

Issue Brief

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More Tax Delays are Necessary

Introduction

As the COVID-19 crisis continues in the United States, Congress and the Treasury Department have experimented with policies to provide affected individuals and businesses with much-needed relief to help them weather the economic crisis. In March, Treasury announced that it would be delaying tax payment and tax filing requirements from April 15th to July 15th. The delay was expansive, including individual and corporate income tax payments, excise taxes, and trust returns, among others.¹

Congress has also been quick to respond to the COVID-19 crisis, passing four major pieces of legislation in a few weeks, including the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

¹ Internal Revenue Service. (2020). "Filing and Payment Deadline Extended to July 15, 2020." March 21, 2020, <https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>; and Alcohol and Tobacco Tax and Trade Bureau. (2020). "TTB Industry Circular Number 2020-2," March 31, 2020, <https://www.ttb.gov/industry-circulars/ttb-industry-circulars-2020-2/>.

Key Facts:



The Treasury Department and many states have delayed tax day from April 15th to July 15th. While that relief is an important step, it's clear that further delays are now necessary.



Treasury should delay all 2019 tax payments until October 15, 2020 and eliminate any estimated tax payments for 2020. This should include all income taxes, excise taxes, and employer-side payroll taxes.



With presidentially-declared disasters in all 50 states, Treasury now has sufficient authority to enact such extensions on its own.

While Treasury and Congress should be applauded for quick legislative and administrative delays, more relief is needed. Ongoing shutdowns and economic disruptions mean that tax delays should be extended and expanded for both 2019 and 2020 tax payments and filing deadlines.

The Case For Delaying Tax Payments

There are numerous reasons why policymakers have rightly delayed some tax payments over the last several weeks.

First, there are economic reasons to do so. As businesses deal with a decrease in consumers due to economic shutdowns, liquidity has been an issue. Delaying estimated tax payments allows businesses a cash cushion. Similarly, for employees whose hours or pay are being reduced due to the coronavirus, a delay in individual tax payment deadlines functions as a short-term loan from the federal government. Instead of individuals and businesses sending tax payments to the federal government, they are able to keep it as a bridge to an improved economy when shutdowns are eventually eased.

There are also logistical reasons to further delay tax deadlines. First, it allows Internal Revenue Service (IRS) employees to continue to stay home themselves by decreasing call volume and meetings. It also allows tax preparation clinics, such as those with the Volunteer Income Tax Assistance program,² to close for a short time to allow taxpayers and tax preparation volunteers to stay home. Accounting firms have largely closed, too, as states have issued stay-at-home orders.

There is an obvious trade-off to any delay in the tax filing deadline: a decrease in federal revenues. Historically, April is a strong month for federal revenues, as businesses make estimated tax payments and Americans pay their tax liabilities. Delaying filing season decreases federal revenue in the short-run. That said, bond market volatility has driven the interest rate on federal debt down sharply, meaning the ultimate financial cost of delay is small. And in the context of Congress considering much more expensive policy responses, the impact of this move would be relatively modest.

Individuals anticipating a refund, however, should continue to file their returns. Those refunded dollars could be essential in helping that individual make ends meet during the crisis.

2019 Delays Already Enacted

On March 17, 2020, the IRS announced that it was delaying tax payment obligations for payments due on April 15, 2020 until July 15, 2020. While a huge step forward to help affected individuals and businesses during the COVID-19 crisis, the initial Treasury guidance was lacking. It only delayed tax payments, but did nothing to extend the deadline for filing a return.

Treasury faced an immediate backlash.³ Not delaying tax filings would do little to help in the current situation. Tax preparers and low-income tax clinics were quickly closing their doors to respect social distancing and stay-at-home orders, making it difficult for individuals and businesses to access the support they need to file accurate returns. Thankfully, Treasury listened and quickly released guidance that the filing requirement was also delayed until July 15th.

