



Internal Revenue Service

26 CFR Parts 1 and 301

[REG-115057-20]

RIN 1545-BP98

Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTIONS: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a Federally declared disaster. This document also contains proposed regulations clarifying the definition of “Federally declared disaster.” These proposed regulations affect individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are located in a disaster area. This document invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-115057-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited

personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-115057-20), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William V. Spatz at (202) 317-5461; concerning submission of comments, Regina Johnson, (202) 317-5177; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7508A of the Internal Revenue Code (Code) relating to the discretionary authority of the Secretary of the Treasury or his delegate (Secretary) to postpone certain time-sensitive tax deadlines by reason of a Federally declared disaster. These proposed regulations also amend the Income Tax Regulations (26 CFR part 1) under section 165 to clarify the definition of Federally declared disaster.

I. FEMA Procedures for Declaring a Disaster and Providing Relief

When it is apparent that a Federal disaster declaration, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), P.L. 93-288, as amended, 42 U.S.C. §5121 et seq, may be necessary to assist in the recovery of an affected area, a state, territory, or tribal government may contact the appropriate regional office of the Federal Emergency Management Agency (FEMA) and request a joint Federal-state, territory, or tribal government Preliminary Damage Assessment

(PDA). Local government representatives are also included, if possible. Together, the team conducts an assessment of the affected area to determine the extent of the disaster, its impact on individuals and public facilities, and the types of Federal assistance that may be needed. This information is gathered to show whether the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the state, territory, or tribal governments and the affected local governments and that supplemental Federal assistance is necessary. See 44 C.F.R. §206.33.

After the PDA is complete and the chief executive of the state, territory, or tribal government determines that the damage from the major disaster exceeds the state's, territory's, or tribal government's resources, the executive may submit a declaration request to the President through the applicable FEMA Regional Office.¹ As part of the request, the chief executive must furnish information on the nature and amount of state, territory, or tribal government and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sectors, and provide an estimate of the type and amount of assistance needed under the Stafford Act. The President determines whether a disaster has caused damage of such severity that it is beyond the combined capabilities of state, territory, or tribal governments and local governments to respond. A major disaster declaration provides a wide range of Federal assistance programs for individuals and public infrastructure. See Stafford Act section 401 (42 U.S.C. §5170). A similar declaration request may be submitted to the President in the event of an emergency of such severity and magnitude that effective response is beyond the capabilities of the state, territory, or tribal governments. If the United States

¹ In rare catastrophic events, the PDA may not be completed before the disaster is declared. Tribal governments may seek assistance either under a state declaration request or tribal leaders may independently choose to request a major disaster declaration from the President.

has the primary responsibility for response to an emergency, the President may issue an emergency declaration without a request from the chief executive of a state, territory, or tribal government. See Stafford Act section 501 (42 U.S.C. 5191).²

Once a declaration is made, affected areas and eligible assistance are determined. See 44 CFR 206.40. FEMA announces on its website and in the **Federal Register** whether specific counties, parishes, boroughs, tribal lands, or municipalities (counties) within a state that were affected by a major disaster are eligible for Federal “public assistance” and/or “individual assistance.”³ “Public assistance” relief is described in Stafford Act sections 406 and 407 as including Federal assistance to repair, restore, and replace disaster-damaged public facilities, which may include debris removal, roads and bridges, water control facilities, buildings and equipment, utilities, parks, and recreational facilities. 42 U.S.C. 5172 and 5173. Emergency protective measures, described in Stafford Act section 403 (42 U.S.C. 5170b), are actions taken by state, tribal, territorial and local governments to meet immediate threats to life and property resulting from a major disaster. “Individual assistance” relief is described in Stafford Act section 408 as Federal assistance to individuals and households, including disaster programs for crisis counseling, unemployment assistance, legal services, and supplemental nutrition assistance. 42 U.S.C. 5174. FEMA defines an “incident” as any condition which meets the definition of a major disaster or emergency under the Stafford Act and which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency. 44 CFR 206.32(e). FEMA also defines an “incident period” as “[t]he time interval during which the disaster-causing incident occurs.” 44 C.F.R. §206.32(f).

² More information about the process for declaring major disasters or emergencies under the Stafford Act can be found at 44 CFR 206.31 et seq. and on the FEMA website: <https://www.fema.gov/disasters/how-declared>. It is rare for the President to declare an emergency without a request from a state, territory, or tribal government. Examples include the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995, the loss of the Space Shuttle Columbia in 2003, and the COVID-19 pandemic in 2020.

³ <https://www.fema.gov/disasters/disaster-declarations>.

