



August 29, 2023

Ms. Lia Colbert  
Commissioner, SBSE  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

**Re: Recommendations for Updated Guidance and Clarifications on Disaster Tax Relief**

Dear Ms. Colbert:

The American Institute of CPAs (AICPA) is providing comments and recommendations for updated guidance and clarifications from the Internal Revenue Service (IRS) in several areas relating to disaster tax relief. The increasing number of natural disasters and affected taxpayers necessitates that we correspond with you on these matters. We look forward to your response and would be pleased to meet with the IRS to discuss these issues and recommendations virtually or in person on November 15, 2023, as part of our AICPA Individual and Self-Employed Tax Technical Resource Panel meeting in Washington, DC.

This letter includes comments and recommendations on:

1. Update of Revenue Procedure 2018-58
2. Section 7508A Updates to the IRM
3. Account Resolution Freeze Codes Clarifications
4. Clarifications Regarding Obtaining Relief for Taxpayers Located Outside a Disaster Area
5. Clarifications Regarding Obtaining Relief for Taxpayers:
  - a. Whose Zip Code Contains Both a County That is a Declared Disaster Area and a County That is Not a Declared Disaster Area, or
  - b. Whose County Contains Two Zip Codes Where One Zip Code is a Declared Disaster Area, and the Other Zip Code is Not a Declared Disaster Area
6. Additional IRS FAQs for Disaster Victims

**Background**

The authority for the IRS to grant disaster relief is found in section<sup>1</sup> 7508, which postpones specified acts for individuals serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone or serving with respect to a contingency operation, and in section 7508A, which permits a postponement of the time to perform specified acts for taxpayers affected by a federally declared disaster, significant fire, or a terroristic or military action.

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<sup>1</sup> All references to “section” or “§” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §” and “regulations” are to U.S. Treasury regulations promulgated thereunder.

## 1. Update of Revenue Procedure 2018-58

### Overview

When Rev. Proc. 2018-58 was issued, it contained an updated (at the time) list of time sensitive acts eligible for postponement under section 7508 and section 7508A when there is a federally declared disaster. Generally, for taxpayers to be entitled to a postponement of any act listed in Rev. Proc. 2018-58, the IRS publishes a News Release or issues other guidance providing relief with respect to a federally declared disaster, or a terroristic or military action. The list of acts in Rev. Proc. 2018-58 supplements the list of postponed acts in section 7508(a)(1) and Treas. Reg. § 301.7508A-1(c)(1)(vii).

Revenue Procedure 2018-58 is supposed to be updated as needed if the IRS determines that additional acts should be included or removed from the list.<sup>2</sup> Taxpayers can also request for that list to be updated.<sup>3</sup> In particular, there are new Code sections and elections, enacted after Rev. Proc. 2018-58 was issued, that are not covered in Rev. Proc. 2018-58.

The IRS issues a News Release for each disaster indicating the filing relief applicable for the disaster. These News Releases are posted on the IRS website as they are issued. Revenue Procedure 2018-58 is referenced in the News Release with this standard language:

- “The IRS also gives affected taxpayers until [DATE], to perform other time-sensitive actions described in Treas. Reg. § 301.7508A-1(c)(1) and Rev. Proc. 2018-58, 2018-50 IRB 990 (December 10, 2018) ....”
- “Unless an act is specifically listed in Rev. Proc. 2018-58, the postponement of time to file and pay does not apply to information returns in the W-2, 1094, 1095, 1097, 1098 or 1099 series; to Forms 1042-S, 3921, 3922 or 8027; or to employment and excise tax deposits.”

Therefore, it is important for Rev. Proc. 2018-58 to be updated and current with all items that would be included for filing relief available to the taxpayers in areas covered by the News Release.

### Recommendations

The IRS should:

- Update the list of acts in Rev. Proc. 2018-58 for which disaster-related postponements are available, including for code section changes and elections,<sup>4</sup> such as the qualified business income deduction under section 199A, the international tax provisions in the Tax Cuts and

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<sup>2</sup> [Rev. Proc. 2018-58](#), section 1.04.

<sup>3</sup> *Ibid.*

<sup>4</sup> See, e.g., [Rev. Proc. 2018-58](#), section 13(13) and section 13(14), referring to [Rev. Proc. 2003-43](#) and [Rev. Proc. 2004-48](#), respectively, both discussing relief for late S corporation elections. However, both [Rev. Proc. 2003-43](#) and [Rev. Proc. 2004-48](#) were modified and superseded by [Rev. Proc. 2013-30](#).

