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v.

Commissioner of Internal Revenue

Respondent

Docket No. 36722-21
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Amicus Brief of Non-Party Christopher S. Pascucci and Silvana B Pascucci in Support of Petitioners' Motion to Redetermine Interest Pursuant to Rule 261

SERVED 08/28/26

UNITED STATES TAX COURT

MICHAEL J. WEPPLO &	)	
TATYANA R. WEPPLO,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 36722-21
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

BRIEF OF AMICI CURIAE CHRISTOPHER S. PASCUCCI & SILVANA B. PASCUCCI IN SUPPORT OF PETITIONERS' MOTION TO REDETERMINE INTEREST PURSUANT TO RULE 261

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QUESTION PRESENTED

Whether IRC § 7805A(d) creates a mandatory postponement period with respect to the COVID-19 disaster incident from January 20, 2020 through July 10, 2023 during which the Commissioner may not assess interest on any unpaid tax debt.[1]

[1] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended and in effect during the years at issue. All Rules references are to the Tax Court Rules of Practice and Procedure.

IDENTITY AND INTEREST OF AMICI

Christopher S. Pascucci and Silvana B. Pascucci are the petitioners in Docket No. 2966-19 (*Pascucci v. Commissioner*, T.C. Memo 2024-23). On July 9, 2026, they filed a Motion to Redetermine Interest (Docket Record 90) under Rule 261 asking the Court to redetermine interest improperly assessed by respondent during the COVID-19 pandemic disaster incident period that began on January 20, 2020, and ended on July 10, 2023. The assessed interest pertained to 2005 and 2006 tax liabilities determined by the Tax Court that became final on February 10, 2026.

On July 10, 2026, Judge Gustafson issued an Order to Show Cause (Docket Record 91) requesting the parties to show cause why briefing should not be deferred until after resolution of the motion pending in *Wepplo*. Judge Gustafson's order provided that the Pascucci motion appeared to raise the same issue raised in *Wepplo*, and it was unlikely that the Pascucci motion could be decided before the Court rules in *Wepplo*. Judge Gustafson further observed that the amicus process possibly could give the taxpayers an opportunity to make their arguments and therefore have them considered by the Court. The Pascucci taxpayers and the respondent agreed (Docket Record 92), and Judge Gustafson ordered (Docket Record 93) that briefing should be deferred until after a decision is issued in the instant case.

The issue presented in the Pascucci taxpayers' motion is identical to the interest issue presented in the instant case as well as to the issue presented in a motion to redetermine interest filed on July 9, 2026 in a related case, *Ralph Pascucci and Lisa Pascucci v. Commissioner*, Docket No. 2965-19 (Docket Record 45). Counsel for amici authored this brief in its entirety, and the related Pascucci taxpayers in Docket Nos. 2965-19 and 2966-19 funded the preparation and submission of this brief. No other party or party's counsel contributed any funds.

ARGUMENT

I. THE THREE AND ONE-HALF-YEAR DISASTER INCIDENT PERIOD DETERMINED BY FEMA WAS PROPERLY SUBJECT TO MANDATORY RELIEF

Respondent argues that section 7508A creates a "two-track" system for disaster related tax relief, the "discretionary track" of section 7508A(a) and the "mandatory track" of section 7508A(d).[2] In respondent's view, the discretionary track apparently continued during the entire COVID-19 disaster period, but the mandatory track ceased to apply on March 20, 2020, 60 days after the effective date of the COVID-19 disaster declaration.[3]

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[2] Respondent's Response in Opposition to Petitioner's Motion to Redetermine Interest Pursuant to Rule 261 (Docket Record 45) ("Respondent's Opposition").

[3] Respondent Opposition at 17-31.

A. Respondent Issued Discretionary Relief Notices Throughout the FEMA-Declared COVID-19 Disaster Period

Respondent apparently believes that *discretionary* relief was available throughout the COVID-19 disaster period. The IRS issued disaster relief notices long after March 20, 2020, the time respondent claims that the COVID disaster period ended, at least insofar as the availability of mandatory relief.[4] In fact, Respondent's COVID-related notices also provide relief for periods even beyond the FEMA-delcared COVID-19 disaster period.[5]

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[4] *See, e.g.,* I.R.S. Notice 2020-17, 2020-15 I.R.B. 590 (postponing the due date for certain federal income tax payments due April 15, 2020), I.R.S. Notice 2020-18, 2020-15 I.R.B. 590 (superseding Notice 2020-17, postponing until July 15, 2020 the due dates for filing federal income tax returns and making payments due April 15, 2020); I.R.S. Notice 2020-20, 2020-16 I.R.B. 660 (postponing the due date for filing gift and generation-skipping transfer tax returns and payments of tax from April 15, 2020 to July 15, 2020); I.R.S. Notice 2020-23, 2020-18 I.R.B. 742 (postponing to July 15, 2020, any deadline that otherwise fell on or after April 1, 2020 and before July 15, 2020); I.R.S. Notice 2021-21, 2021-15 I.R.B. 986 (postponing certain filing and payment deadlines from April 15, 2021 to May 17, 2021 and disregarding that period for purposes of interest and penalty computation).

