Proskauer

Federal Rulings Ease COVID?Era Interest, Penalty and Filing Burdens

Tax Talks on **February 27, 2026**

Relief from underpayment interest, failure-to-file penalties, and failure-to-pay penalties—as well as relief from IRS filing deadlines that arose during the COVID-19 pandemic—may be possible under two recent federal cases from the US Tax Court and the US Court of Federal Claims. Specifically, the recent *Kwong* decision indicates that the period of the COVID-19 federally declared disaster extended from January 20, 2020 to July 10, 2023. Filing deadlines that would have normally occurred and interest and penalties that would have normally accrued during this period may have been suspended under the reasoning articulated in *Kwong.* Taxpayer deadlines for seeking relief are fast approaching, and the time to review pandemic-era tax filings and tax accounts is now.

Basis for COVID-19 Relief

Pursuant to Section 7508A of the Internal Revenue Code, the IRS has long provided limited-in-time relief in which to perform certain tax-related acts, including extending filing and payment deadlines, for taxpayers in areas affected by federally declared disasters. In December 2019, Congress amended the statute to include a new subsection (d), which provided a mandatory minimum 60-day disregard of certain tax-related act deadlines beyond the end of a federally declared disaster period for affected taxpayers.

Historically, section 7508A afforded relief on a limited basis to taxpayers affected by natural disasters—for example, hurricanes or wildfires. Only a few short months after Congress amended section 7508A, the new subsection (d) was put to the test by the COVID-19 pandemic.

On March 13, 2020, President Trump under the authority of the Robert T. Stafford Disaster relief and Emergency Assistance Act declared a federal disaster for the COVID-19 pandemic affecting the entire country. Since March 13, 2020, Stafford Act declarations were issued for every state, territory, District of Columbia, and several tribes which authorized the Federal Management Agency (FEMA) to deliver disaster assistance nationwide related to the COVID-19 pandemic. The President's declaration and those by the states each stated that the disaster began on "January 20, 2020". Stafford Act declarations do not expire, nor do they have set durations established in statute or regulation. Instead, per federal regulations, FEMA determines an "incident period"—the interval during which an incident occurred—for each Stafford Act declaration. In this case, per FEMA the COVID-19 incident period began on January 20, 2020, and closed on May 11, 2023. The 3.5-year incident period for the COVID-19 pandemic is the longest in FEMA's history; most incident periods cover only days or weeks.

While the COVID-19 disaster declarations were in place, the Internal Revenue Service issued interim guidance under the statute, and the Department of Treasury issued a regulation, Treas. Reg. §301.7508A-1, purporting to limit disaster relief under section 7508A(d). Congress also amended the statute in 2021 for disasters declared after the date of enactment to provide that the section 7508A(d) mandatory relief period for future disasters would not exceed 60 days [subsequently extended to 120 days in an amendment to the provision in July, 2025] after the later of (i) the earliest incident date for the disaster or (ii) the date the disaster declaration was issued.

In *Abdo v. Commissioner*, 162 T.C. 148 (2024), a reviewed Tax Court opinion, married taxpayers mailed a petition for filing with US Tax Court on March 17, 2020, more than two weeks after their normal filing deadline. The IRS challenged the filing as untimely and sought dismissal. In the reviewed opinion that had no dissent, the Tax Court held that the statute provided, at minimum, for a mandatory, self-executing 60-day postponement of filing deadlines for filing of Tax Court petitions, rendering the petitioners' filing timely. To the extent the Treasury Regulation promulgated after the events of the case, limiting the relief available under the statute, indicated a different result, the Court held it to be inapplicable or invalid.

In *Kwong v. United States*, a taxpayer had outstanding penalty balances for five older tax years, and the IRS had used overpayments on other returns to satisfy the amounts due. In 2020, the taxpayer filed administrative claims for refund related to these penalty payments, and, toward the end of 2020, the IRS disallowed the claims. In February 2023, the taxpayer filed suit on the claims, seeking a refund, and the IRS argued that the suit was untimely. Generally, under section 6532, a taxpayer must file a suit for refund within two years of receiving a notice of disallowance of the claim by the IRS: the taxpayer here filed suit two years and three months later. The Court of Federal Claims agreed that the taxpayer's refund suit was timely, and that section 7508A(d) had operated to extend the deadline for filing refund claims under section 6532. In so holding, the court additionally found that the statutory amendments to section 7508A in 2021 were not applicable to the COVID-19 disaster, since by their plain terms they applied to disasters declared after the enactment date of the statute. The court further held that the period of the COVID-19 federally declared disaster extended from January 20, 2020 to July 10, 2023 (60 days after the last "incident date" of the emergency declaration on May 11, 2023). The court also held that the relevant IRS guidance and the Treasury Regulation that purported to limit or shorten relief under the statute were not dispositive and appeared to have misread the statute.

Taxpayers Potentially Affected – Next Steps

For taxpayers affected by a federally-declared disaster—and, for the COVID-19 pandemic, most Americans were—section 7508A(d), where applicable, may provide a basis for extending the time to timely meet numerous tax deadlines, including the following:

- Filing any return of income, estate, gift, employment, or excise tax;
- Payment of any income, estate, gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;
- Filing a petition with the Tax Court, or filing a notice of appeal from a decision of the Tax Court;
- Allowance of a credit or refund of any tax;
- Filing a claim for credit or refund of any tax;
- Bringing suit upon any such claim for credit or refund;

The Court of Federal Claims in *Kwong* held that the period of relief during the COVID-19 disaster extended from January 20, 2020 to July 10, 2023.

Abdo is now final, with the parties having settled in late 2024 without an appeal. *Kwong*, however, is not yet final. There is potential conflict between the two decisions, particularly related to the impact of IRS guidance and the Treasury Regulation issued in 2021.

Regardless, the two decisions provide support for taxpayers to continue to seek relief from IRS deadlines that arose during the COVID-19 pandemic, under the extended period stated in *Kwong*, January 20, 2020 to July 10, 2023.

A few common scenarios where relief may still be available include the following:

- If a taxpayer continues to dispute whether an IRS filing deadline that occurred between January 20, 2020 and July 10, 2023 was met, their filing now may be considered timely. Applicable filing deadlines include filing of a Tax Court petition (the *Abdo* fact pattern) and filing of an untimely refund claim during the suspension period (the *Kwong* fact pattern).
- If a taxpayer incurred failure-to-file or failure-to-pay penalties under section 6651 during the suspension period, and those penalties have not been abated, section 7508A could operate to reduce those penalties and related interest charges.
- If a taxpayer incurred or paid underpayment interest under section 6601 (or potentially owes underpayment interest due to an anticipated or proposed deficiency following an audit), they may be entitled to a reduction or elimination of that interest during the extended COVID-19 disaster period, because IRS interest computations may not take into account the full, extended period set forth in *Kwong*. Taxpayers who paid underpayment interest related to the COVID-19 disaster period within the last two years may still be eligible to seek refunds under section 6511(a).

Every taxpayer's situation is different, and time is of the essence, as the end date of the COVID-19 relief period is now almost three years old, and deadlines for seeking relief under the statute are rapidly expiring. We are advising taxpayers on relief potentially available under this statute. Taxpayers with unresolved tax issues for pre-pandemic or pandemic-era tax years (whether through audits, NOLs, carrybacks, potential refund claims or otherwise) should review and evaluate their filings, considering the relief potentially available under these two decisions.

Related Professionals

- **Abraham Gutwein**
  Senior Counsel
- **Amanda H. Nussbaum**
  Partner