



Texas Society of Certified Public Accountants

September 8, 2017

The Honorable Orrin G. Hatch
Chairman
United States Senate
Committee on Finance
Washington, D.C. 20510

The Honorable Ronald L. Wyden
Ranking Member
United States Senate
Committee on Finance
Washington, D.C. 20510

The Honorable Kevin Brady
Chairman
United States House of Representatives
Ways and Means Committee
Washington, D.C. 20515

The Honorable Richard E. Neal
Ranking Member
United States House of Representatives
Ways and Means Committee
Washington, D.C. 20515

RE: Request for Disaster-related Automatic Extensions of Reporting Deadlines

Dear Chairmen and Ranking Members:

We are grateful for the federal response in the wake of Hurricane Harvey and appreciate your work to address the needs of those impacted by this historic event. On behalf of the 28,000 members of the Texas Society of Certified Public Accountants (TSCPA), we respectfully request that Congress pass immediate tax relief legislation for federal tax deadlines and related form and report deadlines that are not automatically extended.

Congress Should Enact Legislation Providing for Automatic and Consistent Relief

We respectfully suggest that Congress enact legislation that would automatically apply extensions of reporting deadlines to all federal disasters. To date, Congress has not been consistent in granting this relief.

Most recently, Congress enacted the *National Disaster Relief Act of 2008*, which granted tax relief to all taxpayers affected by federally-declared disasters in 2008 and 2009. However, Congress has granted no such tax relief since then. For example, Congress granted no relief following Hurricane Sandy in 2012, although it did previously grant relief following Hurricane Katrina. Hurricane Harvey has just devastated the Texas and Louisiana coastal areas. Moreover, Hurricane Irma is imminently threatening the U.S. and may very well spur on the next major U.S. disaster and Hurricane Jose is following after it.

We suggest that Congress enact permanent legislation that would provide consistent and automatic extensions to provide relief for all victims. We see no reason to distinguish between human suffering

of this nature or to put taxpayers and their professionals through the additional burden of seeking tax relief each time a disaster occurs, in addition to dealing with the disaster itself.

By separate letter, we are addressing the substantive tax relief that we believe Congress should provide for persons affected by this and other natural disasters. In this letter, we specifically address the filing deadlines that should be extended.

The Tax Relief Should Provide for an Automatic Extension of All Filing Deadlines

We respectfully suggest that any tax relief related to a federal disaster area include legislation that would automatically extend the deadlines for at least three months and, depending on the nature and scope of disaster, perhaps more appropriately six months¹ for filing all tax returns, elections related thereto, and information reports for taxpayers that are either themselves located in an affected area or whose tax return preparers are located in an affected area. Our members are particularly concerned that the IRS has only been willing to grant partial relief with respect to various filing deadlines.

Hurricane Harvey caused enormous devastation to the greater Houston and Gulf Coast area. It has left hundreds of thousands of individuals and businesses without access to their homes and offices, based on current estimates released by the White House, and it appears that many will not have that access for several weeks, if not months or years.² The Federal Emergency Management Agency (FEMA) has already approved 197,915 individual disaster applications related to Hurricane Harvey.³ That lack of access means many, if not most, of those individuals and businesses will be unable to timely file accurate tax returns and associated financial tax disclosures and forms.

In addition, tax return preparers are seriously impacted. Where a taxpayer is not located in an affected area but the taxpayer's return preparer is located within that area, sometimes causing the preparer's business to be closed for weeks or months, several of our members have found that the procedures for obtaining extensions on that basis are only granted on a case-by-case basis. This can be very difficult, time-consuming and costly to apply for and obtain.

Moreover, the penalties that may apply to filing late tax-related documents can be significant in many instances. For example, individual taxpayers with certain foreign assets are subject to a penalty of \$10,000 for not timely filing Form 8938.⁴ In addition, certain larger private foundations are subject to penalties of \$100 per day, up to a maximum of \$50,000, for failing to file a timely Form 990-PF.⁵ Tax return preparers can also be subject to significant penalties, sanctions and liability for failing to meet filing deadlines. Seeking reasonable cause penalty abatement on a case-by-case basis is a costly and time-consuming process. These costs are incurred not only by taxpayers, but the federal government

¹ with discretion given to the Treasury to extend it further if warranted.

² <http://www.npr.org/2017/09/01/547598676/at-least-100-000-homes-were-affected-by-harvey-moving-back-in-wont-be-easy>.

³ <https://www.fema.gov/disaster/4332>.

⁴ IRC Section 6038D(d).

