

Legislative Recommendation #57**Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return****SUMMARY**

- *Problem:* Taxpayers who file their tax returns by the April 15 filing deadline ordinarily have until April 15 three years later to file a refund claim and receive a credit or refund of any overpayments of tax. In 2020 and 2021, the IRS postponed the April 15 filing deadline due to the COVID-19 pandemic, but the three-year deadline for the IRS to allow a credit or refund was not extended. Consequently, some taxpayers who took advantage of the postponed filing deadline and file refund claims within three years from the date they filed their returns will have their refund claims rejected as untimely.
- *Solution:* When the IRS postpones a filing deadline, extend the three-year period within which claims for refund or credit are allowed by the same amount of time.

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 filing 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 amounts 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 IRC, including the filing of a tax return.¹ The time which is disregarded in this context has been described as a “postponement.”² For example, the Secretary exercised this authority to address the

¹ IRC § 7508A also authorizes the Secretary to disregard certain IRS acts for a period of up to one year.

² See Treas. Reg. § 301.7508A-1(d)(3).

COVID-19 pandemic by disregarding the period from April 15 to July 15 in 2020 and by disregarding the period from April 15 to May 17 in 2021 for purposes of timely filing an individual income tax return.³

REASONS FOR CHANGE

In determining the lookback period for the allowance of tax credits or refunds, there is a legally significant distinction between an *extension* of the filing deadline and other provisions which may *disregard* time for purposes of determining whether a filing is timely. 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 the extension (generally six months). When a filing deadline is postponed under IRC § 7508A, however, the three-year lookback period on amounts paid is not extended to include payments made more than three years earlier than the postponed filing date.

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 files a claim for refund on July 14, 2023. Under IRC § 6511(a), the claim for refund is timely, as it was filed within three years from the filing date of the original return. 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 refund amount will be limited to \$0, effectively denying the taxpayer any refund.

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 Sunday⁴) 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 for taxpayers who file timely, 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 or additional or disregarded time for timely filing, such as additional time to file pursuant to IRC § 7503 and time disregarded pursuant to IRC §§ 7508 and 7508A, before these claims for credit or refund are filed. Although this problem has become apparent because of the COVID-19 pandemic, it has the potential to arise any time the IRS exercises its authority under IRC § 7508A to postpone the filing deadline. The proposed recommendation would prevent this problem from recurring in the future in addition to addressing the immediate concern.

3 See Notice 2020-23, 2020-18 I.R.B. 742; Notice 2021-21, 2021-15 I.R.B. 986. These notices did not affect the date on which any withheld tax or estimated tax for 2019 or 2020 is deemed paid. Any withheld tax or estimated tax for 2019 is deemed paid on April 15, 2020, for calendar year taxpayers. Similarly, any withheld or estimated tax for 2020 is deemed paid on April 15, 2021, for calendar year taxpayers.

4 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). See also Rev. Rul. 2003-41, 2003-1 C.B. 814 (concluding that when a return is filed on the first business day after a weekend or legal holiday, the lookback period is adjusted accordingly).

RECOMMENDATION

- Amend IRC § 6511(b)(2)(A) to provide that when any postponement or addition or disregarding of time is granted pursuant to the IRC for purposes of timely filing, the limit on the amount of a credit or refund will be the amounts paid in the three-year period preceding the filing of a claim for credit or refund plus the period of any extension, postponement, or additional or disregarded time for timely filing the related return.