II. Disaster Relief under Section 7508A(a)

A. *Overview*

Under section 7508A(a), the Secretary has discretionary authority to determine which taxpayers can have acts postponed by reason of being affected by a Federally declared disaster and to specify both the time-sensitive acts that are postponed and a period of time that may be disregarded, up to one year, in determining whether such acts were timely performed. The time-sensitive acts that may be postponed under section 7508A(a) include acts due to be performed by taxpayers or the government. See §301.7508A-1(c).

The term “Federally declared disaster” is defined in section 165(i)(5) 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.” The Stafford Act does not use the term “Federally declared disaster.” It uses the defined terms “emergency” and “major disaster” and also uses the generic term “disaster” to refer to both emergencies and major disasters. See Stafford Act §101, 42 U.S.C. 5121 (using the term “disaster”); Stafford Act §102, 42 U.S.C. 5122 (defining the terms “emergency” and “major disaster”); H.R. Rep. 93-1037, p. 26 (May 13, 1974) 120 Cong. Rec. 14156 (clarifying that the term “disaster” as used in the Stafford Act “includes an emergency or a major disaster”). As described above, the declaration of either an emergency or a major disaster requires a determination by the President that Federal assistance is warranted under the Stafford Act. Accordingly, the IRS has previously acknowledged that a Federally declared disaster under section 165(i)(5) includes either an emergency or a major disaster declared under the Stafford Act. See Rev. Rul. 2003-29, 2003-11 I.R.B. 587 (Mar. 17, 2003); Rev. Rul. 2002-11, 2002-10 I.R.B. 608 (Mar. 11, 2002); Rev. Rul. 2001-15, 2001-13 I.R.B. 922 (Mar. 26, 2001); and Rev. Rul. 2000-15, 2000-12 I.R.B. 774 (Mar. 20, 2000).

Section 7508A(a) of the Code neither mentions FEMA, nor the concept of the “incident period” as determined by FEMA. As noted above, section 7508A(a) leaves it to the Secretary’s discretion to identify the period of postponement, that is, the start and end dates of the “incident,” and the type of relief to provide, from a tax administration perspective. The Secretary has historically looked to FEMA declarations to identify which counties are sufficiently affected by a major disaster for the Secretary to exercise the discretion under section 7508A(a) to postpone periods of time for the taxpayers in these disaster-affected counties to perform certain specified time-sensitive tax actions.

Section 7508A(a) is not self-executing; it does not operate, on its own, to postpone any time-sensitive act in the event of a Federally declared disaster. Instead, the statute authorizes the Secretary to determine who is affected by a Federally declared disaster for purposes of section 7508A, what time-sensitive acts performed by these taxpayers (or performed by the government with respect to these taxpayers) should be postponed, and for what period of time the postponement period should run.

Section 7508(a)(1) enumerates time-sensitive acts that are postponed with respect to a taxpayer serving in a combat zone (and which the Secretary may postpone with respect to taxpayers affected by a Federally declared disaster, via section 7508A(a)(1)). These acts include filing any income, estate, gift, employment, or excise tax return; making any income, estate, gift, employment, or excise tax payment or any installment thereof; filing a petition with the Tax Court for redetermination of a deficiency, or for review of a Tax Court decision; allowing a credit or refund of any tax; filing a claim for credit or refund of any tax; bringing suit upon a claim for credit or refund; making an assessment of any tax; giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax; collecting, by levy or otherwise, the amount of any liability in respect of any tax;

bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and any other act required or permitted under the internal revenue laws specified by the Secretary. Additional acts that may be postponed in the event of a Federally declared disaster are listed in Rev. Proc. 2018-58, 2018-50 I.R.B. 990, which is the current version of a revenue procedure that is updated periodically to reflect additional acts or other changes. The revenue procedure provides that in order for taxpayers to be entitled to a postponement of the time-sensitive acts listed in the revenue procedure, the IRS needs to issue guidance providing such relief with respect to a Federally declared disaster, typically by cross-referencing the revenue procedure in an IRS news release. This is the case not just for acts listed in the revenue procedure, but for all acts listed in section 7508(a)(1). As a result, in the event of a Federally declared disaster, the IRS generally issues a news release or other guidance identifying the affected taxpayers for purposes of section 7508A (typically by reference to counties or states), the time-sensitive acts postponed, and the period of time for the postponement.

