

COVID-19: IRS Postpones Most Tax Deadlines; Court and Agency Closures Delay Federal Tax Cases – UPDATE

Updated guidance relieves most tax deadlines, provides new procedures for claiming tax relief, and addresses communications with the IRS during the widespread shutdown.

Tax Deadlines – Key Points:

- Notice 2020-23 both clarifies and expands relief provided under Notice 2020-18 — automatically postponing until July 15, 2020 the deadline for virtually all major Federal tax payment and filing obligations that would otherwise be due to be performed on or after April 1, 2020, and before July 15, 2020.
- Taxpayers may also postpone until July 15, 2020 certain identified time-sensitive actions that would otherwise be due to be performed on or after April 1, 2020, and before July 15, 2020 — including, notably, filing US Tax Court petitions.
- Although Notice 2020-23 limits its relief to the obligations and actions specifically identified or referenced in Notice 2020-23, the CARES Act (and other related IRS guidance) provide relief for corporations and partnerships from certain deadlines and procedures not covered by Notice 2020-23.

Background

Under Section 7508A(a) of the Internal Revenue Code (Code), the Secretary of the Treasury may postpone the time for performing acts under the internal revenue laws for up to one year for taxpayers determined to be affected by a disaster warranting assistance by the federal government under the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act).

On March 13, 2020, the President of the United States issued an emergency declaration under the Stafford Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic.¹ Among other measures, that emergency declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).”

Most recently, on April 9, 2020, the IRS issued Notice 2020-23,² which represents the most expansive grant of relief for taxpayers facing payment or filing deadlines, and provides additional clarification on the operation of the deadline relief previously outlined in Notice 2020-18³ and Notice 2020-20.⁴

The IRS has separately provided other forms of relief to taxpayers, including administrative relief (described in [Client Alert 2668](#)) and Federal income tax obligation relief — including a temporary rollback of limitations to the deductibility of net operating losses (NOLs), enabling some corporate taxpayers to seek refunds in respect of NOL carrybacks (described in [Client Alert 2693](#)).

Notice 2020-23

Notice 2020-23 provides that any person with a specified (i) Federal tax payment, return, or form filing obligation or (ii) time-sensitive action — which is due to be performed (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020 (the Relief Period) — may delay performance of those actions until July 15, 2020. Notice 2020-23 provides relief that is expressly limited to the payment and filing obligations or time-sensitive actions explicitly provided therein (as described below), and does not apply with respect to any other type of Federal tax, Federal tax return, or time-sensitive act. For taxpayers taking advantage of this postponed deadline, the Relief Period will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the tax return or failure to pay the taxes postponed by Notice 2020-23.

Eligible Payment and Return Filing Obligations

Notice 2020-23 expressly identifies specific Federal tax payment, return, and other form filing obligations that are eligible for relief if due to be performed during the Relief Period. In a significant clarification to previous guidance, the Notice expressly states that deadline relief extends to all schedules, returns, and other forms that are filed as attachments to or are otherwise required to be filed by the due date of identified returns or forms.

Category	Eligible Payment Obligations	Eligible Return Filing Obligations
Individual income tax	Individual income tax payments	Individual income tax return filings on Forms 1040; 1040-SR; 1040-NR; 1040-NR-EZ; 1040-PR; 1040-SS
Corporate income tax	Calendar year or fiscal year corporate income tax payments	Calendar year or fiscal year corporate income tax return filings on Forms 1120; 1120-C; 1120-F; 1120-FSC; 1120-H, 1120-L; 1120-ND; 1120-PC, 1120-POL, 1120-REIT; 1120-RIC; 1120-S; 1120-SF
Partnerships	N/A	Calendar year or fiscal year partnership tax return filings on Form 1065; 1066
Exempt organization business income tax	Exempt organization business income tax and other payments	Exempt organization business income tax return filings on Form 990-T (and proxy tax under Section 6033(e) of the Code)
Estate tax	Estate tax payments of principal or interest due as a result of an election made under Section 6166, 6161, or 6163 and annual recertification requirements under Section 6166	N/A
Estate and trust income tax	Estate and trust income tax payments	Estate and trust income return filings on Forms 1041; 1041-N; 1041-QFT

