

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: July 2, 2021

to: Clay Coleman
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(Office of Servicewide Interest)

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subject: Determining overpayment interest for certain individual taxpayers who qualify for relief under section 7508A

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

- (1) Do sections 7508A(c) and 7508(b)(2) provide an exception to section 6611(g), which limits the accrual of overpayment interest when a return is not filed in processible form, when an individual taxpayer files a tax return that is timely due to relief granted under section 7508A because of a federally declared disaster or terroristic or military actions?
- (2) If an individual taxpayer who qualifies for relief under section 7508A with respect to a return timely obtains an extension pursuant to section 6081 and files the return after the postponed due date but before the extended due date, do the section 7508(b)(2) overpayment interest provisions apply?

CONCLUSIONS

- (1) Yes. Section 7508A(c) incorporates the special rule for overpayment interest in section 7508(b). Section 7508(b)(2) provides that when an individual taxpayer qualifies for relief under section 7508A and the taxpayer files a timely return (after taking into account the relevant disregarded period), neither section 6611(b)(3) nor section 6611(e) applies. Section 6611(g) applies only for purposes of sections 6611(b)(3) and 6611(e). Accordingly, section 6611(g) does not apply when sections 6611(b)(3) and 6611(e) do not apply.

- (2) No. If an individual taxpayer files a return after the postponed due date (July 15, 2020, for returns that were originally due on April 15, 2020) but before the extended due date, the return is timely by application of section 6081, not section 7508A. Accordingly, section 7508(b) does not apply, and sections 6611(b)(3), 6611(e) and 6611(g) apply to these returns.

FACTS

On March 13, 2020, the President of the United States issued an emergency declaration in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, instructing the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” On March 18, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Notice 2020-17, 2020-15 I.R.B. 590, which provided relief to affected taxpayers under section 7508A(a) and postponed the due date for certain Federal income tax payments from April 15, 2020, until July 15, 2020. On March 20, 2020, the Treasury Department and the IRS issued Notice 2020-18, 2020-15 I.R.B. 590, which superseded Notice 2020-17 and provided expanded relief, postponing the due dates for filing Federal income tax returns and making Federal income tax payments that were originally due on April 15, 2020, to July 15, 2020. The Treasury Department and the IRS subsequently issued additional notices, including Notice 2020-20, 2020-16 I.R.B. 660, and Notice 2020-23, 2020-18 I.R.B. 742, which amplified Notice 2020-18 and provided additional relief not relevant to this memorandum.

Some of the affected individuals have claimed refunds on tax returns that are not processible. Others have claimed refunds on returns that were filed after the disregarded period, but the returns were filed within the period permitted by an extension under section 6081. Some taxpayers are a part of both groups. Questions have arisen about the payment of interest under section 6611 on these claimed overpayments.

LAW AND ANALYSIS

A. Unprocessable returns

Generally, interest is paid on any overpayment of tax from the date of overpayment to the refund date, subject to two relevant limitations. I.R.C. § 6611(a), (b)(2). First, section 6611(b)(3) disallows the payment of interest on an overpayment for the period during which a return is late, which is determined after taking extensions into account. Second, section 6611(e)(1) disallows the payment of interest on an overpayment if the refund is paid within 45 days after either the original due date for filing or, in the case of a return filed after the original due date, the date the return was filed. Section 6611(g)(1) provides, “For purposes of subsections (b)(3) and (e), a return shall not be treated as filed until it is filed in processible form.” Under section 6611(g)(2), a return is in processible form if it is filed on a permitted form and contains the taxpayer’s name, address, and identifying number, has the required signature, and has sufficient required

information, whether on the return or on required attachments, to permit the mathematical verification of tax liability shown on the return.

Sections 7508 and 7508A provide relief to qualifying taxpayers from certain deadlines imposed by the internal revenue laws for performing certain acts, including filing a return. For those taxpayers, a certain period of time is disregarded in determining whether the tax-related act is performed on time. See I.R.C. 7508(a); I.R.C. 7508A(a). Relief under section 7508 is available to those who have served in combat zones. I.R.C. 7508(a). In addition to providing relief from the deadlines described in subsection (a), section 7508 provides more taxpayer-favorable overpayment interest rules in two ways. First, section 7508(b)(1) states that the period disregarded in subsection (a) will not be disregarded for purposes of calculating the amount of interest to be paid on any overpayment. Second, section 7508(b)(2) provides that section 6611(b)(3) and section 6611(e) do not apply to an individual taxpayer who qualifies for relief under section 7508 as long as a return is filed on time (determined after the application of the disregarded period in subsection (a)). Based on the plain language of section 6611(g)(1), the provisions of section 6611(g)(1) only apply for purposes of section 6611(b)(3) and (e). Accordingly, for those individuals who meet the criteria in section 7508(b)(2), because sections 6611(b)(3) and (e) do not apply, the rule in section 6611(g)(1) that a return is not considered to be filed until it is filed in processible form also does not apply, and whether or not a return is processible is irrelevant to computing overpayment interest.

