

## King Kwong-Sized Corporate Interest And Penalty Refunds and COVID-19 Disaster Suspension

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# King Kwong-Sized Corporate Interest and Penalty Refunds and COVID-19 Disaster Suspension

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In this article, Morris examines *Kwong* and *Abdo*, which held that the section 7508A COVID-19 disaster period was self-executing, thus

extending the statute of limitations and providing potential relief from interest and penalties from January 20, 2020, through July 10, 2023. He urges taxpayers to review their return filings for potential refund claims arising from affected statute of limitations deadlines.

## I. Introduction

Section 7508A authorizes relief from return deadlines, interest, and penalties during federally declared disasters. In *Kwong*,<sup>1</sup> the Court of Federal Claims concluded that for purposes of relief under section 7508A(d), the COVID-19 disaster began on January 20, 2020, and ended on July 10, 2023. This follows the Tax Court's decision in *Abdo*<sup>2</sup> holding that section 7508A(d) is self-executing and mandatory, thus invalidating regulations that allowed the IRS to define the period of a disaster. These decisions extend the relief for filing deadlines because of the COVID-19 disaster — previously announced by the IRS to run from

April 1, 2020, to July 15, 2020 — and increase it from three-and-a-half months to about 39 months.

These decisions could be of enormous importance for a few reasons:

- They extend a variety of tax-related deadlines, including the time to file suit or refund claims for tax determinations that may date back many years for large C corporations.
- They may substantially lengthen the time for relief from the underpayment of interest and penalties from three-and-a-half months to 39 months.

The decisions could significantly affect the time-based interest and penalties that large C corporations involved in extended examinations or with outstanding material understatements face. With the clock running on the COVID-19 disaster, large corporate taxpayers should carefully review their tax history to determine whether they should file refund claims for interest and penalties incurred during the January 20, 2020, to July 10, 2023, COVID-19 disaster period.

## II. Section 7508A(d) Before the 2021 Amendment

Section 7508A(a) was enacted to briefly delay return due dates, tax payments, and appeal deadlines because of disasters like hurricanes, floods, or fires, and the IRS customarily issues notices that announce the deferral of any tax-related filings and payments. Subsection (a) of section 7508A grants this discretionary authority to the IRS, while subsection (d), enacted in December 2019, introduced a mandatory, self-executing postponement for qualified taxpayers:

- (a) In general. In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster (as defined

<sup>1</sup> *Kwong v. United States*, No. 1:23-cv-00267 (Fed. Cl. Nov. 25, 2025).

<sup>2</sup> *Abdo v. Commissioner*, 162 T.C. 148 (2024).

by section 165(i)(5)(A)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to 1 year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer —

- (1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),
- (2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and
- (3) the amount of any credit or refund.

Unlike subsection (a), in subsection (d) the disaster period is defined by statute as the incident's beginning date through the end of the incident period plus 60 days:

(d) Mandatory 60-day extension.

- (1) In general. In the case of any qualified taxpayer, the period —

(A) beginning on the earliest *incident date specified in the declaration* to which the disaster area referred to in paragraph (2) relates, and (B) *ending on the date which is 60 days after the latest incident date so specified, shall be disregarded in the same manner as a period specified under subsection (a).*<sup>3</sup>

[Emphasis added.]

Further, and again unlike subsection (a), subsection (d) provides that taxpayers' responsibilities "shall be disregarded in the same manner as a period specified under subsection (a)" (emphasis added). Critically, within the scope of tax responsibilities under subsection (a), that applies not only to filing deadlines but also to "the amount of any interest, penalty, additional

amount, or addition to the tax" and "the amount of any credit or refund."<sup>4</sup>

On March 13, 2020, President Trump declared a nationwide emergency in response to the COVID-19 pandemic and approved major disaster declarations for all 50 states under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Each state-level disaster declaration identified January 20, 2020, as the beginning of the COVID-19 disaster incident period and did not specify an end date.

