

DEPARTMENT



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Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9950]

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.

ACTION: Final regulations.

SUMMARY: This document contains final 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 final regulations clarifying the definition of “federally declared disaster.” These final 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.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: The date of applicability for the amendment to the Procedure and Administration Regulations under section 7508A is December 21, 2019, as explained below in SUPPLEMENTARY INFORMATION.

The date of applicability for the amendment to the Income Tax Regulations under section 165 of the Code to clarify the definition of the term “federally declared disaster” is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Andrew C. Keaton at (202) 317-5404 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 205 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Public Law 116-94, 133 Stat. 2534, 3226, amended section 7508A of the Code, relating to the discretionary authority of the Secretary of the Treasury or her delegate (Secretary) to postpone certain time-sensitive tax deadlines by reason of a federally declared disaster, by adding section 7508A(d). This provision 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)].”

On January 13, 2021, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-115057-20, 86 FR 2607) to interpret and implement sections 165(i)(5) and 7508A(d). Five responsive written comments were received. No commenter requested a public hearing, so none was held.

As described more fully in the preamble to the proposed regulations, section 7508A(d) is ambiguous in at least two important respects – the time-sensitive acts to be postponed (beyond the pension-related actions described in section 7508A(d)(4)) are not specified and it is unclear how the mandatory 60-day postponement period is to be calculated when the disaster declaration specified in section 7508A(d) does not contain an incident date. The legislative history is also insufficient to explain these areas of ambiguity.

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7508A and the Income Tax Regulations (26 CFR part 1) under section 165 to clarify the definition of the term “federally declared disaster.” As described further below, the Department of the Treasury (Treasury Department) and the IRS have modified proposed §301.7508A-1(g)(4)(iii), Example (3), in these final

regulations to better illustrate the calculation of the mandatory 60-day postponement period and to correct typographical errors. No other changes have been adopted.

Comments on the Proposed Regulations

Section 1.165-11(b)(1)

The proposed regulations provided that a federally declared disaster includes both a major disaster and an emergency declared under sections 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 100-707, 102 Stat. 4689 (1988).

One commenter said it approved of the proposed regulations including emergency declarations in the definition of a federally declared disaster under section 165(i)(5)(A). However, another commenter was critical of this portion of the proposed regulations and recommended that it be stricken. This second commenter said emergency declarations are governed by a different set of rules than major disaster declarations, pointing out that emergency declarations (i) do not need to be preceded by a governor's request for Stafford Act relief (but may instead be declared sua sponte by the President), (ii) may only result (if not followed up by a major disaster declaration) in Federal assistance to local governmental entities (as opposed to assistance to individuals), and (iii) may be issued before a disaster. This commenter further opined that President Trump's letter of March 13, 2020, declaring an emergency under the Stafford Act with respect to the COVID-19 pandemic, was not authorized by Congress to serve as a disaster declaration under sections 165(i)(5)(A) and 7508A of the Code.

The comment from the second commenter is not adopted in the final regulations. In the Explanation of Provisions section of the preamble to the proposed regulations, Part III. Federally Declared Disasters, this issue is already addressed in detail. There is no provision in the Stafford Act to declare a "disaster." The legislative history of the Stafford Act indicates that the term "disaster" is an umbrella term that includes both an

emergency and a major disaster. The Conference Report to the Disaster Relief and Emergency Assistance Act of 1974, Public Law 93-288, 88 Stat. 143 (1974), clarified the definitional section of the Stafford Act, stating: “It was the intention of the conferees not to define the term ‘disaster’ specifically; whenever used in this legislation such term includes an emergency or a major disaster.” H.R. Rep. 93-1037, p. 26 (May 13, 1974).

The opening section of the Stafford Act, titled “Congressional findings and declarations,” uses the generic term “disaster” in laying out the key congressional findings and declarations that underlie the rest of the chapter’s provisions. Stafford Act section 101(a), 42 U.S.C. section 5121(a). In multiple revenue rulings, the IRS has provided that, for the purposes of section 165(i), a federally declared disaster includes an emergency or a major disaster declared under the Stafford Act. Several of these revenue rulings are cited in the preamble to the proposed regulations.