Section 7508A relief is available to taxpayers determined by the Secretary to be affected by a federally declared disaster or terroristic or military actions. I.R.C. 7508A(a). Section 7508A(c) provides for special treatment of interest on overpayments by simply stating, “[t]he rules of section 7508(b) shall apply for purposes of this section.” Therefore, the provisions of section 7508(b) apply to individuals who qualify for relief under 7508A in the same manner as they apply to those who qualify for relief under section 7508. As a result, the two limitations on overpayment interest in section 6611(b)(3) and (e) do not apply to those who qualify for relief under section 7508A and timely file their return in accordance with section 7508(b)(2). Neither does section 6611(g), because there is no need to apply that provision when sections 6611(b) and (e) do not apply in the first place.

Finally, section 7508(b)(2) requires the timely filing of a return, but the return does not have to be processible to meet this requirement. A return does not have to be processible to be a valid return. *Hulett v. Commissioner*, 150 T.C. 60, 84 (2018). A valid return will trigger the running of the statute of limitations because it contains enough information to calculate a tax liability, even if it is not processible under section 6611(g) and does not trigger the allowance of overpayment interest. See *Id.* at 85; see also I.R.M. 25.6.1.6.16 (setting out procedures applying this legal conclusion). Under the test described in *Beard v. Commissioner of Internal Revenue*, 82 T.C. 766, 777 (T.C. 1984), *aff’d*, 793 F.2d 139 (6th Cir. 1986), for a document to qualify as a valid return, it must satisfy the following:

- (1) it must purport to be a return;
- (2) it must be signed under penalty of perjury;

- (3) it must contain sufficient data to allow calculation of tax; and
- (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law.

Both a valid return and a processible return must have sufficient data to permit the calculation of the tax liability shown on the return, but for a return to be processible, it must also contain information that will allow the Service to complete its processing tasks. As I.R.M. 25.6.1.6.16(2) explains, a return will be valid even though it is missing Form W-2 or Schedule D, but it will not be processible because the calculations on the return are not verifiable. In addition, a common error that renders a return unprocessable is the omission of the taxpayer's identification number, such as a social security number for individuals.

Therefore, we conclude that to trigger the application of section 7508(b)(2), the taxpayer must (1) be entitled to relief under section 7508 or section 7508A, and (2) timely file a valid return (i.e., a return that meets the *Beard* test). If the requirements in section 7508(b)(2) are met, whether and when the taxpayer subsequently files a processible return is irrelevant to the computation of overpayment interest because sections 6611(b)(3), (e), and (g) do not apply.

The following scenarios illustrate the legal analysis related to taxpayers filing unprocessable returns or returns that are not valid. All of the scenarios assume that the taxpayer is an affected individual who qualifies for relief pursuant to Notice 2020-18, that the relevant tax return was originally due April 15, 2020, and that the due date of the return was postponed to July 15, 2020.

1. The taxpayer filed a valid return on May 1, 2020, showing a refund, and it was not processible. The taxpayer filed a processible return on July 1, 2020.
2. The taxpayer filed a valid return on May 1, 2020, showing a refund, and it was not processible. The taxpayer filed a processible return on September 1, 2020.
3. The taxpayer filed a valid return on May 1, 2020, showing a refund, and it was not processible. The taxpayer filed a processible return on November 1, 2020.
4. The taxpayer filed a valid return on May 1, 2020, showing a refund, and it was not processible. The taxpayer does not file a processible return.

In scenarios 1-4, the taxpayer is entitled to section 7508A(a) relief and timely filed his or her tax return within the disregarded period. Therefore, under sections 7508A(c) and 7508(b)(2), the limitations on the payment of overpayment interest in section 6611(b)(3) and 6611(e) do not apply. As explained in the Analysis, the limitation in section 6611(g) also does not apply because sections 6611(b)(3) and 6611(e) do not apply. Therefore, interest begins to accrue from the date of overpayment, irrespective of whether and when the taxpayer subsequently files a processible return.

