

[Latham & Watkins Tax Practice](#)

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## COVID-19: IRS Postpones Tax Deadlines and Court and Agency Closures Will Delay Federal Tax Cases

*Notice 2020-18, expanded by Notice 2020-20, provides welcome economic relief from filing and payment obligations for certain federal taxes; however, traps for the unwary exist.*

### Tax Deadline – Key Points:

- On March 20, 2020, the Internal Revenue Service (IRS) issued Notice 2020-18, automatically postponing until July 15, 2020 the deadline to file federal income tax returns and make certain federal income tax payments ordinarily due April 15, 2020. Taxpayers are not subject to interest, penalties, or additions to tax if such postponed federal income tax filings and payments are timely made under the new deadline. The covered payments are federal income tax payments for the 2019 taxable year and federal estimated income tax payments for the first quarter of the 2020 taxable year, without the dollar limits that had been previously announced in Notice 2020-17.
- On March 24, 2020, the IRS published additional guidance on its website about the application of the relief granted in Notice 2020-18 and, on March 27, 2020, the IRS issued Notice 2020-20, which extends the relief described in Notice 2020-18 beyond federal income taxes.
- Notice 2020-20 automatically postpones until July 15, 2020 payments of federal gift taxes and federal generation-skipping transfer taxes, as well the filing of any federal gift and generation-skipping transfer tax returns, ordinarily due on April 15, 2020. Taxpayers are not subject to interest, penalties, or additions to tax if such postponed filings and payments are timely made under the new deadline.
- Notice 2020-18 and Notice 2020-20 do not extend the time for the payment or deposit of any other type of federal tax or for the filing of any federal information return.

### 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.<sup>1</sup> 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).”

### **Notice 2020-17 (Superseded)**

On March 18, 2020, the IRS released Notice 2020-17, *now superseded* (as discussed below). Notice 2020-17 stated that the Secretary of the Treasury “has determined that any person with a Federal income tax payment due April 15, 2020, is affected by the COVID-19 emergency” and permitted taxpayers to delay payment of certain amounts of Federal income taxes due April 15, 2020 until July 15, 2020 without interest, penalties, or additions to tax.

The delay covered only federal income tax payments for the 2019 taxable year and federal estimated income tax payments for the first quarter of the 2020 taxable year subject to a “cap” on the amount of a tax payment that could be delayed. Notice 2020-17 did not originally extend the limited payment delay to the *filing* of federal income tax returns due on April 15, 2020.

### **Notice 2020-18**

On March 20, 2020, the IRS issued Notice 2020-18, which superseded Notice 2020-17. Notice 2020-18 expands the relief provided in Notice 2020-17 in two significant ways:

- It removes the cap or dollar amount limitations on the federal income tax payments that may be deferred until July 15, 2020, so that an eligible payment in any amount may be deferred.
- It automatically postpones the due date for *filing* federal income tax returns due on April 15, 2020 to July 15, 2020, so that the deadlines for filing and payment are matched.

Accordingly, the period beginning on April 15, 2020 and ending on July 15, 2020 will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the federal income tax returns or failure to pay the federal income taxes postponed by Notice 2020-18. Note that the IRS has encouraged taxpayers anticipating a refund to file in advance of the delayed filing date.

Finally, Notice 2020-18 specifically states, “No extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any Federal information return.”

### **Notice 2020-20 (Amplifying Notice 2020-18)**

On March 27, 2020, the IRS issued Notice 2020-20, which amplified Notice 2020-18. Notice 2020-20 states that the Secretary of the Treasury “has determined that any person (as defined in section 7701(a)(1) of the Code) with a Federal gift tax or generation-skipping transfer tax payment or the requirement to file Form 709 (United States Gift and Generation-Skipping Transfer Tax Return) on April 15, 2020 is also affected by the COVID-19 emergency” and permits taxpayers to delay payment of those taxes and the filing of Form 709 until July 15, 2020. As in Notice 2020-18, the period beginning on April 15, 2020 and ending on July 15, 2020 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 2020-20.

Notice 2020-20 states that “there is no requirement to file Form 8892 (Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax) to obtain the benefit

of this filing and payment postponement until July 15, 2020.” It also states clearly that taxpayers who wish to file Form 709 on October 15, 2020 may obtain that further extension by filing Form 8892 by July 15, 2020, but that “any Federal gift and generation-skipping transfer tax payments postponed by this notice **will still be due on July 15, 2020.**” (Emphasis added.)

## Thoughts on Compliance

On March 24, 2020, the IRS published on its website a set of questions and answers about the application of the relief described in Notice 2020-18.<sup>2</sup> As of March 28, 2020, the IRS has not updated that online guidance to reflect Notice 2020-20.