Category	Eligible Payment Obligations	Eligible Return Filing Obligations
Estate and generation-skipping transfer tax	Estate and generation-skipping transfer tax payments	Estate and generation-skipping transfer tax return filings on Forms 706; 706-NA; 706-A; 706-QDT; 706-GS(T); 706-GS(D); 706-GS(D-1)
Gift and generation-skipping transfer tax	Gift and generation-skipping transfer tax payments	Gift and generation-skipping transfer tax return filings on Form 709 that are due on the date an estate is required to file Form 706 or Form 706-NA
“Portability” elections under § 2010(c)(5)(A) for unused exclusion amounts	N/A	Estate tax return on Form 706 filed pursuant to Revenue Procedure 2017-34
Excise tax	Excise tax payments on investment income and excise tax payments (related to excised tax return filings on Form 4720)	Excise tax return filings on Forms 990-PF and 4720
Quarterly estimated income tax payments	Quarterly estimated income tax payments calculated on or submitted with 990-W (worksheet), 1040-ES (payment voucher), 1040-ES (NR) (payment voucher), 1040-ES (PR) (payment voucher), 1041-ES (payment voucher), and 1120-W (worksheet)	The identified worksheets and payment vouchers are only submitted in conjunction with a quarterly estimated income tax payment, so the deadline remains unaffected by Notice 2020-23.
Value of property distributed from an estate, filed on Form 8971	N/A	Form 8971 and any supplemental Form 8971, including all requirements contained in Section 6035(a) of the Code.

Time-Sensitive Actions

Notice 2020-23 also specifies that taxpayers who are due to perform one of the following time-sensitive acts during the Relief Period, may — but are not required to — postpone the time to perform until the last day of the period.

- Filing a petition with the Tax Court, or for review of a decision rendered by the Tax Court;⁵
- Filing a claim for credit or refund of any tax⁶
- Bringing suit upon a claim for credit or refund of any tax⁷
- Any of the actions specifically identified in Revenue Procedure 2018-58⁸

Importantly, while the deadlines for filing a Tax Court petition or for filing claims or complaints for credit or refund of any tax may be postponed, Notice 2020-23 does not provide any additional relief relating to other existing court or administrative deadlines, such as deadlines for filing or serving motions and briefs, exchanging discovery, or responding to information document requests. Thus, taxpayers should treat existing court and audit deadlines as unchanged in the absence of separate court orders or additional IRS guidance.

Further, as announced in connection with the IRS People First Initiative, IRS Exam personnel continue to work on existing audits remotely, so taxpayers should continue responding to outstanding requests, if feasible. For practical purposes, e-fax is the most effective means of transmittal at this time when the IRS may not be able to process regular mail.

Taxpayers who may need additional time to file a tax return beyond July 15, 2020, may choose to file the appropriate extension form by July 15, 2020, to obtain an extension to file their return. However, the extension date may not go beyond the original statutory or regulatory extension date (e.g., October 15, 2020 for Form 1040), and such extension for filing does not extend the time to satisfy any payment obligations beyond July 15, 2020.

CARES Act Relief

On March 27, 2020, President Donald J. Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to address the COVID-19 pandemic. The CARES Act — together with subsequently issued IRS guidance — provides significant procedural relief (described below) for taxpayers looking to take advantage of much-needed federal income tax relief. For further explanation of the relief from federal income tax obligations provided by the CARES Act, please see [Client Alert 2693](#).

Corporate Refunds for 2018 and 2019 Net Operating Loss (NOL) Carrybacks

The CARES Act temporarily rolls back the limitations on the deductibility of NOLs and permits taxpayers to carry back NOLs generated in 2018, 2019, and 2020 to each of the five years preceding the year of loss.

For taxpayers seeking tentative refunds of 2018 NOLs following the passage of the CARES Act, under normal rules the deadline for the filing of such claims would actually already have passed — and the CARES Act failed to address this issue. Thus, on April 9, 2020, the IRS issued Notice 2020-26, which, among other things, provides deadline relief for taxpayers applying for refunds in respect of 2018 NOLs.⁹ Notice 2020-26 updates the procedures for 2018 NOLs by providing corporations with a six-month extension to file Form 1139 to make a claim for a tentative refund. Corporations now must file Form 1139 (by fax or mail) within 18 months after the close of the taxable year in which the NOL arose (e.g., June 30, 2020 for a calendar year taxpayer for 2018 NOLs). If valid, the refund should be issued within approximately 90 days of filing, but may be subject to subsequent IRS audit and review by the Joint Committee on Taxation (Joint Committee). Starting on April 17, 2020 and until further notice, the IRS will accept eligible refund claims Form 1139 submitted via Fax to 844-249-6236 and eligible refund claims Form 1045 submitted via fax to 844-249-6237.

