Retirement **Spotlight**

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IRS Aims to Clarify 60-Day Postponement Rule for Federally Declared Disasters

At the end of 2019, the Internal Revenue Code (IRC) was amended to create a mandatory 60-day postponement for certain federal tax-related deadlines in the event of a disaster. This new provision was designed to ensure that affected taxpayers would have guaranteed relief while recovering from a natural disaster or other emergency. But this measure didn't seem to affect how the IRS had already been responding to such events. In fact, the new law created some ambiguity. In an effort to address this uncertainty, the IRS has released proposed regulations. These regulations provide more information about

- what time-sensitive tax acts are covered;
- how the 60-day postponement is determined; and
- how the phrase, "federally declared disaster," is defined for purposes of this 60-day period.

These regulations make it clear that the practical applicability of the automatic 60-day rule still ultimately depends on the IRS's granting of deadline relief when disasters happen. And because the IRS has already been doing this—typically granting *more than* 60 days—there may not be a noticeable change.

60-Day Postponement Rule

The mandatory 60-day postponement rule was added (as IRC Sec. 7508A(d)) by the Taxpayer Certainty and Disaster Tax Relief Act of 2019. (This act was part of the Further Consolidated Appropriations Act, which also contained the SECURE Act.) It requires the IRS to automatically postpone for 60 days certain time-sensitive, federal tax-related deadlines—including those related to retirement savings plans—in response to federally declared disasters that occur on or after December 21, 2019.

The rule applies to taxpayers

- who reside in or were injured or killed in a disaster area,
- who have principal places of business in the disaster area,
- who are relief workers providing assistance in a disaster area, or
- whose tax records necessary to meet a tax deadline are located in a disaster area.

The IRS already had the authority under IRC Sec. 7508A to extend certain tax-related deadlines for up to one year in response to presidentially declared disasters or terroristic or military actions. The IRS typically makes disaster declarations through news releases, describing the counties affected and the length of the deadline postponement.

Extensions typically are 120 days. Some are less. But the 60-day postponement rule ensures at least a minimum time to complete the acts covered by the guidance.

Time-Sensitive Tax Acts

The 60-day postponement statute contains a list of specific time-sensitive, tax-related acts. Those that pertain to retirement plans are

- making IRA or retirement plan contributions,
- removing excess IRA contributions,
- recharacterizing IRA contributions, and
- completing rollovers.

The proposed regulations point to other time-sensitive acts—specified under IRC Sec. 7508, Treasury Regulations, and IRS Revenue Procedure 2018-58—such as filing IRS Form 5500 for retirement plans and making retirement plan loan payments. Thus, the proposed regulations do not limit the mandatory 60-day postponement to only those acts listed in new IRC Sec. 7508A(d). Instead, they reinforce the IRS's discretion in identifying which tax-related acts will be postponed.

So, despite the seemingly automatic nature of the new 60-day extension, individuals must still wait for the IRS to grant relief that applies to a specific disaster and to a specific area. If the IRS decides not to postpone a time-sensitive act, the 60-day postponement statute simply doesn't apply. On the other hand (for disasters with incident dates), if the IRS postpones an act, the postponement must be for at least 60 days.

60-Day Postponement Period

The mandatory 60-day postponement period generally begins on the earliest "incident date" specified in a Federal Emergency Management Agency (FEMA) disaster declaration and ends on the date that is 60 days after the latest incident date. For example, consider a hurricane battering a coastal state for several days. FEMA announces a disaster declaration that is approved by the president. It specifies the earliest incident date for the affected counties as August 15 and the latest incident date (when the flooding ends) as August 19. The deadline postponement begins on August 15 and ends 60 days from August 19.

Under the 60-day postponement statute, however, it is unclear how the 60-day period is calculated when the disaster declaration either does not contain an incident end date or does not contain any incident dates. This happened with the president's March 13, 2020, emergency coronavirus declaration: no incident date was specified, and no latest incident date has yet been determined. The proposed regulations simply state that in such a case no mandatory postponement period applies. Rather, the IRS will determine the postponement period—under its discretionary authority under IRC Sec. 7508A(a)—not to exceed one year.

Federally Declared Disaster

The 60-day postponement statute uses the phrases "disaster area" and "federally declared disaster" and cites the definitions found in IRC Sec. 165(i)(5). There, "federally declared disaster" is defined as ''any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.'' But the words "federally declared disaster" are not used in the Stafford Act. Instead, the Stafford Act uses the terms ''emergency,'' ''major disaster,'' and ''disaster (used to refer to both emergencies and major disasters)."

This language difference between IRC Sec. 165(i)(5) and the Stafford Act has led to some misunderstanding. For this reason, the IRS has also amended the regulations under IRC Sec. 165 to clarify that the term "federally declared disaster" includes references to both "major disaster" and "emergency," as defined in the Stafford Act.

The Takeaway

The IRS is accepting comments on all aspects of the proposed regulations before they are adopted as final. Written or electronic comments and requests for a public hearing must be received by March 15, 2021.These regulations—when made final—may clarify the interplay between the new mandatory 60-day postponement rule and existing disaster relief. But practically, not much is likely to change. The IRS will continue to exercise its considerable authority to postpone tax-related deadlines. Postponements will generally continue to exceed 60 days. And individuals will still rely on the IRS to identify which disasters and tax-related items will qualify for deadline postponement.

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