However, in the intervening month since Treasury's original guidance, it's become clear that the U.S. economy won't have bounced back by July as much as originally hoped. Businesses will only start to reopen by July, and many individuals will still be working remotely, if they're lucky enough to have

² Internal Revenue Service. (2020). "Free Tax Return Preparation for Qualifying Taxpayers." Retrieved from: <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (accessed April 28, 2020).

³ Kaeding, Nicole. "Congress Needs to Step In To Delay Tax Filing, Not Just Tax Payments." National Taxpayers Union Foundation, March 18, 2020. <https://www.ntu.org/foundation/detail/congress-needs-to-step-in-to-delay-tax-filing-not-just-tax-payments>.

kept their job. Additionally, the tax advisers that are able to work remotely have been buried with clients, trying to help them qualify for the litany of new programs created by Congress to support affected individuals and businesses.

Some have argued that delays past July 15th are not needed because most taxpayers are able to receive an automatic extension to October. But receiving an extension is insufficient because it does not delay tax payment requirements, only filing. Taxpayers would still need to pay a bulk of their tax liability by July 15th even with an extension, or else be subject to an underpayment penalty and interest. Treasury should provide the ability to delay tax payments too.

Further, the IRS, itself, has acknowledged that it is not processing many of the returns that have been submitted. Any paper returns are being held for processing once IRS employees return to their offices. Only e-filed returns are being processed and even those are being processed at a slower pace than is traditional.

It is clear that Treasury should further delay tax filing and payments, ideally until October 15th.

2020 Tax Payments

An additional consideration to any further tax delay is how to handle estimated tax payments for 2020. Traditionally, businesses and self-employed individuals remit regular payments to the federal government for their income and payroll tax liabilities. Any consideration of a delay must include a discussion of how to handle estimated payments for 2020.

As of this writing, Treasury has made several modifications to the traditional 2020 estimated payment schedule. Estimated payments are generally due on April 15, June 15, September 15, and January 15 of the following year. Treasury first delayed Quarter 1 payment from April 15th to July 15th, but did not delay Quarter 2's June 15th payment, meaning that Quarter 2 was going to be due before Quarter 1's payment. After significant pressure from NTUF and other tax experts, Treasury relented and delayed Quarter 2 until July 15th too.

But more delays are needed. As of this writing, employers are still required to submit their Form 941 remitting payroll taxes by April 30, 2020 for Quarter 1. The CARES Act delayed all employer-side payroll tax payments for wages paid between March 27, 2020 and December 31, 2020, with the payments due later in 2021 and 2022. Not all employers can qualify for the payroll tax delay; businesses accepting Paycheck Protection Program loans, for example, don't qualify. For many businesses, this payroll tax form is still due by April 30, 2020.

As noted throughout this paper, the first key is that delaying estimated payments helps with business liquidity. By not requiring tax payments, businesses are able to retain that cash to help fund business operations during the crisis. It also allows businesses and individuals to focus on more pressing issues than trying to complete tax paperwork during the crisis. Their accountants and tax preparers are also shouldering the difficult task of helping clients working through the various relief provisions in the CARES Act and FFCRA and have limited bandwidth for completing tax calculations.

Additionally, it is difficult for businesses to effectively forecast their 2020 income. How the U.S. economy recovers from the current economic and public health crisis is far from certain; the lack of clarity impacts the business's forecast of its net income for 2020.

Finally, it's worth noting that a number of new policies implemented by the FFCRA and the CARES Act impact a company's estimated payments as well. The FFCRA created requirements for providing expanded sick and family leave. It offset the costs to businesses, providing credits against payroll tax

liability. And businesses whose credits exceed their payroll tax liability may offset their other federal tax liabilities before submitting them to the IRS, reducing the amount of estimated payments submitted.