Following the disaster declarations, the IRS exercised its discretionary authority under section 7508A(a) and issued Notice 2020-23, 2020-18 IRB 742, which postponed a broad range of tax-related deadlines. The notice covered deadlines that otherwise would have fallen on or after April 1, 2020, and before July 15, 2020, and postponed them to July 15, 2020.

However, the notice did not extend relief to taxpayers whose filing or payment deadlines fell after January 20, 2020, but before April 1, 2020. Thus, the scope of discretionary relief provided under section 7508A(a) did not fully align with the incident period specified in the underlying COVID-19 disaster declaration.

Under the version of section 7508A in effect before November 2021, the automatic extension ran from "the earliest incident date specified in the declaration" to "the date which is 60 days after the latest incident date so specified." Unlike the discretionary extension under subsection (a), the mandatory extension under subsection (d) contained no explicit time limit in the pre-2021 version.<sup>5</sup>

Thus, unlike past short-term weather-related disasters, if the incident period described as "continuing" ran until FEMA declared the end of the COVID-19 disaster (effective May 11, 2023), then the disaster period for acts covered by section 7508A(d) would not be the period specified in the notice (April 1, 2020, to July 10, 2020). Instead, it would be for the entire term of the FEMA-declared disaster, plus 60 days (January 20, 2020, to July 10, 2023). The longer

<sup>3</sup> 2019 section 7508A(d), before amendment in 2021 and beyond.

<sup>4</sup> Section 7508A(a)(2) and (3).

<sup>5</sup> Section 7508A has since been further amended under subsection (e) to provide a mandatory 120-day extension.

incident period could have significant consequences for qualified taxpayers since it grants extended time to file tax returns and appeals and is likely to affect penalties and interest accrued during that time.

### A. Statutory Amendment to Section 7508A(d) in 2021

Effective for disasters declared after November 15, 2021, a revision to section 7508A in November 2021 removed the open-ended definition of an incident period to avoid another prolonged period of delayed tax responsibilities under section 7508A(d). The 2021 amendment revised the statute to provide a fixed maximum of 60 days postponement, regardless of a disaster's longevity. Revised subsection (d)(1) now limits the postponement to acts occurring on or after the "earliest incident date specified in such declaration" and before "the date which is 60 days after the later of such earliest incident date or the date such declaration was issued." The effect of the amendment is that the maximum length of a disaster is no more than 60 days from the later of the disaster start date or the disaster declaration date.<sup>6</sup>

The significance of this legislative change is less about the length of the incident period and more about Congress recognizing that the COVID-19 incident period was potentially 39 months instead of the three-and-a-half months specified in Notice 2020-23.

### III. Judicial Interpretation: *Abdo* and *Kwong*

Two recent cases looked at due dates during the COVID-19 disaster period — one for filing a Tax Court petition, and the other for filing suit to recover penalty assessments. In both cases, the IRS argued that the taxpayers' filings were not timely based on the period for relief set forth in IRS notices. The courts concluded that the IRS had no discretion to define the period of available COVID-19 disaster relief that had been declared by FEMA.

#### A. *Abdo*

In *Abdo*, the taxpayers were issued a December 2, 2019, statutory notice of deficiency requiring them to file a Tax Court petition by March 2, 2020. The petition was not mailed until March 17, 2020. The government filed a motion to dismiss for lack of jurisdiction, arguing that the petition was untimely.

While the case was pending, the IRS issued proposed and final regulations under section 7508A(d). The agency argued that reg. section 301.7508A-1(g)(1) and (2) limits the time-sensitive acts that are postponed for 60 days to the acts postponed by the Treasury secretary's exercise of authority under section 6508A(a). In essence, the IRS argued that the regulation makes the designation of a 60-day postponement and the timelines of a disaster a matter of the agency's discretion:

We first consider the mandatory nature of subsection (d). . . . The mandatory language of subsection (d) stands in stark contrast to the discretionary language of subsection (a). Under the discretionary language of section 7508A(a), the Secretary may specify (1) whether a period is disregarded, (2) how long a period is disregarded, (3) for whom a period is disregarded, and (4) for what purposes a period is disregarded. *The mandatory language of subsection (d), however, provides the Secretary no discretion whatsoever regarding any of these four aspects of the extension. Instead, subsection (d) provides that, for a defined person, a defined period "shall be disregarded" in a defined manner. On the basis of the plain and literal language of the statute, we thus read Congress to have clearly intended to provide for a postponement period that is mandatory.*<sup>7</sup> [Emphasis added.]