B. Historical Application

The historical practice before the enactment of section 7508A(d) was generally to postpone time-sensitive tax acts under section 7508A(a) without regard to the latest incident date for a disaster as described by FEMA. The postponement period set by the Secretary generally began on the earliest incident date specified in a FEMA disaster declaration and ended 120 days later, although a longer period for relief could be selected if the disaster coincided with any major filing deadlines. See IRM 25.16.1.5.2(2) (rev. 06-26-2018) (“The severity of the disaster and proximity of tax deadlines are primary factors in determining the level of tax relief that is provided.”). These postponement periods typically extended more than 60 days after the latest incident date specified in a FEMA disaster declaration. For example, an end date for

the major disaster incident was indicated in FEMA's initial disaster declarations for 48 of FEMA's 53 major disaster declarations issued for disasters occurring in 2019 and declared before December 19, 2019. For these 48 FEMA major disaster declarations in 2019 with initial ending incident dates assigned to them by FEMA, the incident period ranged from one day to 130 days, with a median incident period of nine days. For the five 2019-year major disasters where FEMA's initial declarations did not specify an end date for the disaster, FEMA later amended the declarations to provide an end date to the incident period for the disaster. FEMA major disaster declarations and any amendments thereto are posted on the FEMA website⁴ and published in the **Federal Register**.

III. Section 7508A(d)

On December 20, 2019, section 7508A(d) was added to the Code by section 205 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, P.L. 116-94, 133 Stat. 2534, 3226 (FCAA). Section 7508A(d) provides qualified taxpayers a mandatory 60-day period that is to be disregarded "in the same manner as a period specified under [section 7508A(a)]" (mandatory 60-day postponement period). Section 7508A(d)(1). Section 7508A(d) does not identify the acts for which a period is disregarded under section 7508A(a). Section 7508A(d)(4) provides that a rule similar to section 7508A(d)(1) applies with respect to any person described in section 7508A(b) for certain pension-related acts. In contrast to the rest of section 7508A(d), section 7508A(d)(4) identifies specific pension-related acts to which the mandatory 60-day postponement period provided in section 7508A(d)(1) applies. In addition, section 7508A(d)(5) coordinates the mandatory 60-day postponement period with a period specified by the Secretary by providing that the mandatory 60-day postponement period with respect to a person

⁴ <https://www.fema.gov/disasters/disaster-declarations>

(including by reason of the application of section 7508A(d)(4)) is in addition to (or concurrent with, as the case may be) any period specified by the Secretary under section 7508A(a) or (b) with respect to such person.

Because section 7508A(a) does not, on its own, operate to postpone any acts, the Secretary must determine which acts to postpone. As a result, the requirement in section 7508A(d)(1) that the mandatory 60-day postponement period be disregarded “in the same manner as a period specified under [section 7508A(a)]” indicates that the acts covered by the mandatory 60-day postponement period under section 7508A(d)(1) must also be determined by the Secretary in the manner required under section 7508A(a).

Under section 7508A(d)(5), the mandatory 60-day postponement period in section 7508A(d) runs concurrently with the postponement period determined by the Secretary under section 7508A(a) if the period determined by the Secretary under section 7508A(a) is equal to or longer than 60 days. If the Secretary’s postponement period under section 7508A(a) is less than 60 days, the mandatory 60-day postponement period would run concurrently for the length of the Secretary’s postponement period under section 7508A(a) and then continue running in addition to the Secretary’s postponement period. The mandatory 60-day postponement period generally begins on the earliest incident date specified in a FEMA disaster declaration and ends on the date which is 60 days after the latest incident date.

IV. Legislative History of Section 7508A(d)

The legislative history of section 7508A(d) of the Code is sparse. There are no House, Senate, or Conference Reports concerning the FCAA. The identical text of section 7508A(d) was included in the same session of Congress in H.R. 3301, which was not enacted. Before H.R. 3301 was set to be marked up by the House Ways and Means Committee on June 30, 2019, the staff of the Joint Committee on Taxation

prepared a partial description of proposed section 7508A(d) in JCX 30-19 (June 18, 2019) (Joint Committee Report).

The Joint Committee Report (at 86-87) described twelve categories of time-sensitive acts that could be postponed which are performed by taxpayers (for example, filing any return or paying any tax) or by the IRS (for example, assessment or collection of any tax), which are the same eleven items described in section 7508(a)(1)(A)-(K) (for taxpayers serving in a combat zone), plus the set of acts regarding pensions that are described in §301.7508A-1(c)(1)(iii). The Joint Committee Report did not discuss why section 7508A(d) only refers to the acts regarding pensions in section 7508A(d)(4) to be postponed, but not the eleven categories of acts described in section 7508(a)(1)(A)-(K). The Joint Committee Report also did not discuss the intended meaning of section 7508A(d)(1)'s provision that periods of time "shall be disregarded in the same manner as under [section 7508A(a)]."

As regards the proposed length of the mandatory 60-day postponement period, the Joint Committee (at 87) stated only that "[t]he 60-day period begins on the earliest incident date specified in the declaration of the relevant disaster and ends on the date which is 60 days after the latest incident date so specified." The Joint Committee Report did not refer to or explain how the new proposed section 7508A(d) might be applied in the event that a declaration did not specify an incident date, or in the event of a prolonged and uncertain disaster period, such as in the case of a drought or pandemic.