To make a claim for a tentative refund in respect of 2019 and 2020 NOLs, the normal rules remain effective: for example, taxpayers should file their 2019 tax return and, concurrently with that filing or within 12 months of the end of the 2019 tax year, file Form 1139 (by mail or fax) to make a claim for a tentative refund. In addition, for 2020 NOLs, to receive refunds of any 2020 estimated payments, a corporation should file Form 4466 after year-end and prior to filing the 2020 tax return.

Alternative Minimum Tax (AMT) Credit Carryovers

The CARES Act allows a corporation to elect to make all AMT credit carryovers refundable for tax year 2018. To take advantage of this accelerated timing, corporations must file an application for refund with the IRS prior to December 31, 2020. Notice 2020-26, however, provides that in order to file a single application for a tentative refund and claim both the 2018 NOL carryback and the refundable AMT credit,

the corporation must do so by the earlier of December 30, 2020, or 18 months after the close of its 2018 taxable year (e.g., June 30, 2020, for a calendar year taxpayer).

Amended Partnership Returns

While the CARES Act creates opportunities for partnerships to claim tax benefits for the 2018 and 2019 taxable years, rules applicable to partnerships subject to the centralized partnership audit regime of the Bipartisan Budget Act of 2015 (BBA) (*i.e.*, those with 100 or more partners, or those with other pass-through entities as partners) prevented partnerships from availing themselves of CARES Act tax relief by filing amended tax returns. Rather, BBA partnerships were required to file an Administrative Adjustment Request (AAR) with accompanying statements reporting pass-through adjustments to the partners. Those partners, in turn, would include such adjustments on their tax returns filed for the “reporting” year in which such forms were issued. This process could delay relief until as late as fall 2021. This result is contrary to Congress’s express intention in enacting the CARES Act to provide taxpayers with immediate tax relief.

On April 8, 2020, the IRS issued Revenue Procedure 2020-23 to permit BBA partnerships that had previously filed Forms 1065 and furnished partners Schedules K-1 for taxable years beginning in 2018 and 2019 to file amended partnership returns using Form 1065 rather than an AAR. Eligible BBA partnerships must file a Form 1065 with the “Amended Return” box checked and furnish corresponding amended Schedules K-1 to their partners, with the amended return and each Schedule K-1 noting it is “FILED PURSUANT TO REV. PROC. 2020-23.” Partnership returns amended pursuant to Rev. Proc. 2020-23 must be filed by September 30, 2020.

Payroll Taxes

The CARES Act provides that eligible employers¹⁰ may defer the deposit and payment of the employer’s portion of Social Security taxes imposed under Section 3111(a). The deferral applies to deposits and payments that would otherwise be required to be made during the period beginning on March 27, 2020 and ending December 31, 2020. To be treated as timely—and avoid a failure to deposit penalty—fifty percent of the deferred amounts of the employer’s share of Social Security taxes must be deposited by December 31, 2021, and the balance must be deposited by December 31, 2022.¹¹ Employers are not required to make a special election to be able to take advantage of the deferral.

Neither the CARES Act nor related guidance appears to adjust filing obligations for the Employer’s Quarterly Federal Tax Return on Form 941. The IRS has stated in a Q&A available on its website that it will revise Form 941 for the second calendar quarter of 2020 accordingly, and information will be provided to instruct employers how to reflect the deferred deposits and payments otherwise due on or after March 27, 2020 for the first calendar quarter of 2020.¹²

State and Local Filing and Payment Obligations

The relief described above under Notice 2020-23 and the CARES Act does not directly affect taxes that may be imposed by other taxing authorities such as states, counties, or cities. Taxpayers facing state and local tax filing and payment deadlines are advised to check current state and local guidance online to comply with payment, filing, and extension deadlines. As of April 18, 2020, all but two states that assess individual and/or corporate income tax have authorized some form of relief akin to the deadline relief in Notice 2020-23. Note, though, that the precise terms of relief will likely differ from the terms of Notice 2020-23. Additionally, many states have also granted some form of relief related to taxes such as sale and use and excise taxes.

Delays are anticipated as the COVID-19 pandemic impacts the operations of the IRS, the US Department of Justice Tax Division (Tax Division), the US Tax Court (Tax Court), and other courts that adjudicate federal tax controversies. Taxpayers should expect further guidance and developments in the near future and monitor the agencies' public announcements.