The Tax Court held that the section 7508A(d) postponement period is mandatory and self-executing, invalidating the regulations that attempted to limit its effect to deadlines affirmatively postponed by IRS notice:

<sup>6</sup>*Id.*

<sup>7</sup>*Abdo*, 162 T.C. at 162.

Having concluded that section 7508A(d) unambiguously provides for a *mandatory, automatic extension of at least 60 days for the time to file a petition with the Tax Court, we conclude that deference to Treasury Regulation section 301.7508A-1(g)(1) and (2) is unwarranted, and we hold Treasury Regulation section 301.7508A-1(g)(1) and (2) invalid to the extent it limits the non-pension-related “time-sensitive acts that are postponed for the mandatory 60-day postponement period . . . [to] the acts determined to be postponed by the Secretary’s exercise of authority under section 7508A(a).”* See *Chevron*, 467 U.S. at 842-43.

*Respondent’s regulation, promulgated after the petition in this case was filed, cannot change the result dictated by an unambiguous statute.* See, e.g., *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1485 (2021) (“[A]s this Court has long made plain, pleas of administrative inconvenience and self-serving regulations never ‘justify departing from the statute’s clear text.’” (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2118 (2018))); *Chevron*, 467 U.S. at 842-43 (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”). We do not reach *Chevron* step 2.<sup>8</sup> [Emphasis added.]

The court said the postponement period includes all the acts referenced by section 7508A(a). While interest and penalties were not an issue in this case, section 7508A(a)(2) includes “the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date.”

The court clarified that the incident period must be disregarded for purposes of any acts described in section 7508(a) that were timely filed:

For a defined person (a “qualified taxpayer”), a defined period (“beginning

on the earliest incident date . . . and . . . ending on the date which is 60 days after the latest incident date”) “shall be disregarded in the same manner as a period specified under subsection (a)” of section 7508A, that is by mandatorily and automatically disregarding “whether any of the acts described in paragraph (1) of section 7508(a),” including the act of filing a petition with the Court, “were performed within the time prescribed therefor.” [Emphasis added.]

Although *Abdo* involved a Tax Court petition deadline, the court’s reasoning rested on section 7508A’s structure and its incorporation of subsection (a). Further, the court did not address the total time of the COVID-19 disaster period but observed in a footnote that the law changed in 2021 to make the period no longer than 60 days regardless of the disaster’s length. This implies that the period must have been longer before the change in the law:

We need not, and therefore do not, express a view on what the outer limits of the extension period may be where a declaration omits an ending date or is extended.]. We note, however, that effective with respect to federally declared disasters declared after November 15, 2021, the extension period has been redefined to end “on the date which is 60 days after the later of . . . [the] earliest incident date . . . or the date such declaration was issued.”<sup>10</sup> [Emphasis added.]

In finding for the taxpayers, the court held that the March 17, 2020, filing of the tax petition was timely and that the taxpayers were entitled to an automatic, mandatory 60-day postponement from January 20, 2020, to at least March 20, 2020, of their filing due date.

## B. Kwong

In *Kwong*, the Court of Federal Claims addressed the question the *Abdo* court left open

<sup>8</sup> *Id.* (quoting *Abdo*, 162 T.C. at 168). The parties do not address the validity of reg. section 301.7508A-1(g)(1) and (2) as [applied] to section 7508A(b) and (d)(4) and their pension-related provisions; thus, neither do we.