Jobs Act of 2017<sup>5</sup> (TCJA) (e.g., Global Intangible Low-Taxed Income (GILTI), Base Erosion and Anti-Abuse Tax (BEAT), etc.), the SECURE Act,<sup>6</sup> the SECURE 2.0 Act,<sup>7</sup> etc.

- Clarify whether postponement of filing dates also means that all statutory and regulatory elections are also postponed or are there elections for which the taxpayer must still file an extension if the election is not made by the original filing date. For example, the IRS should clarify if the de minimis safe harbor election under Treas. Reg. § 1.263(a)-1(f) and the election out of bonus at section 168(k) are automatically extended for a federally declared disaster.

## 2. Section 7508A Updates to the IRM

### Overview

The Consolidated Appropriations Act of 2020<sup>8</sup> (CCA 2020) added section 7508A(d) and requires the IRS to provide a minimum of 60 days of disaster tax relief for qualifying taxpayers in the event of a federally declared disaster. The IRS Small Business/Self-Employed Division (SBSE) issued a memo describing changes to IRS disaster relief procedures following the enactment of CCA 2020.<sup>9</sup>

When the IRS grants tax relief to taxpayers affected by a disaster, a News Release is issued to the public outlining the relief that is being granted.<sup>10</sup> However, there have been instances where there has been a notable delay in the issuance of a federal disaster declaration and IRS guidance (notice or announcement) following a disaster. Retroactive relief is frequent and challenging. There are at least two examples of federally declared disasters for which the IRS has not yet issued notices of relief as of the date of this letter.<sup>11</sup>

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<sup>5</sup> Pub. L. No. 115-97.

<sup>6</sup> Pub. L. No. 116-94.

<sup>7</sup> Enacted as Division T of the Consolidated Appropriations Act of 2022, Pub. L. No. 117-328.

<sup>8</sup> Pub. L. No. 116-93.

<sup>9</sup> See [SBSE memorandum control number: SBSE-25-1120-0093](#), issued November 18, 2020, expiration date: 12-31-2022, affected IRM: 25.16.1, from: Rashaunda B. Simmons, Director, SB/SE, Human Capital Office, to: All Affected Business Operating Divisions, regarding: Issue Interim Guidance (SBSE-25-1120-0093), Disaster Assistance and Emergency Relief Policy Change, due to Implementation of H.R. 1865 – Further Consolidated Appropriations Act - Changes to IRS Disaster Relief.

<sup>10</sup> See, e.g., IRS News Release [IR-2023-125](#), extending relief to Vermont flooding victims.

<sup>11</sup> [Kentucky Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides \(DR-4711-KY\)](#), incident period: February 15-20, 2023, and federal disaster declaration: May 9, 2023; [Alabama Severe Storms, Straight-line Winds, and Tornadoes \(DR-4710-AL\)](#), incident period: March 24-27, 2023, and federal disaster declaration: May 5, 2023.

## Recommendations

The IRS should:

- Broaden the relief provided administratively under section 7508A(a) as was done in Notice 2023-21 and make permanent and automatically provide a postponed date lookback period as part of IRS administrative relief for all federally and state declared disasters going forward.<sup>12</sup>
- Clarify whether this relief automatically applies for federally declared disasters (as the 60-day extension is mandatory), or if a formal IRS notice or guidance *must be issued* for impacted taxpayers to qualify for relief.
- Accelerate the issuance of notices of relief.
- Update the IRM for the mandatory 60-day extension (if it has not yet been updated). Also, provide the IRM citation for the updated information on the mandatory 60-day extension.
- Ensure that IRS personnel, including disaster hotline personnel, are familiar with section 7508A and allow the 60-day extension even if there is no official guidance or announcement from the IRS.
- Confirm that taxpayers who miss a filing deadline qualify for relief in the event that a retroactive disaster declaration is issued.
- Make clearer the information in the IRS News Releases and announcements to list actions that are NOT postponed (in addition to actions that are postponed). Also, IRS should include the specific forms that are covered and what happens if the taxpayer files timely by the date in the announcement but pays the tax later.
- Clarify the treatment and how to handle postponed filing deadlines due to disaster relief. For example, clarify whether a Form 1040X, *Amended U.S. Individual Income Tax Return*, is required to be filed when a Form 1045, *Application for Tentative Refund*, is filed a few weeks late in January 2022 for a December 31, 2021 postponed filing deadline due to Hurricane Ida relief that was given until February 15, 2022 to file.

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<sup>12</sup> See AICPA letter, "[Automatic Postponement Date Lookback Period for Allowing Tax Credits or Refunds for All Disasters](#)," March 17, 2023, and AICPA letter, "[Recommendations for the 2023-2024 Guidance Priority List \(Notice 2023-36\)](#)," May 9, 2023.