This conclusion deviates from our previous conclusions with respect to scenarios 2 and 3 above. We previously concluded that in scenario 2 above, if the taxpayer had a valid extension pursuant to section 6081, interest begins to accrue from the date of overpayment. If the taxpayer did not have a valid extension, interest begins to accrue

from the date the return became processible, or September 1, 2020. In scenario 3 above, we previously concluded that interest begins to accrue from the date the return became processible, or November 1, 2020. We have reconsidered our previous position, and we now believe that the return processibility date is not relevant to the determination of when overpayment interest begins to accrue in these scenarios.

5. The taxpayer filed a document on May 1, 2020, and the document does not meet the *Beard* test described in the Analysis above. The taxpayer filed a valid and processible return on July 1, 2020.

In scenario 5, the document that the taxpayer filed on May 1, 2020, does not meet the requirements of *Beard* to qualify as a valid return. However, the return filed on July 1, 2020, is valid and timely filed within the disregarded period. Therefore, section 6611(b)(3) and (e) do not apply, and interest begins to accrue from the date of overpayment.

6. The taxpayer filed a document on May 1, 2020, and the document does not meet the requirements of the *Beard* test described in the Analysis above. The taxpayer filed a valid and processible return on September 1, 2020.

In scenario 6, the document that the taxpayer filed on May 1, 2020, does not meet the requirements of *Beard* to qualify as a valid return. The taxpayer filed a valid but untimely return on September 1, 2020. The untimely return does not trigger the application of section 7508(b)(2). Therefore, section 6611(b)(3), (e), and (g) apply. The return is not considered filed until it is in processible form for purposes of section 6611(b)(3) and (e), thus interest will begin accruing on September 1, 2020, the date a valid return is filed in processible form. However, pursuant to section 6611(e), the IRS may not need to pay any interest if the refund is issued within 45 days of September 1, 2020.

7. The taxpayer did not timely request an extension of time to file the return under section 6081. The taxpayer filed a valid return on August 1, 2020, and it was not processible.

In scenario 7, the taxpayer filed a valid return on August 1, 2020. However, the return was not processible and not timely. The untimely return does not trigger the application of section 7508(b)(2). Therefore, section 6611(b)(3), (e), and (g) apply. The return is not considered filed until it is in processible form for purposes of 6611(b)(3) and (e), thus interest will begin to accrue on the date a valid return is filed in processible form. However, the IRS may not need to pay any interest if the refund is issued within 45 days of the date the return was filed in processible form, pursuant to section 6611(e) and 6611(g). If the taxpayer never files a processible return, no overpayment interest will accrue.

B. Returns filed on or before an extended due date, after the postponed due date

As discussed above, section 7508(b)(2) applies only if the individual taxpayer timely files a valid return. Whether a return is “timely filed” is determined after the application of the relevant disregarded period. See I.R.C. § 7508(b)(2). Separately, a taxpayer may request an extension to file a return under section 6081(a), which permits the Secretary to “grant a reasonable extension of time for time filing any return, declaration, statement, or other document” required by the Internal Revenue Code, not to exceed six months (except for taxpayers who are abroad).

Therefore, under section 6081, a taxpayer whose income tax return is originally due on April 15, 2020, may obtain an extension until October 15, 2020, to file the return. If the taxpayer files a return after the disregarded period (i.e. after July 15, 2020, for returns that were originally due on April 15, 2020), but before the extended due date, the return is only timely after the application of section 6081(a). However, the return is not “timely filed” as described in section 7508(b)(2) because that provision is tied to the application of relief under section 7508 (or, by virtue of section 7508A(c), tied to the application of relief under section 7508A). So, a taxpayer has not timely filed for purposes of section 7508(b)(2) and 7508A(c) if the return is not timely after the application of relief under section 7508 or 7508A. Accordingly, the special overpayment interest provisions of section 7508(b)(2) do not apply to returns filed after the end of the disregarded period and before the expiration of a section 6081 extension.

The following scenarios illustrate the legal analysis related to taxpayers who obtained an extension under section 6081(a). All of the scenarios assume that the taxpayer is an affected individual who qualifies for relief pursuant to Notice 2020-18, that the relevant tax return was originally due April 15, 2020, and that the due date of the return was postponed to July 15, 2020.