<sup>9</sup> *Id.* (quoting *Abdo*, 162 T.C. at 169). As in effect when petitioners’ petition was filed, section 7508(a)(1) provided 11 categories of acts.

<sup>10</sup> *Abdo*, 162 T.C. 148, at n. 13.

involving the potential length of the COVID-19 disaster period. Terry Kwong filed refund and abatement claims for penalties (for tax years 2007, 2010, and 2011) in 2020.<sup>11</sup> The IRS disallowed the claims in October 2020. Kwong sued in February 2023, more than two years later. The issue was whether Kwong was entitled to additional time to file suit to recover penalties from earlier tax years.

The court outlined the process that FEMA followed to declare the COVID-19 disaster period from January 20, 2020, to May 11, 2023,<sup>12</sup> and said the 2019 version of section 7508A(d) was an automatic extension of time for that entire period plus 60 days:

The statute also includes, at all times relevant to this lawsuit, an automatic, or “mandatory,” extension for any qualified taxpayer in a declared disaster area. 26 U.S.C. section 7508A(d) (2019 and 2021). *Under the 2019 version, the period of automatic extension ran from “the earliest incident date specified in the declaration” to “the date which is 60 days after the latest incident date so specified.”*<sup>13</sup> [Emphasis added.]

The court looked to the entire length of the COVID-19 disaster period instead of the period in the IRS notice, which was April 1, 2020, to July 10, 2020:

A disaster declaration that lasted more than three years was unprecedented. Congress appears to have intended for the statute to provide routine short-term deadline extensions under section 7508A(d) and, in rare instances under section 7508A(a), further extensions by the

Secretary that would last up to a year. 26 U.S.C. section 7508A(d), (a) (2019). Disaster declarations often apply to short-term weather events affecting localized communities; the covid-19 pandemic was an unprecedented and long-lasting national event. *Although Congress may not have anticipated a disaster declaration lasting more than three years, the statute’s express text nevertheless applies.*<sup>14</sup> [Emphasis added.]

The *Kwong* court defined the extension of time to include the entire period of the pandemic plus 60 days:

Under the express text of the statute, the automatic extension lasted until after the end of the disaster declaration, or, in the case of the covid-19 disaster, *until July 10, 2023 (60 days after its end date of May 11, 2023).*<sup>15</sup> [Emphasis added.]

The court also found it persuasive that Congress had to change the law to avoid lengthy disaster periods in the future:

That Congress had to amend the statute implies that Congress changed the statute’s meaning; otherwise, Congress could have left the statute’s text as it was. *Bufkin v. Collins*, 604 U.S. 369, 386 (2025) (“[W]e ordinarily presume that when Congress [amends a statute], it intends its amendment to have real and substantial effect.”).<sup>16</sup> [Emphasis added.]

#### IV. Underpayment Interest Relief During the COVID-19 Disaster Period

*Abdo* and *Kwong* primarily address the extension of filing deadlines under the pre-2021 version of section 7508A(d), confirming an automatic postponement from the COVID-19 disaster’s start (January 20, 2020) through July 10, 2023 (60 days after the declared end on May 11, 2023). These decisions invalidated the regulations limiting the scope of relief and upheld the

<sup>11</sup> *Kwong*, No. 1:23-cv-00267.

<sup>12</sup> *Id.* at 8 (“On March 13, 2020, the president declared nationwide emergency (Letter to Federal Agencies on an Emergency Determination, 2020 Daily Comp. Pres. Doc. 159, available at [govinfo.gov](http://govinfo.gov) (Mar. 13, 2020)), and on March 22 he declared a major disaster area in California ‘beginning on January 20, 2020, and continuing,’ due to pandemic conditions (California; Major Disaster and Related Determinations, 85 Fed. Reg. 20703-02 (Apr. 14, 2020)). The Federal Emergency Management Agency was appointed to coordinate the response. *Id.* The pandemic emergency declaration was later amended to end on May 11, 2023: [T]he incident period for all COVID-19 major disaster declarations . . . will close effective May 11, 2023.” Major Disaster Declarations and Related Determinations: Expiration of COVID-19-Related Measures, 88 Fed. Reg. 8884 (Feb. 10, 2023) (emphasis added)).

