

Legislative Recommendation #55**Protect Taxpayers in Federally Declared Disaster Areas Who Receive Filing and Payment Relief From Inaccurate and Confusing Collection Notices****SUMMARY**

- *Problem:* When the IRS postpones a filing and payment deadline due to a federally declared disaster, some taxpayers with balances due file their returns before the postponed deadline but wait until the postponed deadline to make payment. That is permissible, yet the law generally requires the IRS to mail a “notice and demand” for payment, which includes language about interest and penalties accruing before the postponed due date, within 60 days of an “assessment,” which commonly occurs after when the taxpayer files his or her return. This requirement causes needless confusion and worry for taxpayers and needless work for the IRS. In 2023, over a million California taxpayers received these confusing notices, as did taxpayers in Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee.
- *Solution:* When the IRS postpones a filing and payment deadline, tie the deadline for mailing a notice and demand for payment to the postponed filing deadline if the return is filed prior to the postponed date.

PRESENT LAW

IRC § 7508A provides that when the Secretary determines a taxpayer has been affected by a federally declared disaster, a significant fire, or a terroristic or military action, the Secretary is authorized to “disregard” for up to one year certain acts the taxpayer and the government are required to undertake under the internal revenue laws, including the filing of a tax return and the payment of tax.¹ The time that is disregarded in this context has been described as a “postponement.”²

IRC § 6303(a) requires the IRS to issue a notice and demand for payment within 60 days of assessment. An assessment generally occurs after a taxpayer files a return showing a tax liability (*i.e.*, the taxpayer self-reports the tax, also known as a “self-assessment”). Under IRC § 6303(b), if an assessment occurs before the last date prescribed for payment of tax, no notice and demand for payment is required until after the last date “prescribed” for payment of tax.³

REASONS FOR CHANGE

A period of postponement under IRC § 7508A does not change the due date of the return.⁴ Thus, a glitch in the rules arises because a “postponed” payment deadline does not change the “prescribed” payment deadline. It merely allows the IRS to disregard a period of up to one year for performance of the tax-related act.⁵ Because the prescribed due date for payment does not change, IRC § 6303 requires the IRS to issue a notice and demand for payment within 60 days of assessment.

1 IRC § 7508A(a) (citing IRC § 7508(a)(1)).

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

3 See also IRC § 6151.

4 Treas. Reg. § 301.7508A-1(b)(4).

5 IRC § 7508A(a) (citing IRC § 7508(a)(1)); Treas. Reg. § 301.7508A-1(b)(4).

In 2023, the IRS postponed certain filing and payment deadlines for taxpayers affected by severe weather in almost all of California.⁶ Some of these taxpayers filed their returns with a balance due before the postponed deadline but held off on making payments until the postponed deadline.

Example: The regular filing deadline of April 15 is postponed until October 15. A taxpayer files a balance due return on June 1 and plans to make payment on the postponed filing deadline of October 15. The assessment of tax occurs on June 1, and the IRS issues a notice and demand for payment within 60 days (*i.e.*, by July 31). The notice informs the taxpayer that interest and penalties will accrue after the due date reflected on the front page of the notice. The taxpayer is concerned that the accountant's advice about waiting to make a payment until the postponed due date was incorrect, and is worried he or she may face IRS collection action. As a result, the taxpayer may pay the tax earlier than legally required (October 15), or may seek additional advice from the accountant and incur additional fees.

The IRS sent over a million of these notice and demand letters to taxpayers in California covered by a disaster relief declaration.⁷ It also sent these notices to taxpayers in Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee.⁸ The IRS included a short paragraph on the back of page four of the notice explaining that the taxpayer may qualify for disaster relief. After receiving complaints from affected taxpayers and tax professionals, the IRS later sent out updated notices to clarify that taxpayers covered by disaster declarations did not have to pay before the postponed due date.⁹ But the IRS continued to send out notice and demand letters for taxpayers whose returns showed a balance due, because it believes the notice is legally required to protect its ability to administratively collect any unpaid tax.

Under IRC § 7508A, the Secretary has the legal authority to postpone issuing a notice and demand for payment, but the Secretary has rarely done so.¹⁰ We urge the Secretary to routinely postpone notices and demands for payment when postponing filing and payment deadlines (*i.e.*, news releases and notices). However, because of the large number of federally declared disasters for which the IRS grants relief each year and the millions of affected taxpayers,¹¹ we recommend that Congress pass legislation to provide a permanent solution to this problem so that case-by-case exceptions are not required. The proposed recommendation would keep the IRS from mailing notices that lead to taxpayer confusion and anxiety.

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- 6 See IRS, IRS Announces Tax Relief for Victims of Severe Winter Storms, Flooding, Landslides, and Mudslides in California, <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-victims-of-severe-winter-storms-flooding-landslides-and-mudslides-in-california> (last visited Nov. 7, 2023). Seven other states (Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee) faced a similar issue with incorrect notice and demand letters. See Erin M. Collins, Disaster Relief: What the IRS giveth, the IRS taketh away. Or so it seems for disaster relief taxpayers until you get to page 4 of the collection notice (Part One), NATIONAL TAXPAYER ADVOCATE BLOG (July 11, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-one/>; IRS News Release, IR-2023-121, IRS Sends Special Mailing to Taxpayers in Certain Disaster Areas (June 28, 2023), <https://www.irs.gov/newsroom/irs-sends-special-mailing-to-taxpayers-in-certain-disaster-areas>.
 - 7 Natalie Campisi, *IRS Collection Notices Go Out To 1 Million Taxpayers By Mistake; Disaster-Related Extensions Still Apply*, FORBES, July 14, 2023, <https://www.forbes.com/advisor/taxes/california-disaster-tax-relief>.
 - 8 See Erin M. Collins, Disaster Relief: What the IRS giveth, the IRS taketh away. Or so it seems for disaster relief taxpayers until you get to page 4 of the collection notice (Part One), NATIONAL TAXPAYER ADVOCATE BLOG (July 11, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-one/>.
 - 9 See Erin M. Collins, Disaster Relief: What the IRS giveth, the IRS taketh away. Or so it seems for disaster relief taxpayers until you get to page 4 of the collection notice (Part One), NATIONAL TAXPAYER ADVOCATE BLOG (July 11, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-one/>; Erin M. Collins, Disaster Relief: What the IRS giveth, the IRS taketh away. Or so it seems for disaster relief taxpayers until you get to page 4 of the collection notice. (Part Two), NATIONAL TAXPAYER ADVOCATE BLOG (July 12, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-two/>. See also IRS, IRS Statement on California Mailing of Balance Due Notices, <https://www.irs.gov/newsroom/irs-statement-on-california-mailing-of-balance-due-notices> (last visited Nov. 7, 2023).
 - 10 Treas. Reg. § 301.7508A-1(c)(2)(ii). See, e.g., IRS Notice 2023-71, 2023-44 I.R.B. 1191, Relief for Taxpayers Affected by the Terroristic Action in the State of Israel, <https://www.irs.gov/pub/irs-drop/n-23-71.pdf>; 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>.
 - 11 See IRS, Tax Relief in Disaster Situations, <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations> (last visited Nov. 7, 2023).

RECOMMENDATION

- Amend IRC § 6303(b) to include postponement periods when determining the last date prescribed for payment of tax.