[5] *See* I.R.S. Notice 2024-7, 2024-2 I.R.B. 355, providing relief to taxpayers for failure to pay certain income tax penalties for the 2020 and 2021 tax years where the taxpayer received an initial balance due notice between February 5, 2022 and December 7, 2023. The relief period began on the date the IRS issued the initial balance due notice or February 5, 2022, whichever was later, and ended on March 31, 2024. Abatement of the relevant penalty also automatically abated the associated interest for the relief period.

For the reasons stated below, the proper reading of section 7508A is consistent with the expressed intention of Congress, to provide automatic, mandatory temporary tax relief to those affected by major disasters declared by the Federal Emergency Management Agency ("FEMA") for the entire incident period specified by FEMA as the period during which the disaster occurred.[6] The relief applies to "any interest" for such period.[7]

B. The Periods for Mandatory and Discretionary Relief Should be Coterminous

Section 7508A(a) authorizes the Secretary of the Treasury to specify a period of up to one year that may be disregarded in determining, among other things, "the amount of any interest" for periods after the date (determined by the Secretary) of such disaster, for any taxpayer the Secretary determines to be affected by a federally declared disaster. As respondent notes, for discretionary relief to be

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[6] *See generally* H.R. Rep. No. 116-379, at 87-100 (2019). The committee report indicates that the mandatory period "is in addition to, or concurrent with, as the case may be, any period of suspension provided by the Secretary." *Id.* at 100.

[7] *Id.* at 87. This brief does not address the arguments briefed by the *Wepplo* petitioners in their own case that interest should not be assessed on tax liabilities that arose prior to the COVID-19 disaster.

authorized under section 7508A(a), a federally declared disaster must be determined by the President and declared by FEMA.[8]

In addition to the discretionary relief authorized to be granted by the Secretary under section 7508A, section 7508A(d) provides mandatory, automatic relief to any taxpayer whose principal residence is located in the disaster area. As with discretionary relief, Respondent agrees that a disaster determination by the President and declaration by FEMA is necessary.[9] Respondent asserts, however, that in the case of the COVID-19 disaster, the mandatory relief period is not coterminous with the discretionary relief period, despite both being based on the determination and declaration of a federal disaster for the period between January 20, 2020 and May 11, 2023.

As is discussed below, it is well known that the COVID-19 disaster did not end on March 20, 2020. Rather, as far as FEMA was concerned, it ended on March 10, 2023. The IRS's attempt to shorten the period for purposes solely of mandatory relief is inconsistent with the statute and also inconsistent with the profound effect of the disaster on the entire federal tax system.

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[8] *See* Respondent Opposition at 7.

[9] *See id.*

A disaster period for purposes of mandatory relief that is coterminous with the period for discretionary relief is especially appropriate with respect to the COVID-19 disaster because of the effect of the disaster on the federal tax system. As the IRS recognized in its various COVID-related notices, the COVID-19 disaster impacted the entire federal tax system—not just taxpayers—for three and one-half years, from January 20, 2020 through March 10, 2023.

Undeniably, the IRS itself was severely affected by the disaster. The pandemic's adverse effect on the tax system correspondingly impacted both taxpayers' ability to comply with the tax laws and IRS's ability to properly administer those laws. Given the impact of the pandemic on the tax system (and indeed all of government and the United States), it is entirely consistent with the statutory text and purpose that automatic, mandatory relief was triggered by the FEMA disaster declaration.[10]

While respondent suggests that the government believes the COVID-19 disaster incident period, at least for purposes of mandatory relief, was only a one-day event with a 60-day extension, or at most a one-year event,[11] that narrow

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[10] See Petitioners' Reply In Support of Motion to Redetermine Interest (Docket Record 52) at 24-25.

[11] Respondent Opposition at 17-21.

construction of the statute ignores the fact that for at least three and one-half years the IRS struggled to administer the tax system. It is illogical for respondent to argue that taxpayers are entitled only a minimal period of mandatory relief, when the IRS and tax administration was adversely impacted for many years and the statute itself does not authorize the Commissioner to decide when relief ends. That determination is entrusted to FEMA.

The COVID-19 pandemic was unique as compared to previous disasters that may not have directly or significantly impacted the tax system itself. As a direct result of the pandemic, it is undeniable that the IRS was unable to properly administer the tax system for a far longer period than the 60 days advocated for by respondent.