<sup>13</sup> *Kwong*, No. 1:23-cv-00267, at 7.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> *Id.* at 11.

statute's self-executing nature for qualifying events.

There has not been a case addressing the applicability of section 7508A(d) to underpayments, interest, and penalties for the duration of the COVID-19 disaster incident period. However, section 7508A(d) provides substantive relief beyond mere timing-based deadlines: It mandates suspension of underpayment interest (under section 6601) and certain penalties (for example, failure-to-file or -pay under sections 6651 and 6654) accruing during the postponed period for affected taxpayers in disaster areas.<sup>17</sup>

The statute operates as follows:

- Section 7508A(d) mandates that the incident period shall be disregarded.
- The period is disregarded "in the same manner as" subsection (a).
- Subsection (a) explicitly applies to:
  - filing deadlines;
  - credits and refunds; and
  - interest and penalties.

The IRS notice acknowledges that not only are due dates included under section 7508A(a)(2), but so are interest, penalties, and additions to tax for failure to file:

As a result of the postponement of the due date for filing Specified Forms and making Specified Payments, the period beginning on April 1, 2020, and ending on July 15, 2020, *will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the Specified Forms or to pay the Specified Payments postponed by this notice. Interest, penalties, and additions to tax with respect to such postponed Specified Filing and Payment Obligations will begin to accrue on July 16, 2020.*<sup>18</sup> [Emphasis added.]

Both *Abdo* and *Kwong* rely on this statutory cross-reference to section 7508A(a). To apply the disregarded period to filing deadlines but not to interest and penalties, which are addressed in the

same subsection, would be syllogistically inconsistent. Because the time for filing is the entire COVID-19 period, and section 7508A(d) applies to the acts covered by section 7508A(a), then it follows that the interest and relevant penalty underpayments would be disregarded during the entire COVID-19 disaster period plus 60 days (January 20, 2020, to July 10, 2023).

## V. Effect on the Statute of Limitations for Refund Claims

Of particular note for corporate taxpayers, the *Abdo* and *Kwong* decisions could affect the timeliness of refund claims and the calculation of interest during the incident period.

### A. Governing Refund Statute

Section 6511(a) provides that a claim for credit or refund must be filed within the later of (1) three years from the time the return was filed, or (2) two years from the time the tax was paid.<sup>19</sup>

These periods operate independently. In large C corporation examinations, refund claims most often turn on the two-year-from-payment rule because assessments of tax, interest, and penalties frequently occur years after the return was filed.

Section 7508A(d), as enacted in 2019 and applicable to the COVID-19 disaster, does not alter these rules. Instead, it says the COVID-19 disaster period "shall be disregarded in the same manner as a period specified under subsection (a)."<sup>20</sup>

Because subsection (a) explicitly applies to "the amount of any interest" and "the amount of any credit or refund," the mandatory postponement of deadlines under section 7508A(d) directly affects the refund limitation periods for interest and penalties.<sup>21</sup>

The IRS's interpretation of the statute of limitations, in the context of the *Abdo* and *Kwong* decisions under section 7508A, would be to postpone the section 6511 due date to July 10, 2023, the end of the incident period. That is, if the statute of limitations deadline would fall between

<sup>17</sup> See *Kwong*, No. 1:23-cv-00267, and section 7508A(a)(2) ("the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date").

<sup>18</sup> Notice 2020-23, at 8.

<sup>19</sup> Section 6511(a).

<sup>20</sup> Section 7508A(d)(1) (2019).

<sup>21</sup> Section 7508A(a)(2), (3).

the incident period, January 20, 2020, and July 10, 2023, the maximum postponement would be the end of the incident period, July 10, 2023. This would be consistent with past IRS guidance without adding overlapped days.<sup>22</sup>

This would also be consistent with the discretionary time granted under section 7508A(a), which provides:

The Secretary may specify a period of up to 1 year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer.