The differences noted by the commenter between emergencies and major disasters under the Stafford Act are not material to their treatment under sections 165(i)(5)(A) and 7508A of the Code. Most disaster declarations announced by the Federal Emergency Management Agency (FEMA) for particular states also provide only public assistance, and no individual assistance, to particular counties in the state under the Stafford Act. In addition, most emergency declarations announced by FEMA are under section 501(a) of the Stafford Act, and begin with a request from a governor or other chief executive of a state, territory, or tribal government. As noted in the preamble to the proposed regulations, it is rare for an emergency declaration to be made without such a request. The President is authorized to make an emergency declaration under section 501(b) of the Stafford Act when the United States will have the primary responsibility for response to the emergency. There is no difference in the need for affected persons in a state threatened with a disaster to receive relief from time-sensitive deadlines to perform specified acts under the Code when the request for such

relief originates with the state's governor or is independently raised by the President. Consequently, the final regulations make no changes to this portion of the proposed regulations.

Section 301.7508A-1(g)(1)-(2)

The proposed regulations provided that (excluding the pension-related acts described in section 7508A(d)(4)) the time-sensitive tax acts that are postponed for the mandatory 60-day postponement period are the acts, if any, that the Secretary determines to be postponed under section 7508A(a) or (b).

One commenter expressed a general concern that this provision had the potential to reduce section 7508A(d) to a nullity. A second commenter expressed its concerns specifically in terms of what it contended was a clear reading of the statute and its legislative history. This commenter said it was clear that Congress intended to postpone the timely performance of all of the time-sensitive tax acts, both taxpayer and government acts, listed in section 7508(a)(1) of the Code. However, this second commenter recommended that the final regulations provide that the government may take advantage of the postponement periods for government-initiated actions only if a taxpayer first acts in reliance on the "automatic" postponement periods for the taxpayer's time-sensitive tax acts.

A third commenter agreed with the Secretary's characterizations of the statute and legislative history as ambiguous on the issues of which time-sensitive tax acts (other than the pension-related tax acts described in section 7508A(d)(4)) are postponed under section 7508A(d) and of which declared disasters are subject to the mandatory 60-day postponement period under section 7508A(d). This commenter approved of the solution to these ambiguities that was reflected in the proposed regulations, in terms of which time-sensitive tax acts would be postponed. This commenter said section 7508A(d) was a poorly-worded statute, that the legislative

history of the provisions contained contradictions, and the result was that section 7508A(d)(1) leaves no (non-pension) time-sensitive tax acts for section 7508A(d) to operate upon, unless or until the Secretary exercises her powers under section 7508A(a).

The third commenter noted also that for the year 2017, the IRS provided relief under section 7508A(a) in response to only 14 of the 59 major disaster declarations announced by FEMA that year. If all major disaster declarations automatically entitled all taxpayers in disaster areas to timing relief under section 7508A(d), the commenter noted that there would be a dramatic increase in the number of disasters leading to postponements of time-sensitive tax acts. On these issues, the third commenter concluded that the proposed regulations properly preserved the discretion of the IRS to determine which declared disasters should result in any type of disaster relief and of which time-sensitive tax acts should be postponed under section 7508A.

The comments from the first two commenters on this issue are not adopted in the final regulations, while the approving comments of the third commenter were already reflected in the proposed regulations. As explained more fully in the Explanation of Provisions section of the preamble to the proposed regulations, Part I. Time-Sensitive Tax Acts, and as noted by the third commenter described above, except for the rules regarding pensions described in section 7508A(d)(4), section 7508A(d), by its terms, does not specify the time-sensitive tax acts to be postponed during the mandatory 60-day postponement period. Instead, section 7508A(d)(1) provides that the 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, but rather, requires a determination by the Secretary to specify the acts to be postponed. As a result, the cross-reference to section 7508A(a) in section 7508A(d)(1) operates to require the same determination by the Secretary as a prerequisite to determining the

acts to which the mandatory 60-day postponement period applies. This interpretation gives full effect to the statutory language and does not reduce section 7508A(d) to a nullity, because that section still imposes a mandatory period for postponement and establishes a new category of persons eligible for relief – the “qualified taxpayers” defined in section 7508A(d)(2). The final regulations make no changes to §301.7508A-1(g)(1) and (2) of the proposed regulations.