On January 21, 2020, a month after the enactment of section 7508A(d), the House Ways and Means Committee released a report on H.R. 3301, H. Rept. No. 116-379 (2020) (House Committee Report), which largely repeated (at 97-100) the explanations previously provided by the Joint Committee Report regarding the features of section 7508A(d). In this report, the Ways and Means Committee titled the section

discussing the text of what had been enacted as section 7508A(d), “Automatic Extension of Filing Deadlines in Case of Certain Taxpayers Affected by Federally Declared Disasters.” H.R. Rep. No. 116-379, at 97 (2020). Next, the House Committee Report described the current law (prior to enactment of section 7508A(d)), beginning with a discussion of the filing deadlines for Federal income tax returns and quarterly estimated tax payments, and ending with a listing of all of the items in section 7508(a)(1) and section 7508A(a) that the Secretary may postpone in the event of a Federally declared disaster. Id. at 97-98. Then, the report identified the reason for change as follows:

The Committee believes that the certainty and additional time provided by an automatic extension of filing deadlines for taxpayers affected by Federally declared disasters will ease the burden of tax compliance for taxpayers dealing with the hardship of disaster recovery.

Id. at 99. Again, the House Committee Report only identified an automatic extension of filing deadlines as the purpose for the new statutory text. However, in the Explanation of Provision section that followed, the House Committee Report seems to indicate that the statute was meant to postpone all of the deadlines that it had listed in its description of current law:

The provision provides to qualified taxpayers in the case of a Federally declared disaster a mandatory 60-day period that is disregarded in determining whether the acts listed above were performed in the time prescribed; the amount of interest, penalty, additional amount, or addition to tax; and the amount of credit or refund. The 60-day period begins on the earliest incident date specified in the declaration of the relevant disaster and ends on the date which is 60 days after the latest incident date so specified.

Id. at 99. The “Explanation of Provision” section of the House Committee Report is inconsistent with the report’s “Reason for Change” section, and neither section comports with the statutory text of section 7508A(d) as enacted, because the statutory text does not reference which specified acts (let alone all) are postponed under section 7508A(a).

Explanation of Provisions

The Treasury Department and the IRS have determined it necessary to propose regulations addressing the enactment of section 7508A(d) because the statutory text is ambiguous in at least two respects. First, it is unclear what time-sensitive acts are to be postponed. Second, it is unclear how the mandatory 60-day postponement period is to be calculated when the declaration specified in section 7508A(d) does not contain an incident date. Further, the legislative history described in the Background section is insufficient to explain these areas of ambiguity. The Treasury Department and the IRS have also determined it necessary to propose regulations addressing the ambiguity between the different terms used in the Code and in the Stafford Act to refer to disasters determined by the President to warrant Federal assistance. This Explanation of Provisions section discusses the proposed regulations addressing each of these areas of ambiguity.

I. Time-Sensitive Tax Acts

Section 7508A(d) provides a mandatory 60-day period during which qualified taxpayers will receive disaster relief. Except for the rules regarding pensions described in section 7508A(d)(4), section 7508A(d) does not specify the time-sensitive tax acts to be postponed during the mandatory 60-day postponement period. Section 7508A(d)(1), however, provides that this mandatory 60-day postponement period “shall be disregarded in the same manner as a period specified under [section 7508A(a)].”

Section 7508A(a) is not self-executing. Rather, it requires the Secretary to determine whether a taxpayer is affected by a Federally declared disaster for purposes of section 7508A(a), whether any time-sensitive tax acts are to be postponed for such taxpayers, and the duration of such postponement. Section 7508A(d)(1)’s reference to section 7508A(a) thus requires a determination by the Secretary of the time-sensitive tax acts, if any, to be postponed under section 7508A(a). Therefore, these proposed regulations

provide that the Secretary's determination under section 7508A(a) of the acts subject to postponement due to a Federally declared disaster is an essential prerequisite to determining the acts to which the mandatory 60-day postponement period applies with respect to that Federally declared disaster for qualified taxpayers.