However, the mandatory language under subsection (d) as interpreted by *Abdo* and *Kwong* — “shall be disregarded in the same manner as a period specified under subsection (a)” — raises the possibility that there would be a tolling of the statute of limitations during the incident period, allowing taxpayers more time to file refund claims applying the findings in the cases to interest and penalties.

## B. Postponement Analysis Under *Abdo* and *Kwong*

In *Abdo*, the court evaluated how the “may” language versus the “shall” language affected the time that should be disregarded in determining whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed. Those acts include filing a “claim for credit or refund of any tax”<sup>23</sup>:

They dispute only whether the “in the same manner” language carries this discretion over to the mandatory postponement period set forth by subsection (d) (or is simply silent on the matter). But we see neither ambiguity nor silence in subsection (d) on the point. Instead, we see a near mirror image of section 7508(a).<sup>24</sup>

Rather than adopting the IRS’s defined end date under discretionary section 7508A(a), the

court in *Abdo* looked at how the term “shall be disregarded” is applied under section 7508(a) for individuals serving in a combat zone in the military:

Section 7508(a) provides that, for a defined person, a defined period “shall be disregarded” in a defined manner, i.e., in determining whether “any of the . . . acts [described in its paragraph (1)] was performed within the time prescribed therefor.” We have readily construed that provision as requiring an extension of the time that includes a postponement of the period to file a petition with this Court. See *Stone v. Commissioner*, 73 T.C. 617, 620-21 (1980) (“Section 7508(a)(1)(C) excludes the period during which a member of the Armed Forces is present in a ‘combat zone’ in determining the time allowable for the filing of a petition with the Tax Court for a redetermination of a deficiency.”); *Munoz v. Commissioner*, T.C. Memo. 2000-18, 79 T.C.M. (CCH) 1366, 1367 (“Section 7508(a)(1)(C) serves to extend the normal 90-day . . . period within which a petition must generally be filed by disregarding the time when a member of the Armed Forces is present in a combat zone. . . .”); *see also, e.g., Hampton v. United States*, 513 F.2d 1234, 1246 (Ct. Cl. 1975) (“A Serviceman in combat is also given an automatic extension of time to perform certain acts under the revenue laws by virtue of section 7508 of the Code. . . . The postponement authorized under section 7508 generally applies to the filing of returns, the payment of any tax, the assessment of any tax, and the commencement of any suit.”). We read the language and context of section 7508A(d) to lend itself just as readily to the same interpretation.<sup>25</sup>

The courts have consistently held that the period in which a taxpayer is in a combat zone should be disregarded or excluded when applying the deadlines under section 7508(a).

<sup>22</sup>See, e.g., IRS relief for victims of Hurricane Milton postponed to a fixed date of May 1, 2025.

<sup>23</sup>Section 7508(a)(1)(E).

<sup>24</sup>*Abdo*, 162 T.C. at 165-166.

<sup>25</sup>*Id.* at 166.

Thus, days in a combat zone must be excluded or added to the time that would ordinarily apply to meeting tax related deadlines (for example, tax filings, refund claims, court petitions, etc.).

According to the court in *Abdo* the “shall be disregarded” language as applied in section 7508(a) combat cases should be applied in interpreting the disaster period under the mandatory subsection (d). “We read the language and context of section 7508A(d) to lend itself just as readily to the same interpretation.”<sup>26</sup>

While *Abdo* did not address the filing of refund claims, the court held any of the acts under section 7508(a) (which would include filing refunds) during the incident period should be mandatorily and automatically disregarded:

Instead, we think Congress’s intent is clear. For a defined person (a “qualified taxpayer”), a defined period (“beginning on the earliest incident date . . . and . . . ending on the date which is 60 days after the latest incident date”) “shall be disregarded in the same manner as a period specified under subsection (a)” of section 7508A, that is by mandatorily and automatically disregarding “whether any of the acts described in paragraph (1) of section 7508(a),” including the act of filing a petition with the Court, “were performed within the time prescribed therefor.”

