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June 16, 2021

Treasury Issues Final Regulation on Mandatory 60-Day Postponement of Certain Tax Deadlines During Federally Declared Disasters

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: Treasury Issues Final Regulation on Mandatory 60-Day Postponement of Certain Tax Deadlines During Federally Declared Disasters

On June 11, 2021, the Treasury Department and Internal Revenue Service (IRS) published a final regulation relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally declared disaster,[\[1\]](#) which was added by the Taxpayer Certainty and Disaster Tax Relief Act of 2019.[\[2\]](#) The final regulation also clarifies the regulatory definition of "federally declared disaster" for various purposes.

Background

Internal Revenue Code ("Code") section 7508A(a) authorizes Treasury to postpone the deadlines for meeting certain requirements for taxpayers determined to be affected by a federally declared disaster. Treasury has discretion to specify both the time-sensitive acts that are postponed and the length of the postponement, up to one year. Treasury Regulation section 301.7508A-1 and Revenue Procedure 2018-58[\[3\]](#) provide lists of time sensitive acts, the performance of which may be postponed under Code section 7508A. These acts include the making of payments to retirement plans and IRAs, plan loan repayments under Code section 72(p), substantially equal periodic payments under Code section 72(t), and required minimum distributions under Code section 401(a)(9).

The Taxpayer Certainty and Disaster Tax Relief Act of 2019 added a new subsection (d) to Code section 7508A, providing qualified taxpayers[\[4\]](#) a mandatory 60-day period that is to be disregarded in determining whether certain acts (described in Code section 7508(a)(1)) were performed within the prescribed time-period.

Final Regulation

As explained in the final regulation's preamble, the regulation is intended to clarify certain ambiguities in the statutory text.^[5] While there is some evidence that Congress intended subsection 7508A(d) to provide an automatic extension when a federal emergency is declared, the preamble notes that the statutory text does not describe an automatic extension.^[6] Because the new statutory language fails to specify the time-sensitive acts to be postponed^[7] and cross-references section 7508A(a), which itself is not self-executing and requires Treasury to make certain determinations, the preamble explains that a determination by Treasury will be necessary before the mandatory 60-day extension will apply.

The final regulation generally adopts the proposed regulation with no substantive changes. The regulation amends Treasury Regulation section 301.7508A-1 to provide that:

- Qualified taxpayers (as defined in Code section 7508A(d)(2))^[8] are entitled to a mandatory 60-day postponement period to run concurrent with a discretionary extension provided by Treasury pursuant to Code section 7508A(a).^[9]
- The time-sensitive acts subject to the mandatory 60-day postponement period are those specified by Treasury under Code section 7508A(a) or (b) (including, if applicable, the pension-related acts enumerated in Code section 7508A(d)(4))^[10].
- The mandatory 60-day postponement period begins on the earliest incident date specified in a disaster declaration for a federally declared disaster and ends on the date that is 60 days after the latest incident date specified in the disaster declaration. The mandatory 60-day postponement period may not exceed one year.
- If Treasury determines to postpone time-sensitive acts pursuant to a federally declared disaster that does not specify an incident date, there is no mandatory postponement period under section 7508A(d). In such cases, the only postponement period will be the discretionary period determined by Treasury under section 7508A(a) or (b).

The changes to Treasury Regulation section 301.7508A-1 are applicable to disasters declared on or after December 21, 2019.

The final regulation also amends the definition of "federally declared disaster" in Treasury Regulation section 1.165-11(b)(1),^[11] to clarify that a federally declared disaster includes both a major disaster declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act^[12] and an emergency declared under section 501 of that Act. This clarification applies on or after June 11, 2021.

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endnotes

^[1] The regulation was published at 86 Fed. Reg. 31146 (June 11, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-06-11/pdf/2021-12311.pdf>. The proposed regulation was published at 86 Fed. Reg. 2607 (January 13, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-01-13/pdf/2021-00185.pdf>.

[2] See section 205 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Public Law 116-94.

[3] Revenue Procedure 2018-58 is available at <https://www.irs.gov/pub/irs-drop/rp-18-58.pdf>.

[4] Code section 7508A(d)(2) defines the term "qualified taxpayer" as:

- a. any individual whose principal residence is located in a disaster area,
- b. any taxpayer if the taxpayer's principal place of business (other than the business of performing services as an employee) is located in a disaster area,
- c. any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area,
- d. any taxpayer whose records necessary to meet a deadline for an act described in section 7508(a)(1) are maintained in a disaster area,
- e. any individual visiting a disaster area who was killed or injured as a result of the disaster, and
- f. solely with respect to a joint return, any spouse of an individual described in any preceding subparagraph of this paragraph.

[5] See 86 Fed. Reg. 31147.

[6] See proposed regulation preamble at 86 Fed. Reg. 2610. A House Ways and Means Committee report titled the section discussing this provision "Automatic Extension of Filing Deadlines in Case of Certain Taxpayers Affected by Federally Declared Disasters," and used the term "automatic extension" in the description of the purpose of the new text.

[7] Generally, Code section 7508A(d) does not identify the specific deadlines that are to be extended; however, subsection (4) lists the following specific pension-related acts to which the mandatory extension applies:

- a. making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2);
- b. making distributions under section 408(d)(4);
- c. recharacterizing contributions under section 408A(d)(6); and
- d. making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

The preamble to the final regulation also notes that the statute does not indicate how to calculate the mandatory 60-day postponement period when the disaster declaration does not include an incident date.

[8] See note 4 *supra*.

[9] In many cases, the 60-day mandatory extension is unlikely to have any impact, since Treasury generally provides extensions of 120 days. See proposed regulation preamble at 86 Fed. Reg. 2611.

[10] See note 7 *supra*.

[11] Treasury Regulation section 1.165-11 relates to elections to take a disaster loss deduction under Code section 165, but the definition applies for other purposes, including Code section 7508A.

[\[12\]](#) Public Law 100-707, 102 Stat. 4689 (1988).

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