8. The taxpayer obtained an extension until October 15, 2020, to file the return. The taxpayer claimed a refund on a processible return filed on August 1, 2020.

In Scenario 8, the taxpayer did not file the return before the end of the disregarded period. Thus, it was not filed within the time prescribed by section 7508A(a), and the return does not qualify for the special overpayment interest rules in section 7508(b), which means sections 6611(b)(3) and (e) apply. Nevertheless, the return was filed on or before the extended due date (here, October 15, 2020) and is not late for purposes of section 6611(b)(3). Therefore, interest generally accrues from the date of overpayment. However, under section 6611(e), no interest will be paid if the refund is issued within 45 days of the date the return is filed (here, August 1, 2020).

9. The taxpayer timely obtained an extension until October 15, 2020, to file the return. The taxpayer claimed a refund on a valid return filed on August 1, 2020. The return was not filed in processible form. The taxpayer subsequently filed a processible return on October 15, 2020.

Like in Scenario 8, the taxpayer in Scenario 9 did not file the return within the time prescribed by section 7508A(a). Accordingly, the return does not qualify for the special overpayment interest rules in section 7508(b). Sections 6611(b)(3), (e), and (g) apply.

The taxpayer filed a valid, processible return within the section 6081 extension period. A return that is filed in processible form on or before the extended due date (here, October 15, 2020) is not late for purposes of the late return rule in section 6611(b)(3). Therefore, interest generally accrues from the date of overpayment. However, under section 6611(e), no interest will be paid if the refund is issued within 45 days of October 15, 2020, the date the return was filed in processible form.

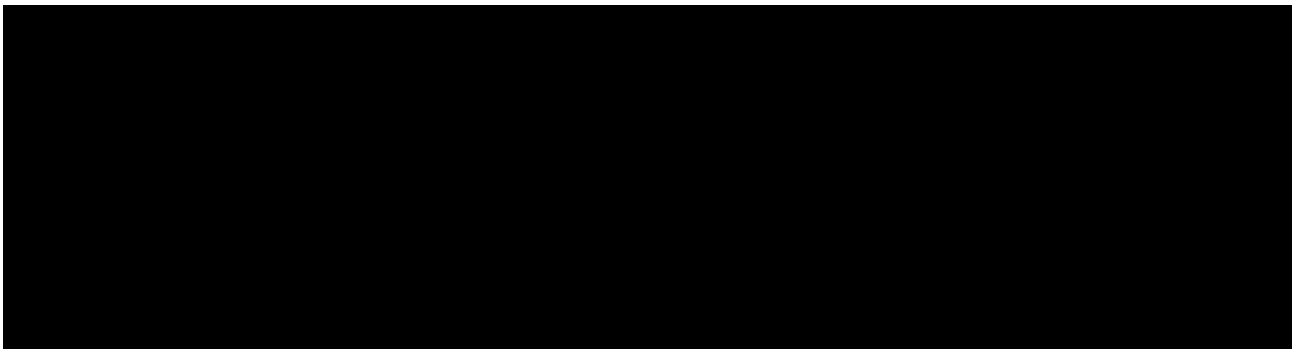
10. The taxpayer timely obtained an extension until October 15, 2020, to file the return. The taxpayer claimed a refund on a valid return filed on August 1, 2020. The return was not filed in processible form. The taxpayer subsequently filed a processible return on October 30, 2020.

