



THE AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

McPherson Building
901 15th Street, NW, Suite 525
Washington, DC 20005
(202) 684-8460 • Fax (202) 684-8459
actec.org

Board of Regents

Please Address Reply to:

Executive Director

DEBORAH O. MCKINNON

- President*
STEPHEN R. AKERS
Dallas, Texas
- President-Elect*
ANN B. BURNS
Minneapolis, Minnesota
- Vice President*
ROBERT W. GOLDMAN
Naples, Florida
- Treasurer*
KURT A. SOMMER
Santa Fe, New Mexico
- Secretary*
SUSAN D. SNYDER
Chicago, Illinois
- Immediate Past President*
JOHN A. TERRILL, II
West Conshohocken, Pennsylvania
- PROFESSOR GERRY W. BEYER
Lubbock, Texas
- LORA L. BROWN
Seattle, Washington
- ELAINE M. BUCHER
Boca Raton, Florida
- STEPHANIE B. CASTEEL
Reno, Nevada
- MICKEY R. DAVIS
Houston, Texas
- LAUREN Y. DETZEL
Orlando, Florida
- GREGORY V. GADARIAN
Tucson, Arizona
- CHRISTOPHER H. GADSDEN
Wayne, Pennsylvania
- KEITH BRADOC GALLANT
New Haven, Connecticut
- PETER S. GORDON
Wilmington, Delaware
- STEVEN B. GORIN
St. Louis, Missouri
- LYNNE K. GREEN
Jackson, Mississippi
- NANCY C. HUGHES
Birmingham, Alabama
- KIM KAMIN
Chicago, Illinois
- AMY K. KANYUK
Concord, New Hampshire
- BETH SHAPIRO KAUFMAN
Washington, DC
- TRENT S. KIZIAH
Los Angeles, California
- MARGARET G. LODISE
Los Angeles, California
- BRIDGET A. LOGSTROM KOCI
Minneapolis, Minnesota
- STEPHANIE LOOMIS-PRICE
Houston, Texas
- THOMAS N. MASLAND
Concord, New Hampshire
- C. KEVIN MCCRINDLE
Waterloo, Iowa
- PROFESSOR NANCY A. McLAUGHLIN
Salt Lake City, Utah
- PETER T. MOTT
Southport, Connecticut
- RUDY L. OGBURN
Raleigh, North Carolina
- THOMAS L. OVERBEY
Fayetteville, Arkansas
- MARGARET E. W. SAGER
West Conshohocken, Pennsylvania
- LYNN B. SASSIN
Baltimore, Maryland
- JAMES D. SPRATT
Atlanta, Georgia
- DALE B. STONE
Birmingham, Alabama
- ROBERT E. TEMMERMAN, JR.
San Jose, California
- MARGARET VAN HOUTEN
Des Moines, Iowa
- SUZANNE BROWN WALSH
Hartford, Connecticut
- RANDALL M. L. YEE
Honolulu, Hawaii

March 27, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury, steven.mnuchin@treasury.gov

The Honorable Charles P. Rettig
Commissioner of Internal Revenue
Internal Revenue Service, charles.rettig@irs.gov, IRS.Commissioner@IRS.gov

RE: Request for Further Postponement Relief for Tax Return Filings, Tax Payments, and Certain Other Matters Due to the COVID-19 Emergency

Dear Secretary Mnuchin and Commissioner Rettig:

The American College of Trust and Estate Counsel (“ACTEC”) is pleased to submit the enclosed memorandum setting forth its request for further postponement relief for tax return filings, tax payments, and certain other matters due to the COVID-19 emergency. ACTEC commends Treasury and the IRS for their efforts, including through the issuance of Notice 2020-18, in swiftly providing April 15, 2020 income tax filing and payment relief that will help to promote the health and safety of the American people while alleviating some of their immediate financial burdens and income tax reporting obligations. However, ACTEC respectfully requests that the Treasury and the IRS consider providing similar postponement relief for other types of tax returns, information returns, and tax payment obligations as well during these times of unprecedented national emergency.

ACTEC is a professional organization of approximately 2,500 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of federal taxes, with a focus on estate, gift and GST tax planning, fiduciary income tax planning, and compliance. ACTEC offers technical comments about the law and its effective administration but does not take positions on matters of policy or political objectives.

If you or your staff would like to discuss the comments, please contact Kevin Matz, who led the task force that put together this memorandum, at (914) 380-2140 or kmatz@stroock.com, Don Kozusko, Chair of the ACTEC Washington Affairs Committee, at (202) 457-7211 or dkozusko@kozlaw.com, or Deborah McKinnon, ACTEC Executive Director, at (202) 684-8460 or domckinnon@actec.org.

Respectfully submitted,

Steve R. Akers, President

Attachment

cc: Catherine V. Hughes, Department of the Treasury, Office of Tax Policy

**Request of The American College of Trust and Estate Counsel (“ACTEC”)
for Further Postponement Relief for Tax Return Filings, Tax Payments,
and Certain Other Matters Due to the COVID-19 Emergency**

In response to the COVID-19 emergency, on March 20, 2020 the Treasury Department (“Treasury”) and the IRS issued Notice 2020-18.¹ The Notice postponed to July 15, 2020 the due date for filing income tax returns due on April 15, 2020, and for making income tax payments due on April 15, 2020. ACTEC commends Treasury and the IRS for their efforts to swiftly provide this relief. The relief will help to promote the health and safety of the American people while alleviating some of their immediate financial burdens and income tax reporting obligations.