Given these considerations, it makes the most sense for the federal government to suspend all estimated payments for 2020 for all major taxes, including individual income, corporate income, some payroll taxes, and excise taxes. Such a suspension would not eliminate the requirement to pay the tax eventually, but it does provide cash flow and administrative benefits during the crisis. Any business or individual would simply need to remit their final payment in 2021 when they file their 2020 tax return. Employers, however, should continue to remit employee-side payroll taxes to the extent they aren't offset by any of the newly created tax credits.

Relatedly, the underpayment penalty should be eliminated for 2020. Taxpayers who do not remit at least 90 percent of their tax liability in advance, via estimated payments or tax withholdings, are subject to a penalty when they file their final returns. That penalty should be reduced to the greatest extent possible for 2020 to ensure tax filers aren't negatively impacted by their filing and payment relief.

Administrative Authority for Delays

The Internal Revenue Code (IRC) provides broad authority to the Treasury Secretary to delay tax payments and filing when necessary. IRC Section 6081 says that the Secretary “may grant a reasonable extension of time for filing any return, declaration, statement, or other document required,” for up to six months.⁴ That authority is further expanded in Section 6161 which states that the Secretary “may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof)” for the six months too.⁵ Without Congressional intervention, the Secretary has broad latitude to reduce taxpayers' burden when needed.

During a crisis, the Secretary's authority expands. IRC Section 7508A states that in the case of a federal disaster declaration, the Secretary may delay “in respect of any tax liability...the amount of any interest, penalty, additional amount” of tax for up to 12 months.⁶ The Secretary can also delay filing requirements for 12 months too. And 7508A is broad in its application. The statute applies to “income, estate, gift, employment, or excise tax[es].”⁷

Congressional intent here is clear; taxpayers should be relieved of tax burdens during crises. Congress recently iterated its desire that taxpayers impacted by a crisis have flexibility to meet tax obligations. In 2019, Congress voted overwhelmingly to provide automatic tax relief in the case of a natural disaster.⁸ As Congressman Tom Rice (R-SC), original sponsor of the idea, noted “if a natural disaster coincides with a tax filing deadline, people will be able to prioritize their safety rather than worry about filing a tax return.”⁹

In March, President Trump issued a national emergency, highlighting the severity of the current crisis. A national emergency is distinct from a federal disaster, per the Stafford Act.¹⁰ Under the Stafford Act, a disaster declaration can only be invoked to respond to a specified set of events and through a

⁴ 26 U.S. 6081.

⁵ 26 U.S. 6161.

⁶ 26 U.S. 7508A.

⁷ 26 U.S. 7508A references 26 U.S. 7508(a)(1), where this definition resides.

⁸ Public Law 116-94, Division Q, Section 205.

⁹ Representative Tom Rice. “Rep. Rice Introduces The 2018 Natural Disaster Tax Relief Act.” February 12, 2019. <https://rice.house.gov/2019/2/rep-rice-introduces-the-2018-natural-disasters-tax-relief-act>. Treasury, interestingly, has argued that this does not apply. See generally Rubin, Richard, “IRS Rejects Congressman's Argument That Trump Emergency Declaration Suspends Tax Payments,” *The Wall Street Journal*, March 20, 2020, <https://www.morningstar.com/news/dow-jones/202003208960/irs-rejects-congressmans-argument-that-trump-emergency-declaration-suspends-tax-payments>.

¹⁰ The full name of the Stafford Act is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, also known as Public Law 93-288.

specific collaborative process with state governments. The Act sets out 16 different events that qualify for a disaster declaration, including things like hurricanes or earthquakes but not including infectious disease outbreak. To safeguard against federal overreach, the governor of a state or territory or a tribal chief executive must request that the president make a major disaster declaration in the wake of a qualifying event. If the president does so, a wide range of powers are triggered allowing the federal government to assist states.

Presumably, the Trump administration did not initially declare a disaster because doing so on a nationwide basis would require 50 gubernatorial requests. But the emergency declaration made by the President may not have conferred sufficient authority to extend filing deadlines past six months, as it's unclear that such a declaration unlocks the authorities laid out in Section 7508A, which Treasury cited as conferring its delay authority.