⁵ IRC Section 6652(c).

as well. Enacting legislation to extend deadlines for those affected by natural disasters could substantially reduce these unnecessary administrative costs.

It is of utmost importance that extensions be made available to individuals and businesses located in the zip codes within or overlapping counties affected by Hurricane Harvey for the filing of all federal tax returns and forms that otherwise would be due between now and the end of January 2018. These extensions should also be made available to taxpayers that do not reside within those zip codes, but either have a financial interest in an entity within those zip codes that has an impact on their tax returns or individuals and businesses that rely on return preparers located within the disaster area. We believe that a legislative fix to provide an automatic extension of all tax forms and documents would not require budgeted funds to do so and would not adversely affect revenue.

Citing its authority under Internal Revenue Code (IRC) Section 7508A, the IRS recently announced that certain taxpayers affected by Hurricane Harvey may qualify for an extension with respect to filing certain returns and elections as provided for in IRS Rev. Proc. 2007-56.⁶ However, the list of returns, elections and related documents that are extended is not inclusive of all returns, elections and documents that taxpayers are currently required to file. There may be a question as to whether the IRS has authority to extend the due dates for all tax returns, elections and related documents currently in use. We have listed below additional tax filings we have immediately identified that are or may not be specifically extended in the above-referenced IRS news releases.

Impact of Hurricanes and Other Disasters in Texas on the U.S. and Global Economies

The significance of Texas to the national and international economies cannot be overstated. International business is prolific in Texas, which is the 10th largest economy in the world.⁷ Texas has 11 deep-water ports, 28 border crossings with Mexico and has been called a “globally-connected economic powerhouse.”⁸

Houston, which was hard-hit by Hurricane Harvey, has a business community and population with strong international ties. For example, the Port of Houston is one of America’s largest seaports, processing about 13 million tons of cargo a year and managing around 8,300 vessel stops. It processes more than two-thirds of containers moving through the Gulf Coast.⁹ In addition, the Gulf Coast represents 45 percent of the United States refining capacity and offshore drilling in the Gulf of Mexico represents 17 percent of America’s crude oil production.¹⁰ The Arkema Chemical plant, whose operations were severely impacted by the storm, is headquartered in Colombes, near Paris, France. These are only a few examples of the connection between the Texas Gulf Coast and both the U.S. and global economies. As a result, important foreign reporting requirements will be significantly impacted and applicable deadlines should be extended for those reporting requirements.

⁶ Internal Revenue Bulletin 2017-35 and Announcement 2017-09; Aug. 28, 2017.

⁷ https://businessintexas.com/sites/default/files/07/24/17/fdi_2.pdf.

⁸ https://businessintexas.com/sites/default/files/07/24/17/fdi_2.pdf.

⁹ <https://www.usatoday.com/story/money/2017/09/01/houston-port-reopens-cargo-terminals-business/625479001/>.

¹⁰ <https://www.theatlantic.com/science/archive/2017/08/harvey-offshore-platform-oil-gas/537960/>.

Recommendations

In the interest of both aiding the victims of the hurricane and providing accuracy in their filings, we strongly urge Congress to enact legislation permanently extending the deadlines for filing all tax-related documents and elections in the event of a federally-declared disaster. Congress previously enacted *The National Disaster Relief Act of 2008*. However, the act only applied to disasters occurring after Dec. 31, 2007, and before Jan. 1, 2010, and did not permanently extend tax return deadlines. Similar and perhaps more comprehensive legislation should be enacted on a permanent basis and should include automatic extensions of deadlines.

A. Extend Filing Deadlines for Returns, Elections and Reports Identified in Rev. Proc. 2007-56 by Statute

The dates for filing returns and elections following a federal disaster that have been specifically identified by the IRS in Rev. Proc 2007-56 should be extended permanently by statute for three months¹¹ when a disaster is declared. This will ensure taxpayers can rely on those extended dates without having to rely on administrative grace or otherwise running the risk that the IRS will revoke or modify those deadlines later.

B. Extend Deadlines for All Other Returns, Elections and Reports by Statute

The deadlines for other returns, elections made on any tax return where the due date has been extended, and reports that are not addressed in Rev. Proc. 2007-56, or which are specifically excluded or limited from the list of extended deadlines in Rev. Proc 2007-56 should also be extended by statute for the same reasons. Some of these deadlines are administered by U.S. Treasury Department's FinCEN, the U.S. Department of Labor or agencies other than the IRS, but still affect taxpayers involved in disasters.