There are circumstances when the Secretary has chosen to limit the extent to which the discretion to postpone time-sensitive acts under section 7508A(a) might otherwise be exercised. For example, section 7508A(a)(1) (through its reference to acts described in section 7508(a)(1)) lists several time sensitive acts performed by the IRS – not by taxpayers – that are available for postponement in the event of a Federally declared disaster, including the assessment of any tax, making of notice and demand for payment of any tax, collection of any tax, and initiating litigation with respect to any tax liability. Although all of these acts can be postponed under section 7508A(a) in the same manner as time-sensitive acts performed by taxpayers, the Secretary rarely chooses to postpone them. Over the past 20 years, time-sensitive government acts were only postponed under section 7508A(a) in connection with four Federally declared disasters: the September 11, 2001 terrorist attacks (Notice 2001-68, 2001-47 I.R.B. 504), Hurricane Katrina (Notice 2005-66, 2005-40 I.R.B. 620 and Notice 2005-81, 2005-47 I.R.B. 977), Hurricane Rita (Notice 2005-82, 2005-47 I.R.B. 978), and the COVID-19 pandemic (Notice 2020-23, 2020-18 I.R.B. 742). The statutory text of section 7508A(d) provides no indication that Congress intended to postpone all time-sensitive acts for which relief potentially could be provided under section 7508A(a), including those acts due to be performed by the government with respect to a qualified taxpayer. It has generally not been the practice of the Secretary to exercise all of the authority given under section 7508A(a) to postpone all time-sensitive government acts with respect to taxpayers affected by a Federally declared disaster.

The Secretary generally also chooses not to exercise the discretion under

section 7508A(a) with respect to many time-sensitive acts carried out by taxpayers. For example, section 7508(a)(1)(A)-(B) and section 7508A(a)(1) combine to provide, among other things, that the Secretary has the discretion to specify a period of up to one year that may be disregarded in determining whether an affected taxpayer with respect to a qualifying disaster has timely filed any return of income tax or paid the United States any employment or excise taxes. The Secretary may exercise the discretion under section 7508A(a) to not provide postponement periods for the filing of certain information returns with respect to income, such as Forms W-2 (Wage and Tax Statement) and forms in the 1099 series. These information returns with respect to income are required by most income tax filers in order to timely prepare their own income tax returns, such as Forms 1040 (U.S. Individual Income Tax Returns) or Forms 1120 (U.S. Corporation Income Tax Returns). These information returns may also be used by the IRS to verify withheld amounts that were claimed on an income tax return before tax refunds are issued. As a result, for tax administration reasons, the Secretary generally does not postpone the time-sensitive acts of filing and furnishing these information returns, except for certain information returns relating to individual retirement accounts (IRAs) and certain other tax-exempt accounts.

Finally, the Secretary may choose not to provide any relief under section 7508A in response to a Federally declared disaster. For example, when a disaster is eligible for assistance that is limited to only the clean-up of public property or other short-term public services, the Secretary may determine that relief is not warranted under section 7508A.

For the foregoing reasons, these proposed regulations provide that the phrase, “shall be disregarded in the same manner as a period specified under [section 7508A(a)]” in section 7508A(d)(1) first requires the Secretary’s exercise of discretion under section 7508A(a) to specify the postponed set of time-sensitive acts for taxpayers

(and potentially for the government) during the entirety of the postponement period under both section 7508A(a) and (d). Accordingly, if the Secretary determines not to postpone a time-sensitive act pursuant to the discretionary authority under section 7508A(a), that act will also not be postponed under section 7508A(d). Similarly, if no time-sensitive acts are postponed under section 7508A(a), then none will be postponed under section 7508A(d).

II. Calculation of the Mandatory 60-day Postponement Period

The earliest and latest incident dates referred to in subsections 7508A(d)(1)(A)-(B) for a Federally declared disaster are the dates for these events set forth in the declaration establishing the Federally declared disaster for purposes of section 7508A. In the circumstances where there is a certain event with an incident date or incident dates stated in the declaration, as described in Examples (1)-(3) of the proposed regulation, the period described in section 7508A(d)(1) will generally run concurrently with the discretionary periods specified by the Secretary under section 7508A(a) or (b), when the postponement period provided by the Secretary is equal to or greater than 60 days. (As explained previously, the postponement period provided by the Secretary is generally 120 days.) If the postponement period provided by the Secretary is less than 60 days, then section 7508A(d) would apply to provide a mandatory 60-day postponement period, running concurrently with the Secretary's postponement period at the start, and then after the period prescribed under section 7508A(a) ran out, the mandatory period under section 7508A(d) would continue to run for the remainder of the 60-day period.

In flooding, wildfire, or earthquake disasters, it is not unusual for FEMA initially to issue a major disaster declaration with no known end date for the disaster incident period. However, insofar as Congress could have been aware when section 7508A(d) was enacted, these open-ended disaster incident periods were generally resolved with

the addition by FEMA of a closing date within a short time (usually less than 60 days) after the first reported incident date. Also, it is clear from the legislative history that Congress did not anticipate a situation such as a pandemic or drought, where the beginning date and end dates are not clear, or a situation where the declaration does not specify an incident date.

