IRS finalizes rule on mandatory 60-day extension for disasters

By Brian J. Kearney and Margaret Berger
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A recently finalized IRS regulation addresses the mandatory 60-day extension of certain tax deadlines under the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116-94). The rule explains which actions are covered by the extension, how the 60-day period is calculated and what is considered a federally declared disaster triggering the extension. Revisions to this article, first published on Feb. 9, reflect the June 11 final regulation, which is largely identical to the proposal. The only changes are some typographical corrections and a clarified example illustrating how the mandatory extension operates in the case of an ongoing disaster and multiple disaster declarations.

Treasury's authority to extend deadlines for a disaster

Internal Revenue Code (IRC) Section 7508A authorizes the Treasury Department to postpone for up to one year certain tax-related deadlines in response to a federally declared disaster. Once the Federal Emergency Management Agency (FEMA) declares a disaster, Treasury announces which (if any) deadlines are postponed and the length of the postponement. IRC 7508(a)(1) and Rev. Proc. 2018-58 specify the actions for which Treasury can extend deadlines, including the following actions for retirement plan sponsors and administrators:

- Filing income, employment and excise tax returns
- Filing the Form 5500 series
- Paying minimum required distributions
- Distributing elective deferrals in excess of the annual limit
- Fixing qualification defects in a plan document by the end of the applicable remedial amendment period
- Distributing or forfeiting contributions to pass the actual deferral percentage (ADP) and actual contribution percentage (ACP) tests

- Making deductible plan contributions under IRC Section 404(a) (but not minimum required contributions under Section 430)
- Withdrawing nondeductible contributions to avoid the 10% excise tax
- Self-correcting operational errors under the Employee Plans Compliance Resolution System (EPCRS)

New mandatory 60-day extension

The Taxpayer Certainty and Disaster Tax Relief Act of 2019 added a mandatory 60-day extension of certain deadlines. Under the new law, whenever Treasury issues relief under IRC Section 7508A for a federally declared disaster, the 60-day extension automatically applies to the deadlines for the following retirement-related actions:

- Making deductible plan contributions (but not minimum required contributions)
- Withdrawing contributions to an individual retirement account (IRA) before the tax-return due date
- Recharacterizing IRA contributions (i.e., transferring from a Roth to traditional IRA or vice versa)
- Completing a rollover to an eligible retirement plan or IRA

The rule clarifies that the 60-day extension also applies to the deadline for any other tax-related action in IRC Section 7508(a)(1) or Rev. Proc. 2018-58 that Treasury includes in its disaster relief announcement.

Calculating 60-day extension

Under the final regulation, the calculation of the 60-day extension depends on the start and end dates for the incident period identified in the disaster declaration. Once Treasury issues relief, the mandatory extension begins at the start of the incident period, ends 60 days after the last day of the incident period and runs concurrently with the extension otherwise granted by Treasury.

> *Example.* Hurricane Zeta made landfall in Alabama on Oct. 28, 2020. FEMA declared a major disaster for certain counties in the state, with an incident period from Oct. 28–29. After the declaration, Treasury announced an extension for certain tax-related acts in IRC Section 7508(a)(1) and Rev. Proc. 2018-58. Treasury's relief announcement triggered the mandatory 60-day extension, which ran from Oct. 28 until Dec. 28, 2020 (i.e., 60 days after Oct. 29).

The 60-day extension serves as a minimum for actions covered by Treasury's disaster announcements. Treasury can — and often does — grant a longer delay (up to one year). For example, in the above example for Hurricane Zeta, Treasury granted a longer extension for covered acts until March 1, 2021.

In certain cases, FEMA initially defines a disaster declaration as ongoing, with no end date to the incident period. In these cases, the mandatory 60-day extension won't apply unless FEMA amends its declaration to include an end date to the incident period.

> *Example.* FEMA declared a major disaster for certain wildfires on Aug. 17, 2020, specifying a start date of Aug. 15, 2020, and stating that the disaster was ongoing. In response to the declaration, Treasury issued an extension for certain tax-related acts from Aug. 15 through Dec. 15, 2020. When the wildfires continued,

Treasury issued a second extension through Jan. 15, 2021. Because FEMA's initial announcement did not define the incident period, the mandatory extension didn't apply, even though Treasury issued relief. However, FEMA later amended its major disaster declaration with an incident end date of Nov. 19, 2020. Based on the newly defined incident period, the mandatory extension period ran from Aug. 15, 2020, to Jan. 18, 2021 — 60 days after the incident end date of Nov. 19, 2020, and three days later than the end of Treasury's discretionary relief period.

Definition of disaster

The rule clarifies that a "federally declared disaster" means any disaster determined by the president under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This includes both major disasters and emergencies declared under sections 401 and 501 (respectively) of that act.

Applicability date

The regulation applies to disasters declared on or after Dec. 21, 2019.

Related resources

- Final regulation (IRS, June 11, 2021)
- Division Q of Pub. L. No. 116-94, the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Congress, Dec. 20, 2019)

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