AMERICAN BENEFITS COUNCIL

March 9, 2021

Internal Revenue Service
CC:PA:LPD:PR (REG—115057-20)
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Mandatory 60-Day Postponement of Certain Tax-Related Deadlines

Dear Sir or Madam:

On behalf of the American Benefits Council (the "Council"), we appreciate the opportunity to comment on the recently proposed regulations interpreting the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally-declared disaster.

As you know, the American Benefits Council is dedicated to protecting and fostering privately-sponsored employee benefit plans. Our members are primarily very large employers operating nationwide, as well as firms, companies and organizations that support employers of all sizes. Collectively, our members either sponsor or provide services to plans that cover virtually all Americans participating in employer-sponsored and federally qualified retirement plans.

The Council has long supported the automation and standardization of tax relief for employee benefit plan sponsors and participants that have been affected by federally-declared disasters. Accordingly, we were very pleased when, at the end of 2019, Congress amended the Internal Revenue Code ("Code") to include a new mandatory 60-day extension of various deadlines imposed by the Code for "qualified taxpayers" who have been affected by federally-declared disasters.

As we understand that 2019 legislation, Congress intended to create a new ***mandatory and automatic*** deadline extension for taxpayers who have been affected by federally-declared disasters. The U.S. Treasury Department and Internal Revenue Service (IRS) have long had the authority to postpone these same deadlines on discretionary basis. However, the unpredictable nature of those discretionary extensions results in inefficiencies and uncertainty when there is a delay between the onset of a disaster and the IRS announcement of deadline extensions. Under this existing framework, some affected taxpayers do not know whether they will be eligible for relief until weeks after a disaster has occurred, and in some cases, well after the relevant tax deadline has passed. Thus, to eliminate those inefficiencies and uncertainties, Congress created a new mandatory and automatic deadline extension for taxpayers who have been affected by federally-declared disasters.[1]

Provide a truly mandatory and automatic extension.

Notwithstanding this apparent legislative intent, the proposed regulations indicate that the new "mandatory" 60-day extension will only apply if the IRS first uses its discretion to extend deadlines for a given disaster. This is not a mandatory and automatic extension. Instead, this proposed interpretation of the 2019 legislation would preserve the discretionary nature of deadline relief for taxpayers who have been affected by federally-declared disasters. We disagree with this proposed interpretation and urge Treasury and the IRS to issue final regulations that recognize truly mandatory and automatic deadline relief.

According to the statute, the mandatory 60-day deadline extension is required to run until "the date which is 60 days after the latest incident date so specified [in the disaster declaration]." We understand that this creates challenges for indefinite disasters, such as the COVID-19 disaster, because a literal reading of the statute could be interpreted to extend a taxpayer's deadlines indefinitely until some unknown point in time that is long after the disaster began. To avoid that unworkable application of the statute, for otherwise qualified taxpayers, we recommend that Treasury and the IRS interpret the statute as automatically providing a deadline extension until the date that is 60 days after the earliest incident date specified in a disaster declaration, if the initial disaster declaration does not expressly identify the latest incident date of a disaster.[2] This approach would provide an automatic and reasonable delay for disasters that occur over a few days, as well as disasters that have an indefinite duration.

Furthermore, in addition to our support for a truly mandatory and automatic extension of tax deadlines, we encourage Treasury and the IRS to continue using their

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[1] *See e.g.,* Press Release: *Rep. Rice Introduces the 2018 Natural Disaster Tax Relief Act* (Feb. 12, 2019), available at https://rice.house.gov/2019/2/rep-rice-introduces-the-2018-natural-disasters-tax-relief-act ("Ambiguity under current law results in the IRS waiting to grant a tax deadline extension for weeks after a natural disaster. This package includes The Disaster Certainty Act, which will create an automatic 60-day tax deadline extension immediately following a Presidential Disaster Declaration.").

[2] When the initial disaster declaration only includes the earliest incident date for a particular disaster, without specifying the disaster's end date, at that point, the earliest incident date should also be considered the latest incident date specified in the disaster declaration for purposes of Code Section 7508A(d). As indicated in the preamble to the proposed regulations, it is relatively rare for an initial disaster declaration to not include the latest incident date.

discretion to extend taxpayer deadlines, as appropriate, beyond the mandatory 60-day extension period contemplated by Code Section 7508A(d). For example, in the case of particularly devastating disasters, we encourage Treasury and the IRS to exercise their discretion to make the total postponement period no less than the 120-day postponement period that has traditionally been provided on a discretionary basis to taxpayers affected by federally-declared disasters.

Confirm that deadline extensions are optional.

As we understand the discretionary and mandatory deadline extensions described in Code Section 7508A, both forms of relief are optional for affected taxpayers. However, notwithstanding this general understanding, we request that Treasury and the IRS confirm that all forms of deadline relief under Code Section 7508A are optional for affected taxpayers. For example, if a qualified retirement plan requires participants to complete rollovers within 60 days of a distribution, the plan should be permitted, but not required, to accept rollovers after that 60-day deadline if a participant becomes eligible for deadline relief under Code Section 7508A. In a similar regard, qualified retirement plans that offer retirement plan loans to their participants should be permitted, but not required, to adjust loan repayment schedules when a participant qualifies for deadline relief under Code Section 7508A.

Provide good faith relief for 2020.

Although the proposed regulations were not released until January 2021, the proposed regulations would apply to disasters that were declared on or after December 21, 2019. Given that this effective date precedes the publication of the proposed regulations, the Council requests that Treasury and the IRS provide relief for any individual taxpayers or employee benefit plans that took actions (or failed to take actions) based on a good faith and reasonable interpretation of the deadline relief provided in Code Section 7508A. For example, the IRS should not impose penalties or take adverse actions against a qualified retirement plan if it accepted rollover contributions on behalf of a "qualified taxpayer" after the usual 60-day rollover deadline based on a good-faith and reasonable belief that the qualified taxpayer was eligible for the mandatory 60-day deadline extension described in Code Section 7508A(d). This good-faith relief should be available for at least 60 days after the final regulations are published in the Federal Register.

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Again, the Council greatly appreciates the opportunity to comment on this rulemaking. If we can provide any further assistance, please feel free to contact me at ldudley@abcstaff.org or 202-289-6700.

Sincerely,

Lynn D. Dudley

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: Carol Weiser, Benefits Tax Counsel
Rachel Levy, Associate Chief Counsel
Stephen Tackney, Deputy Associate Chief Counsel