Ambiguities in applying section 7508A(d) arise when the incident date is specified in the declaration as beginning on a certain date but remaining open-ended for an extended period of time. In those cases, the calculation of the mandatory 60-day postponement period could result in a prolonged postponement of specified time-sensitive acts that could span well beyond the one-year discretionary period authorized under section 7508A(a). It defies logic for the Secretary's discretionary postponement period under section 7508A(a) to be limited to "a period of up to 1 year," and there be no limit on the mandatory *60-day* postponement period under section 7508A(d). If section 7508A(d) were interpreted as requiring such prolonged postponement periods, that interpretation would be contrary to the directive of section 7508A(d)(1) that the mandatory 60-day postponement period must "be disregarded in the same manner as a period specified under [section 7508A(a)]." For the foregoing reasons, these proposed regulations provide that the phrase "shall be disregarded in the same manner as a period specified under subsection (a)" in section 7508A(d)(1) means that the mandatory postponement period cannot exceed the one-year period authorized under section 7508A(a).

Further ambiguities arise when the declaration establishing a Federally declared disaster for purposes of section 7508A does not specify any incident date. Under such circumstances, it is not possible to apply the statutory language in section 7508A(d)(1) to provide relief "beginning on the earliest incident date specified in the declaration" and "ending on the date which is 60 days after the latest incident date so specified." For that

reason, these proposed regulations provide that where a declaration establishing a Federally declared disaster for purposes of section 7508A does not specify an incident date, there is no mandatory period for relief under section 7508A(d). If the Secretary determines to postpone time-sensitive tax acts in response to such a declaration, under the discretionary authority in section 7508A(a), the only postponement period will be the period determined by the Secretary under 7508A(a).

These proposed regulations apply only to the relief that is made available under section 7508A in the event of a Federally declared disaster. It does not apply to other relief provisions under other provisions of the Code that automatically arise as a result of a Federally declared disaster, such as the loss provisions under section 165 of the Code.

III. Federally Declared Disasters

As noted above, the term “Federally declared disaster” is defined in section 165(i)(5) 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.” The term “Federally declared disaster” does not appear in the Stafford Act, but the term “disaster” is used in the Stafford Act to refer to either an “emergency” or a “major disaster” declared by the President in accordance with the procedures contained therein. The use of different terminology between the Code and the Stafford Act could cause confusion as to whether a declaration of an emergency under the Stafford Act establishes a “Federally declared disaster” under the Code. Section 165(i)(5) provides that a Federally declared disaster is “any disaster” that is determined to warrant assistance under the Stafford Act. Under the Stafford Act, the President can declare either an emergency or a major disaster. There is no provision to declare a “disaster,” but the term “disaster” is used in the Stafford Act as an umbrella term that encompasses both an emergency and a major

disaster. As a result, the term “any disaster” in section 165(i)(5) encompasses both an emergency and a major disaster. The IRS has previously acknowledged in multiple Revenue Rulings that Federally declared disasters include either an emergency or a major disaster declared under the Stafford Act. See Rev. Rul. 2003-29, 2003-11 I.R.B. 587 (Mar. 17, 2003); Rev. Rul. 2002-11, 2002-10 I.R.B. 608 (Mar. 11, 2002); Rev. Rul. 2001-15, 2001-13 I.R.B. 922 (Mar. 26, 2001); and Rev. Rul. 2000-15, 2000-12 I.R.B. 774 (Mar. 20, 2000). These proposed regulations formalize that clarification by amending the definition of “Federally declared disaster” in §1.165-11(b)(1) of the Income Tax Regulations to specifically provide that the term “Federally declared disaster” includes both a major disaster declared under section 401 of the Stafford Act and an emergency declared under section 501 of the Stafford Act.

IV. The COVID-19 Pandemic

The disaster relief provided under section 7508A in response to the COVID-19 pandemic illustrates some of the provisions in these proposed regulations. The COVID-19 pandemic became a Federally declared disaster for purposes of section 7508A on March 13, 2020, when the President issued his nationwide emergency declaration under section 501(b) of the Stafford Act.⁵ In response to that declaration, pursuant to the discretionary authority under section 7508A(a) and (b), the Secretary determined the taxpayers affected by the disaster, the time-sensitive tax acts that should be postponed, and the time period for postponement. Those determinations were reflected in several notices released to the public beginning in late March. Notice 2020-17 was issued on March 18, 2020,⁶ Notice 2020-18, superseding Notice 2020-17, was issued on March 20, 2020,⁷ Notice 2020-20, amplifying Notice 2020-18, was issued on March

⁵ <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>

⁶ 2020-15 I.R.B. 590 (April 6, 2020).

⁷ 2020-15 I.R.B. 590 (April 6, 2020).