Section 301.7508A-1(g)(3)(i)

Section 301.7508A-1(g)(3)(i) of the proposed regulations tracked section 7508A(d)(1) and (d)(5) in describing how the mandatory 60-day postponement period for federally declared disasters will be calculated and how the calculation of that mandatory postponement period will interact with the Secretary’s discretionary postponement period (if any) under section 7508A(a) and (b). The Explanation of Provisions section of the preamble to the proposed regulations, Part II. Calculation of the Mandatory 60-Day Postponement Period, identified a 120-day postponement period from the beginning incident date of a disaster announced by FEMA as the usual postponement period provided by the IRS for those disasters where the IRS exercises its discretion under section 7508A(a) or (b) to postpone any time-sensitive tax acts.

Consequently, most mandatory 60-day postponement periods under section 7508A(d) will be calculated to run concurrently with the 120-day postponement period the IRS generally provides under section 7508A(a) or (b). Two commenters noted that section 7508A(d)(1) and the proposed regulations did not provide a clear rule for calculating the mandatory 60-day postponement period when there was more than one disaster declaration issued for the same disaster in a particular state or when any disaster declaration was amended to provide any new or modified incident dates (earliest or latest) that were missing or different from when the first disaster declaration for a disaster in a state was announced by FEMA. Two commenters suggested

potential alternative methods of making calculations of the mandatory 60-day postponement period more certain when there are multiple disaster declarations or disaster declarations that are amended by FEMA for the earliest or latest incident dates described in section 7508A(d)(1)(A) and (B).

One commenter claimed that a literal reading of section 7508A(d)(1) creates challenges for indefinite disasters, such as the COVID-19 pandemic, because the statute could be interpreted to postpone a taxpayer's deadlines "indefinitely until some unknown point in time that is long after the disaster began." To avoid this "unworkable application" of the statute, this commenter recommended that if the initial disaster declaration does not expressly identify the latest incident date for a disaster, then section 7508A(d) should be interpreted as automatically providing a postponement period until the date that is 60 days after the earliest incident date specified in a disaster declaration. However, the statute mitigates the commenter's concern by directing that the postponement period under section 7508A(d) "shall be disregarded in the same manner as a period specified under subsection (a)." That provision ensures that the Secretary retains the same discretion as she has under section 7508A(a) to determine what time-sensitive tax acts, if any, will be postponed.

A second commenter noted what it characterized as a pick-and-choose problem and an amendment problem with the method of calculating the mandatory 60-day postponement period provided for in the proposed regulations and recommended the Secretary adopt one of several alternative bright-line rules it suggested for making the calculation period more predictable.

This second commenter noted there was a potential pick-and-choose problem among multiple potential FEMA-announced disaster declarations, because the Treasury Department and the IRS propose to treat FEMA-announced emergency declarations (as well as major disaster declarations) under the Stafford Act as federally declared

disasters under sections 165 and 7508A of the Code. This commenter's recommendation to strike proposed amended regulation § 1.165-11(b)(1) is discussed and rejected in the preamble discussion of this issue above.

Alternatively, the second commenter recommended that the final regulations reflect a bright-line rule to address potential multiple declarations, such as a first-out rule (the first issued declaration controls), a rule that a later major disaster declaration controls over an earlier emergency declaration, or a rule that the issue date of an emergency declaration is the earliest incident date for section 7508A(d)(1)'s mandatory 60-day postponement period.

