

HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NO. 2:15-cv-00369 RSM

FOURTH CONSENT MOTION AND ORDER  
REGARDING CASE SCHEDULE

NO. 2:15-cv-00850 RSM

The above-captioned actions are for declaratory and injunctive relief under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. The parties jointly request that these actions remain open and that the

FOURTH CONSENT MOTION TO EXTEND TIME AND ORDER  
REGARDING CASE SCHEDULE  
(Case Nos. 2:15-cv-00369, 2:15-cv-00850)

U.S. Department of Justice, Tax Division  
Ben Franklin Station, P.O. Box 227  
Washington, D.C. 20044  
202-616-8994 (Phone)  
202-524-6866 (Fax)

1 Court approve the parties' agreed upon, modified schedule set forth in paragraph 3, below. In  
2 support of this request, the parties state the following:

3 1. On September 17, 2021, the Court issued a modified case management order  
4 adopting the parties' proposed revised schedule and case management order. Under that  
5 schedule, the IRS was required to file a motion for summary judgment by December 3, 2021.

6 2. Counsel for the IRS and Microsoft have had regular discussions over the past  
7 months to identify and attempt to narrow the issues for which summary judgment briefing would  
8 be necessary. By letters dated September 22, 2021 and November 10, 2021, Microsoft  
9 acknowledged that the IRS had addressed some of its concerns, and summarized a variety of  
10 outstanding issues it had raised previously regarding the IRS's productions, draft declarations,  
11 and draft *Vaughn* indices, including certain exemption claims. The IRS responded to certain of  
12 the issues raised by Microsoft by letter dated November 23, 2021. The IRS is in the process of  
13 responding to Microsoft's remaining concerns, and the parties are still engaging in good faith  
14 negotiations to narrow the issues that may be addressed in summary judgment proceedings.<sup>1</sup>

15 3. The IRS accordingly requests, and Microsoft consents, to extend the remaining  
16 deadline for the filing of the IRS's motion for summary judgment. The IRS thus requests that  
17 the Court adopt a case schedule extending the deadline for filing a motion for summary judgment  
18 up to and including January 28, 2022 for both of the above-captioned cases.

19 4. Recognizing that the parties continue to engage in good faith negotiations, the  
20 parties agree that evidence of the IRS's efforts to address Microsoft's concerns, including any  
21 revisions to previously exchanged declarations or exemption claims, is not admissible to prove  
22 that the IRS's search was unreasonable or that the IRS's exemption claims were improper.

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24 <sup>1</sup> As set forth in more detail in the motion in the associated FOIA case also before this Court, 2:15-cv-  
25 01605, the IRS is in the process of supplementing its draft revised *Vaughn* index in that case with  
approximately 3,400 additional entries. The IRS, with Microsoft's consent, has requested an identical  
extension of time for filing for summary judgment in that case.

1           5.       The parties jointly request that these actions remain open and that the Court enter  
2 an order adopting the case schedule proposed in paragraph 3.

3           Respectfully submitted this 2nd day of December, 2021.

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16 **U.S. DEPARTMENT OF JUSTICE**

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*Attorney for Defendant Internal Revenue Service*

1 **CERTIFICATE OF SERVICE**

2 I certify that I served a true and correct copy of the foregoing JOINT MOTION via the  
3 Court's electronic case filing system on December 2, 2021.

4  
5 /s Stephen S. Ho

6 STEPHEN S. HO  
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1 **ORDER**

2 It is SO ORDERED this 6<sup>th</sup> day of December, 2021.

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5 

6 RICARDO S. MARTINEZ  
7 CHIEF UNITED STATES DISTRICT JUDGE

8 Presented by:

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10 **BAKER & McKENZIE LLP**

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