Other authors have considered the potential effect of the *Abdo* decision on the statute of limitations, raising several questions.

Does the “latest incident date so specified” language in section 7508A(d) in conjunction with the holding in *Abdo*, mean that the period automatically disregarded for purposes of the acts described in section 7508(a) is actually January 20, 2020, through July 10, 2023 (60 days after May 11, 2023)? If so, even more questions are raised, including:

Is the period between Jan. 20, 2020, and July 10, 2023, disregarded in determining the ordinary three-year period under Sec. 6511 to file a refund claim (see Silva and

<sup>26</sup> *Id.*

Hodes, “Lookback Period Fix Should Apply to All Disaster Relief,” 54-9 *The Tax Adviser* 15 (September 2023)).

Is the period between Jan. 20, 2020, and July 10, 2023, disregarded in determining the two-year period under Sec. 6532 for taxpayers to file suit in federal court after a refund claim denial?<sup>27</sup>

In *Kwong*, the court held the COVID-19 disaster period was not controlled by the IRS and lasted from January 20, 2020, to July 10, 2023. It was not necessary to address whether to add additional days beyond July 10, 2023, because the extra time was not needed by the taxpayer:

According to Mr. Kwong, because his time to file suit began in September or October 2020 (depending on the tax year) and was extended until at least July 2023, and he filed in February 2023, his suit is timely.

The court said it did not matter whether the statute provided for tolling or postponement:

Because the mandatory period for covid-19 under section 7508A lasted from early 2020 to July 10, 2023, it does not matter whether the statute provides for tolling or a postponement period. . . . Either way, Mr. Kwong had until at least July 10, 2023, to file suit.<sup>28</sup>

Applying the 2019 version of section 7508A(d), the court held that the COVID-19 incident period ran from January 20, 2020, through May 11, 2023, plus the statutory 60-day period ending on July 10, 2023.<sup>29</sup> The court emphasized that the statute’s plain text controlled, despite the unprecedented duration of the disaster declaration:

<sup>27</sup> Adam Silva, “Abdo Could Provide Relief for Other Missed Deadlines,” *The Tax Adviser*, Sept. 1, 2024. See also Kreig Mitchell, “Covid-19 Extended Tax Deadlines Longer Than Many Realized,” Mitchell Tax Law (Nov. 29, 2025).

<sup>28</sup> *Kwong*, No. 1:23-cv-00267, at 13.

<sup>29</sup> *Id.* at 9.

Although Congress may not have anticipated a disaster declaration lasting more than three years, the statute's express text nevertheless applies.<sup>30</sup>

Applying the analytical framework under *Abdo*, the "shall be disregarded" language in section 7508(a), and *Kwong*, the entire COVID-19 disaster incident period should be removed from the computation of otherwise-applicable limitation periods, provided that the statute was open or had not yet begun running when the incident period commenced.

The effect of that postponement is mechanical:

- If a limitation period had not yet begun as of January 20, 2020, it did not begin until July 10, 2023.
- If a limitation period was already running on January 20, 2020, it ran until that date, stopped during the incident period, and then resumed with the unexpired portion after July 10, 2023.
- If a limitation period fully expired before January 20, 2020, section 7508A(d) does not revive it.

Thus, the key factor in delaying due dates for refund claims and other relevant time-based deadlines is a limitation period either partly or entirely overlapping with the COVID-19 incident period.

### C. Mandatory Application After *Abdo*

The Tax Court's decision in *Abdo* reinforces that section 7508A(d) operates by statute, not by administrative discretion. In rejecting the IRS's reliance on regulatory and notice-based limitations, the court emphasized the mandatory nature of subsection (d):

For a defined person, a defined period "shall be disregarded" in a defined manner. On the basis of the plain *and literal language of the statute, we thus read Congress to have clearly intended to provide for a postponement period that is mandatory.*<sup>31</sup> [Emphasis added.]