Nevertheless, the March 24 guidance provides important clarifications on certain significant compliance issues:

- The IRS confirmed that the payment relief in Notice 2020-18 **applies** to installment payments for the Section 965 transition tax that would otherwise be due on April 15, 2020. Similarly, the filing and payment relief in Notice 2020-18 also applies to BEAT payments and Forms 8991 that would otherwise be due on April 15, 2020.
- The IRS confirmed that the relief described in Notice 2020-18 **does not apply** to the payment or deposit of federal payroll taxes, federal excise taxes, and federal estate taxes and reiterated that it does not apply to information returns, as expressly stated in Notice 2020-18. In light of Notice 2020-20, this guidance is expected to be updated to reflect the extension of relief to the filing and payment of federal gift and generation-skipping transfer taxes and returns.
- Section 6081 of the Code and its regulations provide taxpayers with the ability to obtain an automatic extension of time to file their income tax returns. This is normally accomplished by filing an application for the automatic extension using Form 4868 for individuals or Form 7004 for corporations on or before the due date for the return. The new IRS guidance clarifies that the deadline for filing automatic extensions, along with payment of any estimated income tax that may be due, is extended until July 15, 2020.
- The IRS confirmed that there is no deadline extension for any filing and payment obligations that fall on dates other than April 15, 2020.

Even in light of the recent, helpful guidance from the IRS, there remain unanswered compliance issues for some taxpayers. Such issues include:

- Notice 2020-18 expressly states that it does not extend the filing deadlines for federal information returns (*i.e.*, returns that report tax information but do not report a tax liability). Although the recent IRS guidance does specify certain forms to which the filing relief described in Notice 2020-18 applies, it leaves the status of several important forms unclear.
  - Classic examples of information returns are those that fall under the definition of “information return” for purposes of Section 6721 of the Code, such as Forms 1094 and 1095 (related to Affordable Care Act shared responsibility payments), 1099 (related to payments of income other than wages, salaries, and tips), and W-2 (related to payments of wages, salaries, and tips). Many, if not most, of those information returns are unlikely to have been affected by Notice 2020-18 even without the express statement of non-application because their filing deadlines (absent any extension) tend to fall before April 15.

- Notice 2020-18 does not specify whether returns for entities such as tax-exempt organizations (Form 990), partnerships (Form 1065), or S corporations (Form 1120-S) — all of which generally do not report income tax due — are information returns for its purposes. Generally speaking, case law, Treasury Regulations, and other pieces of administrative guidance do refer to returns for those types of entities as information returns even though they are not defined as information returns for purposes of Section 6721 of the Code.
- In its recent guidance, the IRS stated, “With respect to returns due on March 16, 2020, which include Form 1065, Form 1065-B, Form 1066, and Form 1120-S for calendar year taxpayers, the filing of those returns has not been postponed.” However, it is not clear whether that guidance is based on the March 16, 2020 due date or on the forms being considered information returns. Relatedly, the IRS explained that the filing relief in Notice 2020-18 does apply to Form 990-T, but only if the form would otherwise be due on April 15, 2020. The relief in Notice 2020-18 does not apply to Form 990-T if it is due on May 15, 2020 (as would be the case for a calendar-year exempt organization subject to the unrelated business income tax).
- The applicability of Notice 2020-18 to certain other federal tax payments and related returns is unclear. These federal tax payments include certain withholding taxes (such as those imposed on payments to nonresident aliens and foreign corporations). The IRS may issue additional guidance specific to other federal tax payments and returns, the status of which is ambiguous under Notice 2020-18.
- IRS filing and payment delays apply only to federal income taxes and federal income tax returns, and now federal gift taxes and generation-skipping transfer taxes and related returns. The extended deadlines do 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 March 28, 2020, more than two-thirds of states have authorized some form of specific deadline relief that resembles the relief in Notice 2020-18 and Notice 2020-20. Note, though, that the precise terms of relief may differ from the terms of Notice 2020-18 and Notice 2020-20. Additionally, many states have also granted some form of relief related to taxes such as sales and use and excise taxes.

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***Delays are anticipated as the COVID-19 pandemic impacts the operations of the IRS, the U.S. Department of Justice Tax Division (Tax Division), the U.S. 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. Nevertheless, litigants should treat deadlines as unchanged, particularly statutory deadlines for filing documents such as petitions or notices of appeal.
- The Department of Justice has not yet 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, 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. These 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 or private delivery service is the only option for filing a petition while the Tax Court building is closed, since petitions are not eligible for eFiling.<sup>6</sup>

For its part, the Department of Justice has not yet 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 U.S. Court of Federal Claims and the U.S. Bankruptcy Courts, and supports the Office of the U.S. Solicitor General in tax cases before the U.S. Supreme Court. Because the operations of all the federal 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).<sup>7</sup> 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.<sup>8</sup> 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. The IRS transcript delivery service is still available to certain authorized tax professionals. Finally, as of March 27, 2020, the IRS was not equipped to answer questions on stimulus payments.

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**

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- <sup>1</sup> 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/>.
  - <sup>2</sup> See <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>.
  - <sup>3</sup> Press Releases dated March 11, 2020, March 13, 2020, and March 23, 2020 *available at* <https://www.ustaxcourt.gov/>.
  - <sup>4</sup> Press Release dated March 18, 2020 *available at* <https://www.ustaxcourt.gov/>.
  - <sup>5</sup> Press Release dated March 23, 2020 *available at* <https://www.ustaxcourt.gov/>.

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- <sup>6</sup> See U.S. 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](https://www.ustaxcourt.gov/electronic_access.htm).
- <sup>7</sup> 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>.
- <sup>8</sup> Taxpayer Assistance Center Statement (Mar. 20, 2020) *available at* <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.