

Legislative Recommendation #54**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 claim for credit or refund of any overpayments of tax. However, when a filing deadline is postponed due to a federally declared disaster or similar reason, the three-year “lookback period” for paying refunds is not increased. Consequently, some taxpayers who take advantage of a postponed filing deadline will not be able to obtain a refund even if they timely file their refund claims.
- *Solution:* When a filing deadline is postponed, the three-year lookback period for claims for credit or refund should be increased by the same amount of time.

PRESENT LAW

IRC § 6511(a) provides that taxpayers who believe they have overpaid their taxes generally 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 immediately preceding 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 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.

There are certain circumstances in which filing deadlines may be postponed. For example, 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 that is disregarded in this context has been

¹ IRC § 7508A also authorizes the Secretary to disregard a period of up to one year when determining whether certain IRS acts are timely.

described as a “postponement.”² The Secretary uses this authority regularly.³ For example, the Secretary exercised this authority during the 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.⁴

REASONS FOR CHANGE

In determining the three-year 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 return filing deadline is postponed under IRC § 7508A, however, the three-year lookback period is not similarly lengthened. As a result, payments made more than three years before the date of the claim for credit or refund are not included in the credit or refund amount calculation.

Example: In 2019, a taxpayer had income tax withheld from his paycheck every two weeks. The taxpayer filed his 2019 return on the *postponed* filing deadline of July 15, 2020. The taxpayer’s 2019 tax liability was fully paid through withholding, which was deemed paid on April 15, 2020. Based upon the return filing date of July 15, 2020, the taxpayer filed a claim for refund on July 14, 2023. Under IRC § 6511(a), the claim for refund was timely, as it was filed within three years from the return filing date. Under the three-year lookback period of IRC § 6511(b), however, the amount of the taxpayer’s refund was limited to payments made in the three years prior to filing the claim (*i.e.*, payments made on or after July 14, 2020). The withholding deemed paid on April 15, 2020, fell outside that period,⁵ so the refund amount was 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 Sunday)⁶ to be able to file a claim and receive a full refund, because the lookback period of IRC § 6511(b)(2)(A) includes the extension period.

The IRS remedied this problem for the tax years for which filing deadlines were postponed during the COVID-19 pandemic. The IRS issued Notice 2023-21, 2023-11 I.R.B. 563, under its authority in IRC § 7508A(a), to disregard the period of postponement when determining the beginning of the lookback period for taxpayers who timely filed a 2019 and/or 2020 tax return pursuant to the postponements. Thus, under this Notice, taxpayers may file claims for credit or refund within three years of the postponed return due dates without having their credits or refunds barred by the three-year lookback period.

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

³ See IRS, Tax Relief in Disaster Situations, <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations> (last updated Oct. 19, 2023).

⁴ See IRS Notice 2020-23, 2020-18 I.R.B. 742, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic, <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>; IRS Notice 2021-21, 2021-15 I.R.B. 986, Relief for Form 1040 Filers Affected By Ongoing Coronavirus Disease 2019 Pandemic, <https://www.irs.gov/pub/irs-drop/n-21-21.pdf>. These notices did not affect the date on which any withheld tax or estimated tax for 2019 or 2020 was deemed paid. See Treas. Reg. § 301.7508A-1(b)(4) (“To the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return”). Any withheld tax or estimated tax for 2019 was deemed paid on April 15, 2020, for calendar year taxpayers. Similarly, any withheld or estimated tax for 2020 was deemed paid on April 15, 2021, for calendar year taxpayers.

⁵ This would be the same for any estimated tax payments.

⁶ 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).

Notice 2023-21, however, only fixes the problem for claims for credit or refund for tax years 2019 and 2020 with respect to the COVID-19 postponement. Thus, the disparate outcome in the above example persists for taxpayers when the IRS postpones return filing deadlines due to federally declared disasters. We do not believe such an outcome 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 either on the original due date or pursuant to an *extension*, but they generally do not align when a taxpayer takes advantage of a *postponed* filing deadline.

Because of the large number of federally declared disasters for which the IRS grants relief each year and the millions of affected taxpayers, we recommend that Congress pass legislation to provide a permanent solution to this problem. The proposed recommendation would prevent this problem from recurring in the future and prevent it from occurring in other contexts when filing deadlines are postponed (*e.g.*, when additional time is provided under IRC § 7503 if a due date falls on a Saturday, Sunday, or legal holiday and when time is disregarded under IRC § 7508 while an individual is serving in a combat zone or contingency operation).

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.