We respectfully request that the Treasury and the IRS consider providing similar relief for other types of tax returns, information returns, and tax payment obligations. Section 7508A² authorizes Treasury and the IRS to extend the time for taxpayers affected by a federally declared disaster to perform any act required or permitted by the internal revenue laws. President Trump’s March 13 Emergency Determination declared that an emergency exists nationwide and instructed Secretary Mnuchin 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.

We believe that the President’s COVID-19 emergency determination justifies a much broader-based postponement than provided in the Notice. Taxpayers, for example, with federal estate and gift tax payment and filing requirements as well as many other filing requirements have likely been affected by the emergency to the same extent as those with income tax payment and filing obligations.

Broader relief is appropriate in order to help protect taxpayers from further severe economic hardship as a result of the COVID-19 emergency. Unlike personal income tax returns, many other tax and information returns cannot be filed electronically. By granting broader relief, exposure to serious health risks will be reduced for (i) taxpayers, who need to leave the safety of their homes to arrange for the necessary payments and the mailing of those returns and payments, (ii) professional advisors, who need to meet in person to assist in the completion of the returns or travel and engage in activity, often in close proximity to other individuals, to complete appraisals of property included on gift and estate tax returns, and (iii) other individuals who are needed to facilitate the filing of the returns or mailing of payments, such as mail carriers, financial institution employees, appraisers, and duplication service employees.

Requested Extension of Postponement Relief

The following is a list of additional tax return filing obligations, tax payment obligations, and certain other matters for which we respectfully request postponement relief.

1. Filing Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, payment of federal estate and generation-skipping transfer tax (with relief also to

¹ Notice 2020-18 can be found at the following link: <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>

² Unless otherwise stated, references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended.

apply to estate tax returns that are already on extension), and similar tax return filing and payment relief for related “Form 706 series” returns including the following:

706-A
706-GS(D)
706-GS(T)
706-NA
706-QDT

Not all of these returns and payments are due on April 15. As to those returns and payments, we suggest postponement until July 15, 2020 if the return was due on or after March 13, the date of the announcement of President Trump’s determination.

2. Making installment payments of estate tax under section 6166, 6161 or 6163 that are due in 2020.
3. Filing Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent.
4. Filing Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and payment of federal gift and generation-skipping transfer tax.
5. Filing federal income tax returns and making tax payments that are scheduled to occur before July 15, 2020 for fiscal year taxpayers such as estates, as well as for other categories of entities (with such relief also to apply to fiscal year income tax returns that are already on extension).
6. Making estimated tax payments that are scheduled to occur after April 15, 2020, and before July 15, 2020.
7. Filing Form 8855, Election to Treat a Qualified Revocable Trust as Part of an Estate.
8. Filing Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and payment of related tax.
9. Making installment payments of tax under section 965 that are due in 2020.³
10. Filing Form 2553, Election by a Small Business Corporation, for the purpose of making a QSST election or ESBT election otherwise required between the date of Notice 2020-18 and July 15, 2020.
11. Filing information returns generally (including, but not limited to, Forms 3520-A and substitute Form 3520-A, 5227, 8308, and 8865).
12. Filing Form 990 and related filings, including Form 990-EZ.

³ Such relief is indicated in Q&A 8 of the FAQ relating to Notice 2020-18 that was posted on the IRS website on March 24, 2020 (the “March 24 FAQ”). <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> According to the March 24 FAQ, “[t]he answers to these questions provide responses to general inquiries and are not citable as legal authority. Accordingly, the Treasury Department and the IRS are continuing to consider additional [Internal Revenue Bulletin] guidance on these issues addressed in these FAQs.”

13. Filing Form 990-PF, related filings, and payment of tax.
14. Filing Form 990-T and payment of tax.⁴
15. Filing Form 4720 and payment of tax.
16. Making 2019 HSA or Archer MSA contributions.⁵
17. Filing all tax refund claims.
18. Extending the individual retirement account (IRA) contribution deadline of April 15, 2020 (provided that such is not fully addressed by proposed legislation).⁶
19. Providing for a “holiday” from taking required minimum distributions for 2020, consistent with relief provided in Notice 2009-9 (provided that such is not fully addressed by proposed legislation).

Additional Clarifications

The following additional issues may need clarification. We respectfully request that Treasury and the IRS address these items as soon as practicable.

1. It is unclear if the duration of a taxpayer’s extension of time to file is valid for six months from the original due date (*i.e.*, October 15, 2020 for a calendar year taxpayer) or six months from the new deadline provided under Notice 2020-18 (*i.e.*, January 15, 2021 for a calendar year taxpayer). If the later deadline is correct, clarification will also be needed to confirm that an extension of time to file a tax return that has already been filed with the IRS will likewise be deemed to have the effect of extending the extended due date for such return by six months from the new filing date (*e.g.*, from July 15, 2020 to January 15, 2021).
2. It may be impractical or impossible for certain individuals to sign returns during this period of extended shelter in place orders across the country. Consideration by the IRS of permitted usage of verified electronic signatures (*e.g.*, DocuSign) would be an alternative method for execution of documents on a timely basis that would be consistent with the intended purpose of the relief granted.

We commend you for your efforts in all of the relief granted to date. We welcome the opportunity to provide further assistance to both Treasury and the IRS during these unprecedented times.

⁴ Such relief is indicated in Q&A 3 of the March 24 FAQ, but solely in instances where the Form 990-T is due on April 15.

⁵ Such relief is indicated in Q&A 21 of the March 24 FAQ.

⁶ Such relief is indicated in Q&A 17 of the March 24 FAQ.