Tax Controversies – Key Points:

- The Tax Court has canceled all trial sessions throughout the country through July 3, 2020. Additionally, the Tax Court building in Washington, D.C. is closed until further notice. Although Notice 2020-23 provides relief for Tax Court petition filings, litigants should treat other deadlines as unchanged, particularly statutory deadlines for filing documents such as notices of appeal.
- The Department of Justice has not issued any statements related to Tax Division operations in light of the COVID-19 pandemic, but delays in most federal tax litigation can be expected. Coordination with opposing counsel and the courts is recommended. Tax Division officials have noted that the Division's attorneys are continuing to work remotely in support of the agency's tax enforcement mission.
- Beginning on March 17, 2020, the IRS has instituted significant operational changes on a continuing basis that prioritize taxpayer and IRS personnel safety and security in light of the COVID-19 pandemic. In particular, the IRS "People First Initiative" (described in [Client Alert 2668](#)) temporarily modified certain enforcement and compliance activities to provide administrative relief. Although IRS personnel will continue to develop certain cases by working with taxpayers remotely, these recent changes may make it more difficult to communicate with the IRS, and can generally be expected to delay the administrative resolution of federal tax controversies.

Court Operations and Procedures

Generally speaking, courts across the country are altering their operations and procedures in order to minimize the transmission of COVID-19. Those modifications vary among courts and the most up-to-date information can be found by visiting the courts' websites.

Of particular relevance to litigants in federal tax cases, the Tax Court has canceled all trial sessions throughout the country through July 3, 2020. In the press releases announcing the cancellations,¹³ the court stated that it "expects that the parties will continue to work together to exchange information and resolve pending issues" and that unresolved cases will be scheduled for trial at a later date.

On March 18, 2020, the Tax Court announced that its building in Washington, D.C. would be closed until further notice and that hand delivery of documents will not be accepted.¹⁴ In the same statement, the court said, "Taxpayers may comply with statutory deadlines for filing petitions or notices of appeal by timely mailing a petition or notice of appeal to the Court." The Tax Court stated that mail would be held for delivery until it resumes normal operations, and that timeliness would be determined based on the United States Postal Service postmark or the delivery certificate of a private delivery service. On March 23, 2020, the Tax Court stated that its building remains closed, that personnel are working remotely, and that mail will not be delivered until the building reopens.¹⁵

Accordingly, even though the Tax Court building is closed, to satisfy statutory filing deadlines by mail or private delivery, a litigant should ensure that documents to be filed are postmarked no later than the filing deadline or that delivery is certified on or before the deadline as if the Tax Court were open. If a

document mailed or sent by a litigant is returned, the litigant should re-mail or re-send it to the Tax Court with a copy of the envelope or container in which it was first mailed or sent in order to prove timeliness.

The Tax Court's March 18, 2020 statement noted that its online eAccess and eFiling systems remain operational, which its March 23, 2020 statement confirmed. Therefore, parties with upcoming filing deadlines for briefs or motions (which are generally required to be eFiled) should comply with those deadlines absent the Tax Court granting a case-specific extension of time. Note that filing by mail is the only option for filing a petition while the Tax Court building is closed, since petitions are not eligible for eFiling and documents may not be hand delivered to the Court.¹⁶

For its part, the Department of Justice has not issued any public statements related to Tax Division operations in light of the COVID-19 pandemic generally or referencing the Office of Management and Budget Memo specifically (discussed below). The Tax Division litigates civil and criminal tax cases on behalf of the United States in the federal district and appellate courts, litigates tax claims in the US Court of Federal Claims and the US Bankruptcy Courts, and supports the Office of the US Solicitor General in tax cases before the US Supreme Court. Because the operations of all the courts, particularly concerning trials and court appearances, are widely affected by the pandemic, delays can be expected in the progress of most federal tax litigation. Litigants should, however, remain in contact with opposing counsel and the courts for case-specific details.

Federal Agency Operations

On March 17, 2020, the Office of Management and Budget issued a memorandum for the heads of departments and agencies about operational alignment to slow the spread of COVID-19 (OMB Memo).¹⁷ The OMB Memo instructed the heads of federal departments and agencies to adjust operations and resources with the dual goals of (1) minimizing face-to-face interactions and (2) re-prioritizing available resources to mission-critical activities. The memorandum also stated that "Agencies shall communicate to the public how service levels may be impacted[.]" On March 20, 2020, the IRS publicly announced that it would temporarily close all Taxpayer Assistance Centers and discontinue face-to-face service throughout the country.¹⁸ Likewise, the Taxpayer Advocate Service has suspended walk-in services, but remains open to receive phone calls.

On March 25, 2020, the IRS announced that it planned to make certain operational changes as part of its new People First Initiative. These operational changes prioritize taxpayer and IRS personnel safety and security, but can generally be expected to delay the administrative resolution of most tax controversies. Please refer to Latham's [Client Alert 2668](#) for more information on those operational changes, as well as on additional taxpayer relief measures announced on the same date.