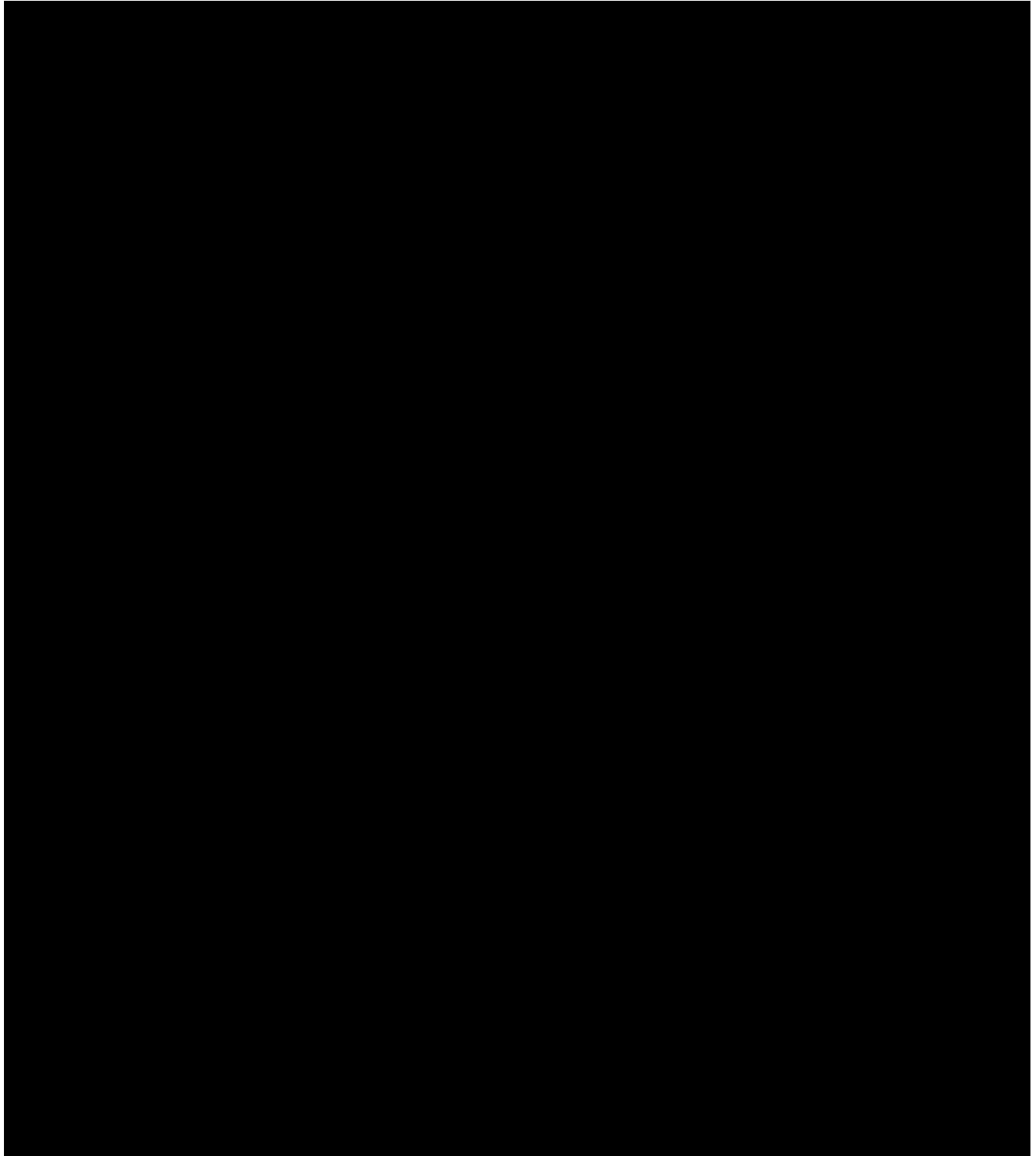
In scenario 10, the taxpayer did not file the return within the time prescribed by section 7508A(a). Accordingly, the return does not qualify for the special overpayment interest rules in section 7508(b). Sections 6611(b)(3), (e), and (g) apply. The taxpayer filed a valid return within the section 6081 extension period. However, under section 6611(g), the return is not considered filed for purposes of 6611(b)(3) and (e) until it is in processible form. Therefore, the return is treated as filed on October 30, 2020, the date the return is filed in processible form, and pursuant to section 6611(b)(3), overpayment interest generally begins to accrue on that date because the return was filed late. However, under section 6611(e), no interest will be paid if the refund is issued within 45 days of October 30, 2020.

11. The taxpayer timely obtained an extension until October 15, 2020, to file the return. The taxpayer claimed a refund on a valid return filed on August 1, 2020. The return was not filed in processible form. The taxpayer does not file a processible return.

In Scenario 11, the taxpayer again did not file the return within the time prescribed by section 7508A(a). As explained in the Analysis, the return would be untimely after the application of section 7508A alone. Accordingly, the return does not qualify for the special overpayment interest rules in section 7508(b). Sections 6611(b)(3), (e), and (g) apply. Overpayment interest does not begin to accrue until the taxpayer files the return in processible form. See I.R.C. § 6611(b)(3) and (g). Therefore, if the taxpayer does not file a processible return, no overpayment interest accrues.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS





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Please call Han Huang at (202) 317-5096 if you have any further questions.