The following is an initial list of tax returns and financial disclosures that were not included in the IRS notice. There may be other returns that we have not yet identified:

- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation – for a Section 4947(a)(1) Charitable Trust
- Form 990-PF for Section 501(a) organizations and Form 990-T, Exempt Organization Business Income Tax Return appear to be extended but this needs to be clarified
- Form 5227, Split-Interest Trust Information
- Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation in a U.S. Trade or Business
- Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans
- Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent
- FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), including foreign bank account disclosure not included in the IRC, but coordinated with and related to tax filing (although there appears to be the ability to call FinCEN to request late-filing relief in the event of a disaster)

¹¹ Ibid, discretion to Treasury to extend.

- Excise tax deposits including estimated tax for 990-PF's or 990-T's are not included other than a waiver of penalties on deposits due before Sept. 7, 2017
- Employment tax deposits are not included other than a waiver of penalties on deposits due Sept. 7, 2017
- Retirement plan funding deadlines for employers of employee funds withheld from pay (tight timeframes)
- The following forms are specifically listed on the IRS website as not extended:
 - W-2
 - Forms 1094 and 1095, Health Care Coverage
 - Form 1097, Bond Tax Credits
 - Form 1098, Mortgage Interest Statement
 - Form 1099, Entire Series
 - Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding
 - Form 3921, Exercise of an Incentive Stock Option under Section 422(b)
 - Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan under Section 423(c)
 - Form 8025
 - Form 8027, Employer's Annual Information
- 401(k) loan payment deadlines (which could result in a Form 1099-R issued equal to loan balance)
- Employment documentation deadlines on Form I-9, Employment Eligibility Verification, and W-4 excise tax deposit deadlines
- Amended returns where the statute of limitations expires during the extension period
- Foreign Reporting Forms (including but not limited to):
 - Individuals
 - Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation
 - Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner
 - Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations
 - Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
 - Form 8833, Treaty-Based Return Position Disclosure under Section 6114 or 7701(b)
 - Form 8840, Closer Connection Exception Statement for Aliens
 - Form 8858, Information Return of U.S. Persons with Respect to Foreign Disregarded Entities
 - Form 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships
 - Form 8938, Statement of Specified Foreign Financial Assets, appears to be extended but this needs to be clarified
 - Institutions
 - Form 8508-I, Request for Waiver from Filing Information Returns Electronically
 - Form 8809-I, Application for Extension of Time to File FATCA Form 8966
 - Form 8966, FATCA Report
 - FATCA related information returns (Form 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, 1099-R)

- Withholding Agents
 - Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - Form 1042-T, Annual Summary and Transmittal of Forms 1042-S

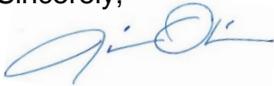
C. Extend Deadlines for Tax Return Preparers Who are Located in Affected Areas

The deadlines for all tax returns and information reports should also be extended automatically where a taxpayer's tax return preparer is located in a disaster area. This includes taxpayers not located in a disaster area who may nevertheless be directly affected if their tax return preparers are living or working in a disaster area, particularly when the return preparer has documents or information related to a tax return or a history with the taxpayer that cannot be easily transferred to another tax return preparer. The tax preparer's address is included on the tax return, so the IRS could use that information to grant the relief using not only the taxpayer's address, but also the tax return preparer's address.

Conclusion

We appreciate your consideration of these important and needed tax extensions. Please feel free to contact us at 972-687-8520 or jray@tscpa.net if we may be of assistance in any way.

Sincerely,



Jim Oliver, CPA, CGMA, CFP
Chairman



Jodi Ann Ray
CEO/Executive Director

Principal responsibility for drafting these comments was exercised by Christina A. Mondrik, JD, CPA; David E. Colmenero, JD, CPA; Kenneth M. Horwitz, JD, LLM, CPA; Carol G. Warley, JD, CPA; and Julie Dale, CPA.

cc: Members, Senate Committee on Finance
Members, House Ways and Means Committee
Texas Members of Congress
The Honorable Steven T. Mnuchin, Secretary of the Treasury
The Honorable David J. Kautter, Assistant Secretary (Tax Policy)
The Honorable John Koskinen, Commissioner, Internal Revenue Service
Amalia C. Colbert, Acting Chief of Staff, Internal Revenue Service
Mary Beth Murphy, Commissioner, IRS Small Business/Self-Employed
Jamal El-Hindi, Acting Deputy Director, FinCEN
Nina E. Olson, National Taxpayer Advocate