

## ACTION ON DECISION

**Subject:** Mohamed K. Abdo and Fardowsa J. Farah v. Commissioner, 162 T.C. 148 (April 2, 2024) (reviewed by the court).

**Issue:** Whether the originally enacted version of 26 U.S.C. § 7508A(d)<sup>1</sup> provided for an automatic and mandatory 60-day postponement of certain tax-related deadlines for all taxpayers affected by the federally declared disaster for the COVID-19 pandemic, beginning January 20, 2020.

**Discussion:** Under section 7508A(a), the Secretary is authorized to postpone certain deadlines for up to one year for taxpayers determined to be affected by a federally declared disaster. The Secretary has discretion to determine (1) who is an affected taxpayer; (2) which deadlines should be postponed; and (3) how long the postponement should last (though no longer than one year). A federally declared disaster includes both a major disaster declared under section 401 of the Stafford Act (42 U.S.C. § 5121, et seq.) and an emergency declared under section 501 of the Stafford Act, but there is no distinction between these types of events for section 7508A(a) purposes. Treas. Reg. § 1.165-11(b)(1). The Federal Emergency Management Agency (FEMA) determines when a federally declared disaster exists and whether Public Assistance and/or Individual Assistance will be given, then issues the disaster declaration, signed by the President. Once the disaster declaration is issued, the Secretary is authorized to exercise discretion to postpone tax-related deadlines for affected taxpayers. The Secretary may postpone deadlines for the acts listed in section 7508(a)(1), including filing returns, paying taxes, filing petitions with the U.S. Tax Court, certain government acts, and any other act required or permitted under the Internal Revenue Code specified by the Secretary.<sup>2</sup> When an affected taxpayer is required to perform a tax-related act by a due date that falls within the postponement period, the affected taxpayer is eligible for postponement of the time to perform the act until the last day of the period determined by the Secretary. Treas. Reg. § 301.7508A-1(b)(2). The Secretary may also disregard the disaster postponement period when calculating the amount of any interest, penalty, additional amount, or addition to the tax owed related to due dates that fall within the postponement period, or when calculating the amount of any credit or refund. I.R.C. § 7508A(a)(2)-(3).

In 2019, Congress added paragraph (d) to section 7508A.<sup>3</sup> Paragraph (d) gave taxpayers a mandatory minimum 60-day postponement of certain tax-related deadlines, effective for disasters declared after December 20, 2019. The text of paragraph (d) specified that mandatory relief was to be applied “in the same manner

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<sup>1</sup> All statutory references hereafter are made to 26 U.S.C. (I.R.C.) unless otherwise specified.

<sup>2</sup> See also Treas. Reg. § 301.7508A-1(c).

<sup>3</sup> See Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. Q, § 205, 133 Stat. 2534, 3245–46 (2019).

as” discretionary relief under section 7508A(a), but it did not identify which deadlines (i.e., taxpayer acts, government acts, or both) should be postponed. Paragraph (d) also failed to explain how to calculate the mandatory 60-day period if there is no incident date of the disaster specified in the declaration, whether mandatory relief can run longer than the year-long limit for discretionary relief under section 7508A(a), and whether mandatory relief applies to every federally declared disaster. It is this version of the statute that was in effect at the time of the issuance of the COVID-19 disaster declarations discussed below.

To address these ambiguities in the statutory language, the Treasury Department published final regulations in June 2021, effective for disasters declared after December 20, 2019. Treas. Reg. §§ 301.7508A-1(g) and (h) specify that to apply section 7508A(d) “in the same manner” as section 7508A(a), the Secretary must first exercise discretion before the mandatory 60-day postponement takes effect. The deadlines postponed under the mandatory 60-day postponement are the same deadlines determined by the Secretary in the grant of discretionary relief under section 7508A(a). The mandatory relief postponement period runs concurrently with the discretionary relief period determined by the Secretary, which cannot last longer than one year. Finally, mandatory relief under section 7508A(d) does not apply when the disaster declaration fails to specify an incident date of the disaster.

