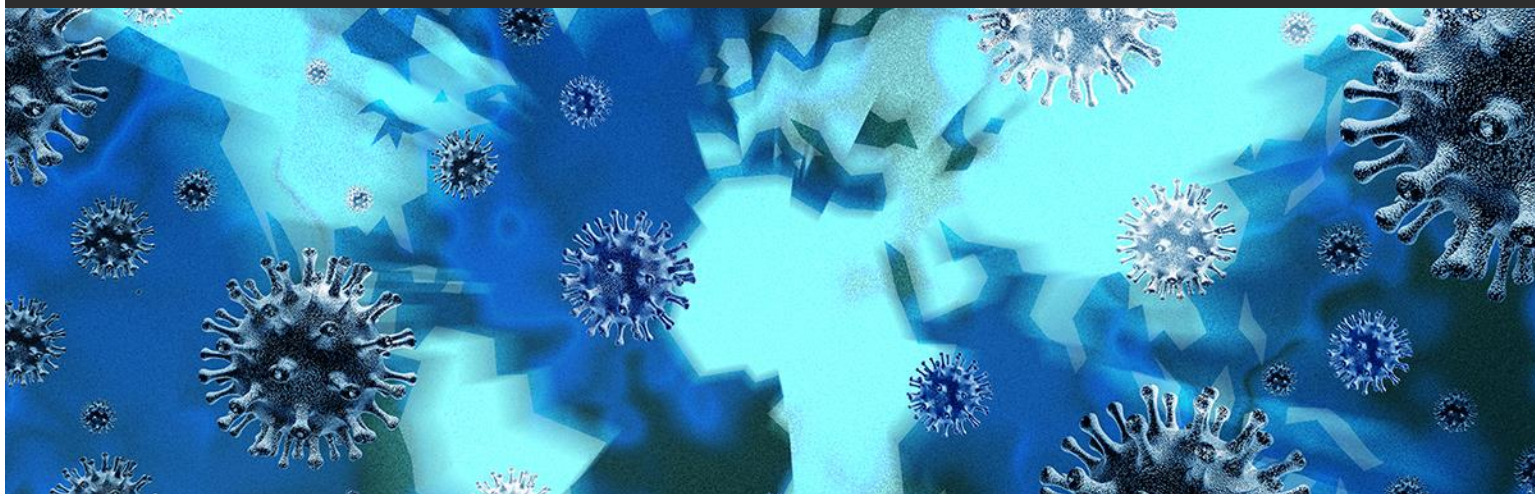


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



May 2020

The IRS Issues FAQs Clarifying Relief from Tax Filing Deadlines under Notice 2020-23

In Notice 2020-23, the IRS provided relief from tax filing deadlines occurring on or after April 1, 2020, and before July 15, 2020. See *IRS Deadline Extensions Due to Coronavirus Disease 2019* for a summary of the relief in Notice 2020-23. On April 27, 2020, the IRS issued Frequently Asked Questions (FAQs) to clarify the guidance in Notice 2020-23 regarding the filing deadlines.

Eligibility for Relief under Notice 2020-23

The FAQs clarify that any taxpayer that has a tax return, payment, or other tax filing due on or after April 1, 2020, and before July 15, 2020, is eligible for relief under Notice 2020-23. For purposes of Notice 2020-23, a “person” includes any type of taxpayer (i.e. individuals, trusts, estates, corporations or other business entities.) A person does not have to be sick, quarantined or otherwise affected by Coronavirus Disease 2019 (COVID-19) to qualify for relief under Notice 2020-23.

FBAR (FinCEN Form 114) Deadlines Automatically Extended

Notice 2020-23 identified specific returns and forms that are extended until July 15, 2020, but it did not include the FBAR (FinCEN Form 114). The FAQs confirm that the deadline to file FBARs is automatically extended to Oct. 15, 2020, under the FinCEN rules.

Fiscal Year Filers with Returns Due on or After April 1, 2020, Eligible for Relief

The FAQs confirm that fiscal year filers are eligible for relief under Notice 2020-23. The relief applies to all returns due on or after April 1, 2020, or before July 15, 2020, regardless of whether it is the original due date or the extended due date. For example, if a fiscal year taxpayer extended the due date of its 2019 fiscal year return to April 15, 2020, Notice 2020-23 extends the filing deadline to July 15, 2020.

Relief Does Not Apply to State Filing Deadlines

The FAQs state that Notice 2020-23 does not apply to state filing or payment deadlines. The FAQs direct taxpayers to their state tax agencies to determine their state filing and payment deadlines.

Effect on Individual Retirement Accounts (IRAs) and Workplace Retirement Accounts

Notice 2020-23 did not specifically address the effect of the guidance on IRAs and other workplace retirement accounts. The FAQs clarify that the deadline for making contributions to an IRA for 2019 is also extended to July 15, 2020. For taxpayers who owe the 10% additional tax on amounts included from gross income on distributions from an IRA during 2019, Notice 2020-23 also extends the deadline to report and pay tax on the distributions to July 15, 2020. Taxpayers who made excess contributions to an IRA during 2019 can avoid the 6% excise tax by making a withdrawal of the excess contribution (and income on the excess contribution) by July 15, 2020, provided that the taxpayer does not deduct the excess contribution on his or her income tax return. Where the taxpayer files his or her income tax return on or before July 15, 2020, but fails to withdraw the excess contribution, the taxpayer can still avoid the 6% excise tax by making the withdrawal on or before Oct. 15, 2020.

With regard to employer contributions to qualified retirement accounts, if the employer is a corporation with an April 15, 2020, deadline to file its Form 1120, then the grace period under I.R.C. § 404(a)(6) for making contributions to the retirement plan for 2019 is extended to July 15, 2020.

