

**Legislative Recommendation #10****Amend the Lookback Period for Allowing Tax Credits or Refunds Under IRC § 6511(b)(2)(A) to Include the Period of Any Postponement of Time for Filing a Return Under IRC § 7508A****PRESENT LAW**

IRC § 6511(a) provides that taxpayers who believe they have overpaid their taxes may file a claim for credit or refund with the IRS by the later of:

1. Three years from the date the return was filed, or
2. Two years from the date the tax was paid.

IRC § 6511(b) places limits on the amount the IRS may credit or refund by using a two- or three-year lookback period:

1. Taxpayers who file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the three-year period before the filing of the claim plus the period of any extension of time for filing the original return (the “three-year lookback period”). See IRC § 6511(b)(2)(A).
2. Taxpayers who do not file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the two-year period before the filing of the claim. See IRC § 6511(b)(2)(B).

For calendar-year taxpayers, IRC § 6513(b) provides that any tax deducted and withheld on wages and any amount paid as estimated tax are deemed to have been paid on April 15 in the year following the close of the taxable year to which the tax is allowable as a credit.

Under IRC § 7508A, when the Secretary determines that a taxpayer has been affected by a federally declared disaster, the Secretary is authorized to “disregard” for up to one year certain acts a taxpayer is required to undertake under the Internal Revenue Code, including the filing of a tax return. The word “disregard” in this context has been interpreted to mean “postpone.” For example, the Secretary exercised this authority to address the COVID-19 pandemic by postponing the filing deadline in 2020 to July 15, and the filing deadline in 2021 to May 17, for calendar-year individual income taxpayers.<sup>1</sup>

**REASONS FOR CHANGE**

For purposes of determining the lookback period for the allowance of tax credits or refunds, there is a legally significant distinction between a return filed after the regular filing deadline due to an *extension* of the filing deadline and a return filed after the regular filing deadline due to a *postponement* of the filing deadline. When a taxpayer files a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, IRC § 6511(b)(2)(A) extends the three-year lookback for the period of extension (generally by six months). When a filing deadline is postponed under IRC § 7508A, however, the three-year lookback period

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<sup>1</sup> See Notice 2020-23, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic; Notice 2021-21, Relief for Form 1040 Filers Affected by Ongoing Coronavirus Disease 2019 Pandemic. These notices did not affect the date on which any withheld tax or estimated tax for 2019 is deemed paid. Any withheld tax or estimated tax for 2019 is deemed paid on April 15, 2020, for calendar-year taxpayers.

on amounts paid is not extended to include payments made more than three years earlier than the postponed filing date.<sup>2</sup>

*Example:* In 2019, a taxpayer had income tax withheld from his paycheck every two weeks. In 2020, the taxpayer filed his 2019 return on the postponed filing deadline of July 15. The taxpayer's 2019 tax liability was fully paid through withholding, which was deemed paid on April 15, 2020, the due date of the return. Based upon the filing deadline postponement to July 15, the taxpayer timely files a claim for refund on July 14, 2023. Under IRC § 6511(a), the claim for refund is timely. Under the three-year lookback period of IRC § 6511(b), however, the amount of the taxpayer's refund is limited to payments made in the three years prior to filing the claim (*i.e.*, payments made on or after July 15, 2020). The withholding deemed paid on April 15, 2020, falls outside that period (as would any estimated tax payments), so the claim for refund will be denied.

By contrast, if the taxpayer had requested a filing *extension* until October 15, 2020, the taxpayer would have had until October 16, 2023 (October 15, 2023, is a Sunday)<sup>3</sup> to be eligible to receive a refund.

We do not believe the outcome in the above example was intended. More likely, it is an unanticipated result of the interaction between the rules governing the filing of a claim for credit or refund and the rules limiting the amount of a credit or refund that may be allowed. The date for filing a claim for credit or refund and the lookback period generally align, but they do not align in these circumstances. Because of the large number of taxpayers who relied on the *postponed* filing deadlines in 2020 and 2021, the National Taxpayer Advocate recommends that Congress act quickly to authorize the IRS to pay refunds with respect to amounts paid within the preceding three-year period plus the period of any postponement of the filing deadline pursuant to IRC § 7508A before these refund claims are filed.

## RECOMMENDATION

- Amend IRC § 6511(b)(2)(A) to provide that when the Secretary postpones a filing deadline pursuant to IRC § 7508A, amounts paid in the three-year period preceding the filing of a claim for credit or refund plus the period of any postponement of the filing deadline are eligible for credit or refund.

2 See Chief Counsel Advice 2020-53013 (Dec. 31, 2020) (concluding that the additional time prescribed by Notice 2020-23 is not an "extension" within the meaning of the three-year lookback period). By contrast, an extension of the filing deadline until October 15 will extend the lookback period until October 15. See IRC § 6081; Treas. Reg. § 1.6081-4.

3 See IRC § 7503 (when last day for filing falls on a Saturday, Sunday, or legal holiday, the act will be timely if performed on the next business day).