However, that discrepancy has now been cleared. President Trump has now signed disaster declarations for all 50 states,¹¹ providing the Treasury Department with clear authority to delay all tax filing and payments for up to one year.

In addition to paying taxes and filing returns, taxpayers must submit their income taxes via estimated payments. Traditionally for individuals, this is done via regular tax withholding from their paychecks on a regular basis. For businesses and self-employed individuals, they remit estimated tax payments directly to the IRS on a quarterly basis. For individuals who do not submit at least 90 percent of their tax payments in advance of their tax liability, they are charged an underpayment fee. The Secretary also has broad authority to waive this penalty. IRC Section 6654(e)(3)(A) says the Secretary may waive the underpayment penalty when “the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.”¹²

Considerations for States

As of this writing, all states with income taxes have provided taxpayers relief on their 2019 tax filing or payment requirements. The majority of states have harmonized their relief to the federal schedule, delaying tax payments and filing requirements until July 15, 2020.¹³ Exceptions do exist, such as Virginia, which is still requiring tax returns to be filed by May 1, 2020. Tax payments must be remitted by June 1, 2020.¹⁴

Unlike the federal government, state delays are more difficult for their budgets. In practice, all 50 states balance their budgets annually, and most states' fiscal years begin on July 1st. By delaying tax payments until July 15th, revenue is shifted into the next fiscal year, upsetting the state's current-year budget. State budgets are already in flux regardless of delays due to falling revenues and expanded spending on unemployment and health care. States that want to do the right thing and further delay until October 15th could back away simply due to the budget challenges it presents. For states that have a concern about how to navigate their budgetary requirements and ease tax filing requirements, the federal government may be in a position to help manage the revenue timing shift.

States should also consider ways to provide additional tax relief, such as eliminating underpayment penalties, late fees, and granting flexibility for more than income taxes. Property taxes, sales taxes, among other taxes require time and energy for individuals and businesses to complete and remit. Whenever possible, state and local revenue officials should provide the utmost flexibility needed.

¹¹ Coleman, Justine. “All 50 States Under Disaster Declaration for First Time in U.S. History.” *The Hill*, April 12, 2020, <https://thehill.com/policy/healthcare/public-global-health/492433-all-50-states-under-disaster-declaration-for-first>.

¹² 26 U.S. 6654(e)(3)(A).

¹³ “Which States Have Delayed Tax Payments or Filings.” National Taxpayers Union Foundation, April 15, 2020. <https://www.ntu.org/foundation/detail/which-states-have-delayed-tax-payments-or-filings>.

¹⁴ Virginia Tax. (2020). “Coronavirus Updates.” Retrieved from: <https://www.tax.virginia.gov/news/coronavirus-updates> (accessed April 23, 2020).

Congress's Role

Treasury Secretary Steven Mnuchin has broad authority to delay all of the tax filing and payment to match what is currently listed in the report, but Congress has an important role to play. Congress should codify any deadlines and debate to what extent it is willing to provide additional funding to states to offset any budgetary impact.

The original Senate Republican draft of the CARES Act took this step, delaying 2019 tax payments until October 15, 2020, but this was dropped from subsequent versions of the bill after Treasury enacted its own extension. Congress should include clear legislative language providing for comprehensive tax extensions in any Phase 4 relief package.

Conclusion

The Treasury Department should be applauded for its efforts to make the COVID-19 crisis more manageable for taxpayers and tax advisors. By delaying tax payments and tax filing obligations, businesses and individuals are able to retain cash during the crisis when they need it the most, and it relieves an administrative burden, removing the need to hunt down tax receipts during a pandemic.

However, more delays are needed. The Treasury Department and Congress should work collaboratively to delay 2019 tax payments and filings until October 15, 2020 and all estimated tax payments for 2020 should be eliminated. Tax payments for 2020 should be made when the tax filing is completed in 2021.

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