The second commenter further recommended in this section of the final regulations that the Treasury Department and the IRS provide a bright-line rule concerning the effect of potential amendments to an initial FEMA announced disaster declaration on how the mandatory 60-day postponement period is calculated. The additional potential bright-line alternatives suggested by the second commenter were that (i) future amendments will not affect how the mandatory period is calculated, or (ii) only amendments made within a certain amount of time (say one year) will affect the computation of the mandatory period.

The Treasury Department and the IRS appreciate the predictability offered by the bright-line rules suggested by the second commenter. Nevertheless, the statutory language providing for a mandatory period beginning on the earliest incident date specified in the disaster declaration and ending on the date which is 60 days after the latest incident date so specified is capable of being applied as written. While amendments to disaster declarations and shifting "latest" incident dates can cause confusion, the intent of the statute is to ensure that relief is provided throughout the disaster period, assuming such a period is identified in the disaster declaration and the Secretary has determined that postponement of time-sensitive tax acts is warranted. As

a result, the comment on this issue is not adopted in the final regulations.

Section 301.7508A-1(g)(3)(ii)(A)

The proposed regulations provided that in no event will the mandatory 60-day postponement period be calculated to exceed one year. One commenter stated that this portion of the proposed regulations should be removed because it lacks any basis in the text or legislative history of section 7508A(d)(1) or (d)(4).

The comment on this issue is not adopted in the final regulations. As stated in the Explanation of Provisions section of the preamble to the proposed regulations, Part II. Calculation of the Mandatory 60-Day Postponement Period, 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). Interpreting section 7508A(d) to allow postponement periods for more than 1 year 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)]." The final regulations make no change to §301.7508A-1(g)(3)(ii)(A) of the proposed regulations.

Section 301.7508A-1(g)(4)(iii) Example (3)

The proposed regulations provided an Example (3) concerning a continuing disaster declaration involving wildfires that was later amended by a subsequent FEMA announcement of a latest incident date for the disaster. This example contained typographical errors, including a misnumbering – "(5)" instead of "(4)" -- of the subparagraph for the four examples and referring to the taxpayer in the example variously as "Individual C" and "Individual D."

One commenter further noted that the intended rules, if any, which Example (3) was meant to illustrate were not described in the portions of the proposed regulations which precede the Examples section.

Example (3) is intended to illustrate the calculation of the mandatory 60-day postponement period in the event of an ongoing disaster with multiple declarations and shifting “latest” incident dates described in §301.7508A-1(g)(3) of these final regulations. The Treasury Department and the IRS have modified Example (3) in these final regulations, in consideration of the comment above as well as the comments received on §301.7508A-1(g)(3)(i), to better illustrate the calculation of the mandatory 60-day postponement period and to correct typographical errors.

Section 301.7508A-1(h)(2)

The proposed regulations provided that the final regulations shall apply to all disasters declared on or after December 21, 2019.

One commenter requested not only that the final regulations not be retroactive to the effective date of section 7508A(d), but that the final regulations provide relief to any individuals or employee benefit plans that took actions (or failed to take actions) based on a good faith and reasonable interpretation of the postponement relief provided in section 7508A. The commenter further requested that such good faith relief be available for at least 60 days after the final regulations are published in the **Federal Register**.

The Applicability Date discussion in the preamble to the proposed regulations clearly indicated the intention of the Treasury Department and the IRS to rely on the provisions of section 7805(b)(2) of the Code for the applicability date of these final regulations. Section 7805(b)(2) provides that regulations filed or issued within 18 months of the date of enactment of the statutory provision to which the regulations relate are not prohibited from applying retroactively to the date of enactment. Section 7508A(d) was enacted on December 20, 2019, and these final regulations have been filed or issued within 18 months of that date of enactment. The proposed regulations were clear in stating that the Treasury Department and the IRS intended for the final

regulations to apply to any disasters that were declared on or after December 21, 2019. These final regulations do not adopt the commenter's request to modify §301.7508A-1(h)(2) of the proposed regulations.