Effect on Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (MSAs)

The FAQs clarify that the deadline to make contributions to an HSA or MSA for 2019 is extended to July 15, 2020. Taxpayers who made excess contributions to an HSA or MSA during 2019 can avoid the 6% excise tax by making a withdrawal of the excess contribution (and income on the excess contribution) by July 15, 2020, provided that the taxpayer: (i) did not make the contribution through a salary reduction or other similar arrangement with his or her employer; and (ii) did not deduct the excess contribution on his or her income tax return. Where the taxpayer files his or her income tax return on or before July 15, 2020, but fails to withdraw the excess contribution, the taxpayer can still avoid the 6% excise tax by making the withdrawal on or before Oct. 15, 2020.

Clarification on Deadlines for Tax Court Petitions

Notice 2020-23 generally postpones the deadline to perform specified time sensitive acts to July 15, 2020, such as filing a petition with the U.S. Tax Court, filing for a review of a U.S. Tax Court decision, filing a claim for refund, or bringing a suit for a credit or refund of tax. The FAQs provide additional clarity on how Notice 2020-23 will apply to U.S. Tax Court petitions. Under this guidance, petitions that are due on or after April 1, 2020, and before July 15, 2020, will be treated as timely if they are postmarked by July 15, 2020.

Generally, most U.S. Tax Court petitions are filed by mail. Under I.R.C. § 7502, U.S. Tax Court petitions are treated as being filed on the date they are postmarked. When the Tax Court closed on March 19, 2020, many taxpayers had their petitions returned to them by the U.S. Postal Service or other private

delivery services. The issue arose as to how taxpayers should handle the returned petitions. The FAQs direct taxpayers to take the following measures to prove that the returned petitions were timely filed: (i) retain the original timely post-marked envelope or the receipt from the designated private carrier; and (ii) resend the petition to the U.S. Tax Court with the original envelope or receipt on or before July 15, 2020. The failure to retain proof of mailing and to refile the petition on or before July 15, 2020, may result in a dismissal.

The FAQs also clarify how Notice 2020-23 operates in conjunction with the Tax Court's decision in *Guralnik v. Commissioner*, 146 T.C. 230 (2016). *Guralnik* held that Federal Rule of Civil Procedure 6(a)(3)(A) extended the deadline to file a petition in the U.S. Tax Court when the clerk's office was closed due to a weather emergency. The FAQs confirm that taxpayers may benefit from both *Guralnik* and Notice 2020-23. For example, if a petition was due on March 19, 2020, the day the U.S. Tax Court closed: (i) *Guralnik* would apply to the period March 19, 2020, through March 31, 2020; and (ii) Notice 2020-23 will apply for the period beginning on April 1, 2020, and ending on July 15, 2020. If the Tax Court opens prior to July 15, 2020, the FAQs confirm that Notice 2020-23 will apply and the deadline to file will remain July 15, 2020, under Notice 2020-23. If the U.S. Tax Court remains closed when the Notice 2020-23 relief period ends on July 15, 2020, *Guralnik* will extend the deadline to file a petition until the date the court reopens. Because the situation is fluid, taxpayers should continue to monitor the U.S. Tax Court deadlines carefully.

The Application of the I.R.C. § 7508A(d) Mandatory Extension to Filing Deadlines

I.R.C. § 7508A grants the IRS authority to extend various tax filing deadlines. Under I.R.C. § 7508A(a), if the IRS determines that a taxpayer is affected by a federally declared disaster or a terroristic or military action, the IRS may extend the deadline to perform certain acts for a period of up to one year. In December 2019, Congress enacted I.R.C. § 7508A(d), which provides a mandatory 60-day extension for qualified taxpayers, including taxpayers who reside in a disaster area. Under I.R.C. § 7508A(d)(1) the mandatory extension runs from the earliest incident date to which the declaration of disaster relates to the date that is 60 days after the latest incident date. The mandatory extension in I.R.C. § 7508A(d) is in addition to (or runs concurrent with) discretionary extensions granted by the Secretary of Treasury under I.R.C. § 7508A(a).

On March 13, 2020, President Trump declared that the COVID-19 pandemic constituted a national disaster, effective March 1, 2020. The declaration of a nationwide disaster implicated the mandatory extension under I.R.C. 7508A(d) for the entire country for the period beginning on March 1, 2020, and ending 60 days following the date when the disaster declaration is terminated. The Secretary of the Treasury issued Notice 2020-23 pursuant to its discretionary authority under I.R.C. § 7508A(a). Because the mandatory extension under I.R.C. § 7508A(d) is in addition to (or runs concurrently) with the Secretary's discretionary extension in Notice 2020-23, it is unclear when the extension period will end. If the disaster declaration is terminated and the 60-day period in I.R.C. § 7508A(d) runs before July 15, 2020, the deadline in Notice 2020-23 will apply. If the disaster declaration remains in effect on July 15, 2020, the mandatory 60-day extension in I.R.C. § 7508A(d) will apply.

Collection Due Process Deadlines

The FAQs clarify the effect of Notice 2020-23 on important collection deadlines. Generally, when a taxpayer receives a Notice of Intent to Levy, the taxpayer has thirty days to file a request for a collection due process (CDP). The FAQs confirm that where the due date to file the CDP request is on or after April 1, 2020, or before July 15, 2020, Notice 2020-23 extends the deadline to file the CDP request to July 15, 2020.

If the IRS issues a notice of determination with respect to a collection action, a taxpayer only has thirty days to file a petition for redetermination in the U.S. Tax Court. The FAQs confirm that, where the deadline to file a petition for redetermination is on or after April 1, 2020 or before July 15, 2020, the filing deadline is extended to July 15, 2020.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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