### 3. Account Resolution Freeze Codes Clarifications

#### Overview

Historically, the IRS marked the Individual Master File (IMF) for disaster taxpayers with an -O Freeze. The AICPA has heard from taxpayers affected by Hurricanes Ian and Nicole that an -S Freeze now is also in use.

Per the IRM,<sup>13</sup> IRS personnel are supposed to use the taxpayer zip code to “research the S and O freeze columns to determine which freeze needs to be input.”<sup>14</sup> Per IRM Procedural Update [WI-21-0523-0569](#) (05/01/2023), it appears that the county may now also be used to identify for -O Freeze or -S Freeze.

Regarding -O freezes, the IRM explains that:<sup>15</sup>

“The -O (Disaster Indicator) freeze is only input systemically by Information Technology Services (IT) at the request of the Disaster Program Office or on a case-by-case basis by Compliance personnel.

- The -O freeze allows for special penalty and interest calculations.
- The -O freeze suppresses some Master File and IDRS notices.
- The -O freeze does not freeze the module from refunding.
- The -O freeze may be systemically set on identified taxpayer accounts in Federally declared disaster areas.
- The -O freeze is released when the current date is beyond the secondary date (disaster ending date) of the TC 971 AC 087.”

Regarding -S freezes, the IRM explains, “The -S freeze [was] added to IMF and Business Master File (BMF) processing for taxpayer accounts in [federally] declared disaster areas. The -S freeze performs the same functions as the -O freeze for systemic penalty and interest relief. However, it does not provide compliance relief.”<sup>16</sup> The IRM further explains, “The -S freeze is released when the current date is beyond the secondary date (disaster ending date) of the TC 971 AC 688.”<sup>17</sup>

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<sup>13</sup> See IRM [21.5.6.4.30](#) (-O Freeze) and IRM [21.5.6.4.37](#) (-S Freeze).

<sup>14</sup> IRM [21.5.6.4.37\(5\)](#).

<sup>15</sup> IRM [21.5.6.4.30](#).

<sup>16</sup> IRM [21.5.6.4.37\(1\)](#).

<sup>17</sup> IRM [21.5.6.4.37\(9\)](#).

## Recommendations

The IRS should:

- Provide clarification on which code is used and why.
- Clarify what it means when the IRM states that the difference between an -O Freeze and an -S Freeze is that an -S Freeze does not “provide compliance relief.”<sup>18</sup>
- Clarify what governs whether a taxpayer is eligible for -O Freeze or -S Freeze and whether it is the disaster declaration, the IRS notice, or something else.
- Clarify whether either the zip code or the county be used to identify for -O Freeze or -S Freeze.

## **4. Clarifications Regarding Obtaining Relief for Taxpayers Located Outside a Disaster Area**

### Overview

The IRM explains that taxpayers located outside a declared area but whose records, principal place of business, or accountant were inside the declared area must self-identify for disaster relief.<sup>19</sup>

If a practitioner needs to alert the IRS about a single taxpayer account, the IRM says they should call the IRS and ask the assistor to add relief to the taxpayer’s account.<sup>20</sup> The practitioner must already have a Power of Attorney (POA) on file with the Centralized Authorization File (CAF) or must fax a Form 2848, Power of Attorney and Declaration of Representative, to the assistor.<sup>21</sup>

According to the IRM, if a practitioner needs to alert the IRS about several taxpayers, they have three options:<sup>22</sup>

1. Call the Special Service line 866-562-5227.<sup>23</sup>
2. For 10 or more taxpayers, prepare and mail an Excel spreadsheet.<sup>24</sup>
3. Go to the IRS website [Bulk Requests from Practitioners for Disaster Relief](#) for more information on completing the spreadsheet.<sup>25</sup>

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<sup>18</sup> IRM [21.5.6.4.37\(1\)](#).

<sup>19</sup> See IRM [21.5.6.4.30](#) (-O Freeze) and IRM [21.5.6.4.37](#) (-S Freeze).

<sup>20</sup> See IRM [21.5.6.4.30\(3\)](#) (-O Freeze) and IRM [21.5.6.4.37\(4\)](#) (-S Freeze).

<sup>21</sup> *Ibid.*

<sup>22</sup> See IRM [21.5.6.4.30\(2\)](#) (-O Freeze) and IRM [21.5.6.4.37\(3\)](#) (-S Freeze).

<sup>23</sup> Number still working as of May 18, 2023.

<sup>24</sup> The mailing address provided in the IRM is: Internal Revenue Service, Planning & Analysis Staff, 4800 Buford Highway, Stop 96C, Chamblee, GA 30341. See IRM [21.5.6.4.30\(2\)](#) (-O Freeze) and IRM [21.5.5.4.37\(3\)](#) (-S Freeze).