New Rule Proposal

One commenter requested that the final regulations “confirm” that all forms of deadline relief requested under section 7508A are optional for affected taxpayers. In particular, the commenter focused on deadlines arising under employee benefit plans. In some cases, the application of these deadlines may affect both the plan and the participants. After consideration, the Treasury Department and the IRS have concluded that the suggestions made in this comment are beyond the intended scope of the proposed regulations. Consequently, the suggestions are not adopted in these final regulations.

Modifications of Proposed Regulations

Section 301.7508A-1(g)(4)(iii) Example (3)

Example (3) is modified to better illustrate the calculation of the mandatory 60-day postponement period in the event of multiple declarations and shifting “latest” incident dates, and to correct typographical errors.

Applicability Dates

For date of applicability for the amendment to the Procedure and Administration Regulations under section 7508A, see §301.7508A-1(h), which provides that the regulations promulgated by this Treasury decision are applicable for federally declared disasters that are declared on or after December 21, 2019, as explained in the preamble to the proposed regulations (REG-115057-20) published in the **Federal Register** (86 FR 2607), because section 7805(b)(2) of the Internal Revenue Code (Code) provides that regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which they relate may apply to taxable periods

prior to those described in section 7805(b)(1) and these final regulations are being published within 18 months of the enactment of section 7508A(d) on December 20, 2019.

The date of applicability for the amendment to the Income Tax Regulations under section 165 of the Code to clarify the definition of the term “federally declared disaster” is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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 regulations will not have a significant economic impact on a substantial number of small entities. The 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 regulations do not impose a collection of information burden 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 notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these final regulations are Andrew C. Keaton and

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 their development.

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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are 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 paragraphs (b)(1) and (h) 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.

* * * * *

(h) *Applicability dates--(1) In general.* Except as provided in paragraph (h)(2) of this section, this section applies to elections and revocations that are made on or after October 16, 2019.

(2) *Paragraph (b)(1) of this section.* The second sentence of paragraph (b)(1) of this section applies to elections and revocations that are made on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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). The rules of this paragraph (g)(1) apply 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 section 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), the mandatory 60-day postponement period under section 7508A(d) runs concurrently with the postponement period determined by the Secretary in exercising discretion under section 7508A(a) or (b) if the period determined by the Secretary is equal to or longer than 60 days after the latest incident date. If the period determined by the Secretary in exercising discretion under section 7508A(a) or (b) ends prior to 60 days after the latest incident date, 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) or (b) and then continue running in addition to the period determined by the Secretary under section 7508A(a) or (b).

(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 section 7508A(a) or (b).

(4) *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). The county where Individual A lives was included in the news release. 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, including the county 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 county of a state that is experiencing ongoing wildfires. On August 14, FEMA issued a Federal Register Notice announcing an emergency declaration approved by the President to make public assistance available under the Stafford Act to local governments to fight the wildfires. This declaration specified an earliest incident date of August 14 and no latest incident date. On August 17, FEMA issued a Federal Register Notice announcing a major disaster declaration approved by the President for the same wildfires incident, announcing that the residents of the county where Individual C lives were eligible to receive individual assistance under the Stafford Act. This declaration specified August 15 as the earliest incident date and described the incident period as ongoing. Based upon that major disaster declaration, the IRS exercised its discretion under section 7508A(a) to publish a news release identifying the taxpayers (by county) affected by the wildfires disaster for purposes of section 7508A and specifying both the time-sensitive acts that are postponed and a period of postponement from August 15 through December 15. Following the initial news release, the wildfires disaster remained ongoing, with no

ending incident date specified, for several months. The IRS published a second news release postponing the time-sensitive acts through January 15. FEMA subsequently amended the major disaster declaration to specify the latest incident date of November 19. Because the IRS acted in its discretion to provide relief in response to the major disaster declaration, and not to provide relief in response to the emergency declaration, the mandatory 60-day postponement period that Individual C is entitled to under section 7508A(d) begins on August 15, the earliest incident date specified in the major disaster declaration, 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 C 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) of this section*. Paragraph (g) of this section applies to disasters declared on or after December 21, 2019.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: May 25, 2021.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).