

Bipartisan Disaster Tax Provisions Address Last Year's Problems

Posted on Aug. 13, 2021

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The bipartisan infrastructure bill making its way from the Senate to the House includes a disaster tax relief provision seemingly informed by some of the questions raised during the early days of the COVID-19 pandemic.

The [Senate passed](#) its [bipartisan infrastructure bill](#) August 10, paving the way for some unheralded — but perhaps incomplete — disaster filing deadline relief when the House considers the bill.

The taxpayer disaster relief title of the bill includes four provisions, but probably the most interesting are changes to [section 7451](#) addressing the filing deadline for taxpayers taking disputes to the Tax Court, and to [section 7508A](#) clarifying the deadline extensions under [section 7508A\(d\)](#).

Both provisions address issues highlighted during the pandemic. The Tax Court [shuttered its building](#) at the beginning of the pandemic and relied on one of its recent decisions to save taxpayer petitions filed while it wasn't checking its mail. [Section 7508A\(d\) attracted attention](#) when the IRS was granting deadline relief last summer because it provides for a mandatory 60-day tax deadline extension when there's a federally declared disaster.

The other two provisions in the title address deadlines affected by combat zones or significant fires.

Open Windows

Last year, when the Tax Court closed its building and allowed its mail to accumulate undelivered, the court stated that its decision in *Guralnik v. Commissioner*, [146 T.C. 230](#) (2016), would protect taxpayers who wanted their tax disputes with the IRS heard before they had to pay the tax at issue.

Normally, taxpayers have just 30 or 90 days from when the IRS sends them an adverse decision to petition the Tax Court to hear their case. If they miss those deadlines, they have to wait for another adverse decision (although they'll probably face restrictions on what issues they can raise) or pay the tax at issue and sue for a refund.

However, in *Guralnik*, the court found that when it was forced to close because of a severe snowstorm, it wasn't available for filing, so anything that arrived in the mail the next day would still be considered timely (assuming it would have been if delivered when the court was forced to close).

The snowstorm affected the Tax Court for only a day or two, while the pandemic closed it down for months. This led to speculation that the court could reopen and expect taxpayers with returned mail to immediately notice and refile petitions within a day. The IRS [alleviated most of that concern](#) by extending Tax Court petition deadlines to July 15, 2021, using its [section 7508A](#) authority, and the court reopened before that date.

The provision in the bipartisan budget bill goes further by officially "tolling" Tax Court petition deadlines under [section 7451](#) if a filing location becomes unavailable until 14 days after the period of inaccessibility has lapsed. In other words, taxpayers subject to disaster, inclement weather, or government shutdown delays will have at least two weeks to notice the reopening and file their petitions.

Lawrence A. Sannicandro of McCarter & English LLP told *Tax Notes* that the provision provides a solution for the issues faced by taxpayers, the IRS, and the court without reliance on either [section 7508A](#) or *Guralnik*.

However, both Sannicandro and Steven L. Jager of Fineman West & Co. LLP pointed to the definition of filing locations as a source of new questions for taxpayers.

The provision includes two filing locations to check for inaccessibility: the Tax Court's office and "any on-line portal made available by the Tax Court for electronic filing of petitions." That second phrase seems to include the [electronic petition filing apparatus](#) of DAWSON, the court's new case management system, which went live [in December 2020](#).

Jager said the inclusion of the online portal language could become a problem, especially for unrepresented taxpayers who might not have access to sufficient technology to use DAWSON. The Tax Court has been careful to address those sorts of access issues in other areas, particularly access to the [remote trials](#) implemented during the pandemic, he said.

Sannicandro asked how regional issues could affect the availability of the Tax Court's online filing platform. In other words, he said, does it matter if the power or internet goes out at the taxpayer's home or office, or only wherever the servers hosting DAWSON are?

Congress might not have to resolve those questions, however, according to Sannicandro. They could be good questions for the court to address in its rules or for the IRS to issue regulations on, he said.

Bryan T. Camp of Texas Tech University said the provision — especially its explicit reference to government shutdowns — will be useful, but it doesn't go far enough. Congress should have instead explicitly opened the door to the Tax Court applying principles like equitable tolling to its petition filing deadlines, he said.

The Tax Court considers nearly all the deadlines to file petitions to be jurisdictional requirements

not subject to any sort of excuse, aside from the choice of how to count days in the deadline, such as happened in *Guralnik*.

Camp said congressional clarification that the petition deadlines aren't jurisdictional could save years of litigation, even though he [and some litigants](#) think that shouldn't actually be necessary.

Sannicandro said that by using the word "tolling" in the new provision, Congress may have cracked open the door on the question whether petition deadlines are jurisdictional.

Clearing the Air

The [section 7508A](#) clarification comes in the wake of final regs ([T.D. 9950](#)) issued earlier this summer that [didn't take an expansive view](#) of subsection (d).

[Section 7508A\(d\)](#) includes a mandatory 60-day disaster deadline extension, but little clarification about how it should apply other than a cross-reference to [section 7508A\(a\)](#).

Some argued that it should add 60 days to any deadline whenever there is a federal disaster declaration. Others responded with the fact that not all disasters get a deadline extension under [section 7508A\(a\)](#) and that the world of deadlines that could be affected is far broader than just taxpayer return filing requirements.

The final IRS rule basically took [section 7508A\(d\)](#) as a minimum for any extension the agency chose to grant under [section 7508\(a\)](#).

The bipartisan infrastructure bill clarifies the timing of the mandatory extension when there are multiple potentially triggering declarations and replaces the cross-reference to [section 7508A\(a\)](#) for the description of which deadlines automatically get 60 extra days. Instead, the new provision would apply only to deadlines mentioned in [section 7508\(a\)\(1\)\(A\)-\(F\)](#), thereby generally including extensions for taxpayer actions but excluding the limits falling on the IRS.