In November 2021, Congress amended paragraph (d), effective for disasters declared after November 15, 2021, replacing the “in the same manner as” language, which tied the application of mandatory relief to discretionary relief, with a statement that the period of mandatory relief “shall be disregarded” in determining the timeliness of the specified acts. See Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 80501, 135 Stat. 429, 1335 (2021). The amended version of section 7508A(d) also clarified that only taxpayer acts (not government acts) are to be mandatorily postponed. It also explained how to calculate the 60-day postponement period if there is no incident date of the disaster stated in the disaster declaration and specified that mandatory relief applies only to major disasters in response to which Individual Assistance is provided by FEMA (i.e., not to every federally declared disaster).

On March 13, 2020, the President issued a nationwide emergency declaration without an incident date in response to the COVID-19 pandemic. Pursuant to the emergency declaration, the Secretary then issued a series of notices granting discretionary relief under section 7508A(a) and citing the President’s nationwide emergency declaration. See, e.g., Notice 2020-23, 2020-18 I.R.B. 742, which postponed, among other things, the filing deadline for most federal income tax returns from April 15, 2020, until July 15, 2020. On March 31, 2020, the President issued a major disaster declaration for COVID-19 for Ohio, identifying the disaster as “beginning on January 20, 2020, and continuing.”<sup>4</sup> The IRS did not provide any

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<sup>4</sup> Identical major disaster declarations were issued for all U.S. states and territories.

discretionary or mandatory relief based on this or any other state-specific major disaster declaration.

In Abdo v. Commissioner, 162 T.C. 148 (April 2, 2024) (reviewed by the court), the IRS issued a notice of deficiency to petitioners at their last known address in Ohio on December 2, 2019. Their deadline to file a petition with the Tax Court was March 2, 2020, but petitioners didn't mail their petition to the court until March 17, 2020. The Commissioner moved to dismiss the Abdo petition for untimeliness, but petitioners argued that the Ohio major disaster declaration entitled them to a mandatory 60-day postponement of time to file a petition from January 20, 2020, to March 20, 2020, rendering timely the petition they filed on March 17, 2020.

The Tax Court denied the IRS's motion to dismiss the case for lack of jurisdiction. In a unanimous opinion, the Tax Court held that section 7508A(d) (as amended in 2019) unambiguously provided for an automatic and mandatory postponement period that incorporated all of the acts referenced by section 7508A(a), from the earliest incident date specified in the Ohio declaration, and lasting for at least 60 days until March 20, 2020. Based upon this reasoning, the Tax Court determined petitioners' petition was timely filed. In so holding, the Tax Court invalidated Treas. Reg. §§ 301.7508A(g)(1) and (2), which limited non-pension-related time-sensitive acts postponed for the mandatory 60-day period only to acts determined to be postponed by the Secretary's exercise of discretionary authority under section 7508A(a).<sup>5</sup> The Tax Court did not express a view on what the outer limits of the mandatory postponement period could be when a disaster declaration omits an ending date or is extended. Abdo, 162 T.C. at 169 n.13. The IRS disagrees with the Tax Court's holding that the phrase "in the same manner" in former section 7508A(d) is unambiguous and will continue to defend its interpretation of that provision in the Treasury Regulations, which required the Secretary to first specify whether, and for what acts, discretionary relief would be granted before section 7508A(d)'s mandatory minimum postponement period of 60 days would be triggered.

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<sup>5</sup> The IRS disagrees with the partial invalidation of the regulations, but notes that Treas. Reg. §§ 301.7508A(g)(1) and (2) were rendered obsolete following the enactment of the November 2021 amendments to section 7508A(d).

**Recommendation:** Acquiescence only to the Tax Court's holding that the COVID-19 disaster declarations created a mandatory 60-day postponement period from January 20, 2020, to March 20, 2020. The IRS does not acquiesce to the reasoning of the opinion, the invalidation of the relevant portions of the regulation, or an interpretation that would result in any further postponement beyond the 60 days provided by the Tax Court in Abdo.

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