The court contrasted subsection (d)'s mandatory language with the discretionary framework of subsection (a), concluding that administrative guidance cannot narrow the scope of a statutorily disregarded period. Although *Abdo* involved a Tax Court petition deadline, its reasoning applies equally to refund statutes incorporated through section 7508(a):

Today, the opinion of the Court holds that section 7508A(d) provides for an unambiguously self-executing postponement period for certain acts set forth in section 7508(a).<sup>32</sup>

### D. Practical Effect for Underpayment Interest Claims

Applying *Abdo* and *Kwong*, refund claims involving underpayment interest incurred during the COVID-19 disaster incident period will generally remain timely when the corporation had an examination resulting in underpayments during some or all of the COVID-19 incident period, and:

- a waiver of the statute of limitations was signed, leaving open tax periods;
- the resulting interest was paid within the last two years so that the two-year-from-payment period under section 6511(a) remains open; or
- the three-year statute of limitations period for the tax year remains open (adjusted as described above for the incident period).

Any corporation with penalties or understatement interest incurred during the COVID-19 period should carefully consider the potential for interest and penalty refund claims.

Interest and penalty underpayments subject to the two-year rule will still be open if paid within the last two years.

The three-year statute of limitations under section 6511(a) is tolled for the portion of the COVID-19 incident period that overlaps with the otherwise-applicable limitations period, effectively extending the deadline by that number of days. For returns whose limitations period

<sup>30</sup> *Id.* at 26.

<sup>31</sup> *Abdo*, 162 T.C. at 163.

<sup>32</sup> *Id.* at 173 (referencing section 7508(a)(1): "(D) Allowance of a credit or refund of any tax; (E) Filing a claim for credit or refund of any tax").

would have commenced during the incident period, the three-year statute does not begin to run until July 10, 2023, and will end July 10, 2026. Thus, the statute of limitations for 2019-2022 calendar-year C corporations could still be open for refund claims through July 10, 2026.

Companies should also evaluate the effect on interest credit elect and interest netting computations. A complete recovery of interest will be more favorable than netting underpayment interest with overpayment interest to equalize rates (that is, interest rates on underpayments are higher than overpayments).<sup>33</sup>

#### E. King Kwong-Sized Refunds

Large C corporations with long-running examinations may be eligible for material interest refunds for much earlier tax years. For example, suppose a large C corporation with a 2018 tax year-end has a \$10 million underpayment and paid an audit assessment that included underpayment interest on February 15, 2024. The statute for a refund claim remains open until February 15, 2026. At a high level, the refund claim would follow this method:

- 280 days: underpayment interest up to the COVID-19 incident date of January 10, 2020 (no relief).

- 1,269 days: incident disregard interest period during COVID-19 July 10, 2023 (no interest).
- 220 days: post-incident period February 15, 2024 (no relief).

With underpayment interest rates ranging from 7 to 10 percent, the total interest would be approximately \$4 million. About \$2.7 million of this would be attributable to the COVID-19 incident period, potentially recoverable by filing a refund claim before the final two-year period following payment of the assessment on February 15, 2026. In addition, potential penalties calculated during the incident period could also be recoverable.

#### VI. Conclusion

Having lost *Abdo* in the Tax Court and *Kwong* in the Court of Federal Claims, it remains to be seen how the IRS will respond to these cases and refund claims. Taxpayers should expect continued resistance to these decisions and potential appeals. However, given the materiality of the potential exclusion from interest for companies with large underpayments during the incident period, it would make sense for them to file potential King *Kwong*-sized refund claims before the relevant two-year payment or three-year return filing period ends. ■

<sup>33</sup> Section 7508(a)(1) includes other types of federal taxes, such as income, estate, gift, employment, and excise, of which employment and excise taxes should be evaluated by companies if they incurred interest or penalties during the COVID-19 incident period.