27, 2020,⁸ and Notice 2020-23, amplifying Notices 2020-18 and 2020-20, was issued on April 9, 2020.⁹ Additional notices continued to be released thereafter, as the Secretary continued to exercise his discretionary authority under section 7508A(a) and (b) in response to the President's March 13 declaration, including a joint notice with the Department of Labor published on May 4, 2020,¹⁰ and Notice 2020-35, issued on May 28, 2020.¹¹ Because the President's March 13 emergency declaration did not specify an incident date, there is no mandatory 60-day postponement period under section 7508A(d). The only postponement period provided under section 7508A for the time-sensitive acts postponed in response to that declaration are the periods determined by the Secretary under section 7508A(a) and (b).

Subsequent to the President's March 13 nationwide emergency declaration, beginning on March 20, 2020, and continuing on almost a daily basis until April 13, 2020, the President approved major disaster declarations under section 401 of the Stafford Act for all 50 states, the District of Columbia, and 5 U.S. territories, in connection with the COVID-19 pandemic. Those declarations specified an incident period of "January 20, 2020 and continuing." The Secretary did not use his discretion under section 7508A(a) to postpone any time-sensitive tax acts in response to those state-by-state declarations. As discussed earlier, a period for performing acts cannot be disregarded under section 7508A(d) "in the same manner as a period specified under [section 7508A(a)]" if no period for performing such acts is in fact disregarded under section 7508A(a) in connection with a declaration. As a result, section 7508A(d) does not operate to postpone any acts for a mandatory 60-day period in connection with those state-by-state declarations.

⁸ 2020-16 I.R.B. 660 (April 13, 2020).

⁹ 2020-18 I.R.B. 742 (April 27, 2020).

¹⁰ 85 Fed. Reg. 26351 (May 4, 2020).

¹¹ 2020-25 I.R.B. 948 (June 15, 2020).

Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**. However, section 7805(b)(2) provides that regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which they relate are not prohibited from applying to taxable periods prior to those described in section 7805(b)(1). As noted above, section 7508A(d) was enacted on December 20, 2019, as part of the FCAA.

Accordingly, as provided in section 7805(b)(2) of the Code, these proposed regulations are proposed to apply to disasters declared on or after December 21, 2019.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and affirmed by Executive Order 13563. Therefore, a regulatory assessment is not required.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulations clarify how the Secretary may postpone certain time-sensitive tax deadlines by reason of a Federally declared disaster. Such postponements provide more time for affected taxpayers to complete time-sensitive acts than they otherwise would have under the internal revenue laws. In addition, the proposed regulations would not impose a collection of information on any person, including small entities, for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, the Secretary certifies that the regulations will not have

a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the IRS will submit the proposed regulations to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comments on the regulations' impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “**ADDRESSES**” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2020-4, I.R.B. 2020-17, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is William V. Spatz of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.165-11 is amended by revising paragraph (b)(1) to read as follows:

§1.165-11 Election to take disaster loss deduction for preceding year.

* * * * *

(b) * * *

(1) A federally declared disaster means 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 (Stafford Act). A federally declared disaster includes both a major disaster declared under section 401 of the Stafford Act and an emergency declared under section 501 of the Stafford Act.

PART 301--PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.7508A-1 is amended by revising paragraph (g) and adding paragraph (h) to read as follows::

§301.7508A-1 Postponement of certain tax-related deadlines by reasons of a Federally declared disaster or terroristic or military action.

* * * * *

(g) *Mandatory 60-day postponement--(1) In general.* In addition to (or concurrent with) the postponement period specified by the Secretary in an exercise of the authority under section 7508A(a) to postpone time-sensitive acts by reason of a Federally declared disaster, qualified taxpayers (as defined in section 7508A(d)(2)) are entitled to a mandatory 60-day postponement period during which the time to perform those time-sensitive acts is disregarded in the same manner as under section 7508A(a). A similar rule applies with respect to a postponement period specified by the Secretary under section 7508A(b), to postpone acts as provided in section 7508A(d)(4). Except for the acts set forth in paragraph (g)(2) of this section, section 7508A(d) does not apply to postpone any acts.