<sup>25</sup> This webpage is marked as “Historical Content” and therefore may not reflect current law, policies, or procedures. Is there another/updated resource?

## Recommendations

The IRS should:

- Confirm whether a practitioner may call the Special Service line to self-identify up to 9 taxpayers for disaster relief.
- Provide clarity on what practitioners should do when calling the IRS to add relief to a taxpayer's account, and the assistor is not able to locate the disaster and/or other information needed to add the relief to the account.
- Provide clarity for when 10 or more taxpayers require self-identification for disaster relief, whether the only way to alert the IRS is by mailing in a spreadsheet or electronic media, or if there are other more effective and expeditious method for a practitioner to inform the IRS of 10 or more clients who qualify for relief. Practitioners are having difficulty with these methods not being effective or timely.
- Provide confirmation to the practitioner that the relief request was received, and the relief was added to the taxpayer(s) account(s).
- Include as part of the IRS relief notice the instruction for practitioners to send the spreadsheet or electronic media.
- Offer another method other than mailing a paper spreadsheet or electronic media to submit names. For example, we suggest that practitioners should be able to upload the spreadsheet.<sup>26</sup> If that is not possible, a fax alternative should be offered rather than only a physical mail method.
- Update the bulk requests website or provide another more current resource for when a practitioner has several taxpayers needing disaster relief. The current bulk request website is marked as "Historical Content" and therefore may not reflect current law, policies, or procedures.
- Provide (if not already) a telephone script for the Special Services line personnel to follow upon receiving a call from a practitioner that is self-identifying taxpayers for disaster relief. AICPA requests a copy of that telephone script to inform practitioners of what they should expect when calling that line.

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<sup>26</sup> We note that on August 2, 2023, the IRS launched an [initiative](#) to transition more forms and correspondence into a paperless format. See [FS-2023-18](#).

## **5. Clarifications Regarding Obtaining Relief for Taxpayers (a) Whose Zip Code Contains Both a County That is a Declared Disaster Area and a County That is Not a Declared Disaster Area, or (b) Whose County Contains Two Zip Codes Where One Zip Code is a Declared Disaster Area, and the Other Zip Code is Not a Declared Disaster Area**

### Overview

In instances of taxpayers whose zip code contains both a county that is a declared disaster area and a county that is not a declared disaster area, or whose county contains two zip codes where one zip code is a declared disaster area and the other zip code is not a declared disaster area, practitioners find it difficult to determine whether a taxpayer qualifies for relief and are getting inconsistent results from IRS assistors.

IRM Procedural Update [WI-21-0523-0569](#) (05/01/2023) updates IRM [21.5.6.4.30\(4\)](#) (-O Freeze) and IRM [21.5.6.4.37\(5\)](#) (-S Freeze) to indicate that taxpayers residing inside the federally declared disaster area but without a zip code found on the Integrated Customer Communications Environment (ICCE) are able to provide the name of their county and self-identify as long as their county is found on the federal disaster declaration for their state. Taxpayers located outside the federally declared disaster area but whose records, principal place of business, or accountant/preparer were inside the federally declared disaster area are also able to self-identify using the county name if the zip code is not in ICCE. The assistor can add -O Freeze or -S Freeze relief based on county name.

### Recommendations

The IRS should:

- Clarify whether assistors can add relief based on either the zip code or county name.
- Provide guidance that is clearer regarding situations that involve a zip code with both qualifying and nonqualifying disaster counties or a county with both qualifying and nonqualifying disaster zip codes.

## **6. Additional IRS FAQs for Disaster Victims**

### Overview

The IRS has a webpage with helpful information, including [frequently asked questions \(FAQs\) for disaster victims](#). More helpful information is needed, including on the above issues in this comment letter.

### Recommendation

The IRS should include in the IRS [FAQs for Disaster Victims webpage](#) the questions and answers on the issues in this comment letter.

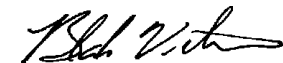


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We welcome the opportunity to discuss these comments or to answer any questions that you may have. If you have any questions, please contact; Peter Mills, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9272, or [Peter.Mills@aicpa-cima.com](mailto:Peter.Mills@aicpa-cima.com); Gerald Schreiber, chair of the AICPA Disaster Tax Relief Task Force at (504) 832-1819 or [ghschreiber@schreibercpa.com](mailto:ghschreiber@schreibercpa.com); or me at (830) 372-9692 or [Bvickers@alamo-group.com](mailto:Bvickers@alamo-group.com).

Sincerely,



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