Also on March 25, 2020, the Commissioner for the Large Business and International Division (LB&I) announced that the enforcement process for information document requests (IDRs) will be suspended until July 15, 2020 with respect to "taxpayers who are unable, due to the COVID-19 pandemic, to respond timely to an IDR." The LB&I announcement states that managers retain the discretion to continue with the IDR enforcement process when, in their judgment, the interests of tax administration warrant it. The announcement specifically identifies examples such as cases with short statutes, listed transactions, or fraud development. Other than in these extraordinary circumstances, general restraint in the issuance of administrative summonses is anticipated.

On March 27, 2020, the IRS announced that its practitioner priority service lines, e-services help desk lines, and help desks for the Filing Information Returns Electronically and Affordable Care Act Information Returns systems are closed until further notice. The IRS has also temporarily suspended acceptance of

new income verification express services requests, which are experiencing processing delays, along with centralized authorization file number approvals.

On April 21, 2020, the IRS announced that phone lines normally supported by live customer service representatives are not being staffed at this time — further limiting the means of communication between taxpayers and IRS personnel. The announcement added that paper returns are not being processed and that the IRS has limited ability to respond to paper correspondence. The IRS has emphasized that taxpayers and tax professionals should use electronic options for filing, payment, and communications whenever possible to speed the processing of tax returns, refunds, and payments.¹⁹ Although taxpayer assistance centers and volunteer tax preparation sites remain closed, this will not affect the IRS's ability to process Economic Impact Payments for taxpayers. However, forms and publications are available only at IRS.gov, and IRS transcripts are not available by mail at this time.

Latham's Tax Controversy Team is closely following these fast-moving developments affecting tax administration and compliance during the COVID-19 pandemic and Latham lawyers are available for client consultation on these and related issues.

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Endnotes

- ¹ Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act (Mar. 13, 2020) *available at* <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.
- ² See Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic *available at* <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>.
- ³ See Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic *available at* <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>.
- ⁴ See Update to Notice 2020-18, Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic, Related to Gift and Generation-Skipping Transfer Tax Filing and Payment Deadline *available at* <https://www.irs.gov/pub/irs-drop/n-20-20.pdf>.
- ⁵ 26 C.F.R. § 301.7508A-1(c)(1)(iv)
- ⁶ 26 C.F.R. § 301.7508A-1(c)(1)(v)
- ⁷ 26 C.F.R. § 301.7508A-1(c)(1)(vi)
- ⁸ See <https://www.irs.gov/pub/irs-drop/rp-18-58.pdf>.
- ⁹ See <https://www.irs.gov/pub/irs-drop/n-20-26.pdf>.
- ¹⁰ Employers that receive a Paycheck Protection Program loan may not defer the deposit and payment of the employer's share of Social Security taxes due after the employer receives a decision from the lender that the loan has been forgiven. Any amount deferred before date of loan forgiveness continues to be deferred and is due as described above.
- ¹¹ Self-employed individuals may also defer the payment of Social Security taxes imposed on net earnings from self-employment income under Section 1401(a) of the Code during the Payroll Tax Deferral Period. As is the case for employers, half of the deferred amount must be paid by December 31, 2021, and the balance must be paid by December 31, 2022. With respect to any taxable year that includes any portion of the Payroll Tax Deferral Period, any deferred amounts of the tax imposed under Section 1401(a) shall not be treated as taxes to which the penalty in Section 6654 for failure to pay estimated taxes applies.
- ¹² See <https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020>
- ¹³ Press Releases dated March 11, 2020, March 13, 2020, and March 23, 2020 *available at* <https://www.ustaxcourt.gov/>.
- ¹⁴ Press Release dated March 18, 2020 *available at* <https://www.ustaxcourt.gov/>.
- ¹⁵ Press Release dated March 23, 2020 *available at* <https://www.ustaxcourt.gov/>.
- ¹⁶ See US Tax Court, Practitioners' Guide to Electronic Case Access and Filing 1, 3, 95 (Dec. 1, 2019) *available at* https://www.ustaxcourt.gov/electronic_access.htm.
- ¹⁷ Russel T. Vought, Acting Director, Office of Management and Budget, Memorandum for The Heads of Departments and Agencies, M-20-16 (Mar. 17, 2020) *available at* <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.
- ¹⁸ Taxpayer Assistance Center Statement (Mar. 20, 2020) *available at* <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.
- ¹⁹ See <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.