(2) *Acts postponed.* The time-sensitive acts that are postponed for the mandatory 60-day postponement period are the acts determined to be postponed by the Secretary's exercise of authority under section 7508A(a) or (b). In addition, in the case of any person described in 7508A(b), the time-sensitive acts postponed for the mandatory 60-day postponement period include those described in section 7508A(d)(4):

(i) Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2);

(ii) Making distributions under section 408(d)(4);

(iii) Recharacterizing contributions under section 408A(d)(6); and

(iv) Making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

(3) *Calculation of mandatory 60-day postponement period--(i) In general.* The mandatory 60-day postponement period begins on the earliest incident date specified in a disaster declaration for a Federally declared disaster and ends on the date that is 60 days after the latest incident date specified in the disaster declaration. In accordance with section 7508A(d)(5), if the period determined by the Secretary in exercising

discretion under 7508A(a) is equal to or longer than 60 days, the mandatory 60-day postponement period under section 7508A(d) runs concurrently with the postponement period determined by the Secretary under section 7508A(a). If the period determined by the Secretary in exercising discretion under 7508A(a) is less than 60 days, in accordance with section 7508A(d)(5), the mandatory 60-day postponement period will run concurrently for the length of the period determined by the Secretary under section 7508A(a) and then continue running in addition to the period determined by the Secretary under section 7508A(a).

(ii) *Limitations on the mandatory 60-day postponement period.* (A) In no event will the mandatory 60-day postponement period be calculated to exceed one year.

(B) In the event the Secretary determines to postpone time-sensitive acts pursuant to a declaration establishing a Federally declared disaster for purposes of section 7508A that does not specify an incident date, there is no mandatory postponement period under section 7508A(d). In such cases, the only postponement period will be the period determined by the Secretary under 7508A(a).

(5) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

(i) *Example (1).* Individual A lives in a state that experienced severe but isolated tornado damage on March 15. On March 20, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President for the state where Individual A lives, describing the incident date for the tornado as March 15. Based upon that major disaster declaration, the IRS published a news release identifying the taxpayers (by county) affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement from March 15 through July 31, pursuant to section 7508A(a). Under section 7508A(d), the mandatory 60-day postponement period that Individual A is entitled to begins on

March 15 and ends 60 days after March 15, on May 14. The mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual A under section 7508A(a).

(ii) *Example (2)*. Individual B lives in a coastal state which experienced harmful effects from a hurricane that began to affect the weather in his state on August 15 and ceased to be a weather factor in his state on August 19. On August 22, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President, determining that the coastline counties in the state where Individual B lives were severely affected and that these counties were entitled to both individual assistance and public assistance. The major disaster declaration specified the earliest incident date for the hurricane in the state where Individual B lives as August 15 and the latest incident date as August 19. Based upon that major disaster declaration, the IRS published a news release identifying the taxpayers affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement from August 15 through December 31, pursuant to section 7508A(a). Under section 7508A(d), the mandatory 60-day postponement period that Individual B is entitled to begins on August 15 and ends 60 days after August 19, on October 18. The mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual B under section 7508A(a).

(iii) *Example (3)*. Individual C lives in a state that is experiencing multiple ongoing wildfires. On August 14, FEMA issued a **Federal Register** Notice announcing a major disaster declaration approved by the President for the state where Individual C lives, specifying the earliest incident date for the wildfires as August 14 and the incident was ongoing. Based upon that major disaster declaration, the IRS published a news release identifying the taxpayers (by county) affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of

postponement from August 14 through December 15, pursuant to section 7508A(a). The wildfire disaster remains ongoing, with no ending incident date specified, for several months. The IRS publishes a second news release postponing the time-sensitive acts through January 15. FEMA amends the major disaster declaration to specify the latest incident date of November 19. Under section 7508A(d), the mandatory 60-day postponement period that Individual D is entitled to begins on August 14 and ends 60 days after the latest incident date of November 19. The mandatory postponement period applies to the same time-sensitive acts and runs concurrently with the relief the IRS provided to Individual D under section 7508A(a), and ends on January 18, which is 60 days after the latest incident date and three days beyond the postponement period specified by the IRS under section 7508A(a) in its news release.

(iv) *Example (4)*. Individual D lives in the United States, which is experiencing a nationwide emergency as a result of its residents being exposed to a highly infectious and dangerous pandemic disease. On March 13, the President declared a nationwide emergency under section 501(b) of the Stafford Act. The pandemic became a Federally declared disaster for purposes of section 7508A on March 13, however, no incident date was specified in the President's emergency declaration. Pursuant to the President's March 13 emergency declaration, the IRS published several notices identifying the taxpayers affected by the disaster for purposes of section 7508A and specifying the time-sensitive acts that are postponed and a period of postponement that generally ran from April 1 through July 15, pursuant to section 7508A(a). Because, in this circumstance, the emergency declaration pursuant to which the notices were published did not specify an incident date, there is no mandatory postponement period under section 7508A(d). The only postponement period is the period determined by the Secretary pursuant to the discretionary authority under section 7508A(a).

(h) *Applicability dates*--(1) *In general*. Except as provided in paragraph (h)(2) of this section, this section applies to disasters declared after January 15, 2009.

(2) *Paragraph (g)*. Paragraph (g) of this section applies to disasters declared on or after December 21, 2019.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

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