In early 2020, reports indicated that the IRS was unable to process mail. Unopened tax refund claims, tax returns filed on paper, and other taxpayer correspondence were being placed in storage trailers because the disaster "has nearly crippled the tax collection agency."[12] Reports also indicated that IRS

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[12] Aaron Lorenzo, *The IRS is Drowning in Unopened Tax Refund Requests Amid Pandemic*, Politico, April 20, 2020, available at https://www.politico.com/news/2020/04/20/irs-tax-refund-delays-snail-mail-193786 (last accessed August 25, 2026).

processing and taxpayer assistance centers "have been shuttered to shield its workforce from exposure to the virus" and "It's an unprecedented challenge for a federal agency that arguably affects more Americans than any other . . . ."[13] The IRS also acknowledged that it had suspended collection activity, suspended call centers, shuttered facilities, and generally curtailed most taxpayer services.[14]

The impact of the pandemic on tax administration continued into the summer of 2020, with the IRS stating that there were many millions of unprocessed tax returns and unopened mail.[15] By July of 2020, the IRS told taxpayers to continue

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[13] *Id.; see also* Katie Lobosco, *The IRS is Holding Mail in Trailers Amid the Pandemic*, CNN, April 20, 2020, available at https://www.cnn.com/2020/04/20/politics/irs-mail-trailers-covid (last accessed August 25, 2026).

[14] Allyson Versprille, *IRS Stopping Some Tax Enforcement Action Amid Virus Spread*, Daily Tax Report, March 17, 2020, *available at* https://news.bloombergtax.com/daily-tax-report/irs-stopping-some-tax-enforcement-action-amid-virus-spread?context=search&index=0 (last accessed August 25, 2026); Allyson Versprille, *IRS Closures, Service Cutbacks Turn Tax Queries into a Struggle*, Daily Tax Report, April 7, 2020, *available at* https://news.bloombergtax.com/daily-tax-report/irs-closures-service-cutbacks-turn-tax-queries-into-a-struggle (last accessed August 25, 2026).

[15] Allyson Versprille, *IRS Virus Woes to Drag on With Delayed Notices, Mail Backlog*, Daily Tax Report, June 29, 2020, *available at* https://news.bloombergtax.com/daily-tax-report/irs-virus-woes-to-drag-on-with-delayed-notices-mail-backlog (last accessed August 25, 2026).

to expect delays because only "mission-critical functions" were operating and the IRS had limited ability to respond to taxpayers.[16]

In October of 2020, the IRS reiterated that services such as live assistance on telephones, processing paper tax returns and responding to correspondence "continue to be extremely limited." The IRS also reported that if a taxpayer mailed a check to the IRS, "it may still be unopened in the backlog of mail the IRS is processing due to COVID-19" and extended relief for bad-check penalties until December 31, 2020.[17] In December of 2020, the IRS reported that it had 7.1 million unprocessed individual returns and 2.3 million unprocessed business returns, and that it still had not issued all refunds for tax year 2019.[18]

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[16] IRS Statement, *IRS Operations During COVID-19: Mission-Critical Functions Continue*, Tax Notes Today (2020 TNTF 138-20), Updated July 17, 2020, *available at* https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-provides-updates-on-its-operations-during-pandemic/2cqw8 (last accessed August 25, 2026).

[17] IRS Statement, *IRS Operations During COVID-19: Mission-Critical Functions Continue,* Tax Notes Today (2020 TNTF 199-17), Updated October 13, 2020, *available at* https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-extends-bad-check-penalty-relief-due-to-backlogged-mail/2d2b4?highlight=%22IRS+operations+during+covid-19%22 (last accessed August 25, 2026).

[18] *Id.*

The National Taxpayer Advocate reported in December 2020 that despite announcements that the IRS would reopen facilities by mid-July, only a small percentage of employees were brought into offices at a time to allow for adequate social distancing. Millions of taxpayers received confusing, late IRS notices bearing dates that had passed and, in many cases, response deadlines that had also passed because notices were automatically generated but not mailed until much later, some lacking any "insert" explaining that the IRS had extended the time to respond.[19]

The impact of the pandemic on tax administration continued into 2021, with the IRS still struggling to process a huge backlog of returns. The Taxpayer Advocate reported in June 2021 that although the 2021 tax filing season had improved over 2020, the IRS had finished the filing season with over 35 million tax returns awaiting manual reviews. The backlog included about 16.8 million paper tax returns, about 15.8 million returns suspended during electronic processing that required further review and about 2.7 million amended returns awaiting processing. The Advocate reported that most individual taxpayers in the manual processing group and many

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[19] National Taxpayer Advocate, *Annual Report to Congress,* at v-vi (Dec. 31, 2020), *available at* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf (last accessed August 25, 2026).

business taxpayers would not receive timely refunds. During the 2021 filing season, only 7 percent of taxpayer calls reached a telephone assister. On the most frequently called IRS number (the "1040" line), only 3 percent of calls went through.[20]

The backlog of paper continued to be a major tax administration issue in 2022.[21] In January 2022, Bloomberg reported that taxpayers and tax professionals face "the most challenging filing season ever" due to a backlog of 10.3 million unprocessed returns and about 5 million pieces of taxpayer correspondence that dated back to at least April 2021.[22]

In June 2022, the Taxpayer Advocate reported that although the IRS had timely processed the original returns of most taxpayers who had filed

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[20] National Taxpayer Advocate, *Objectives Report to Congress, Fiscal Year 2022*, at iv-v (June 30, 2021), *available at* https://www.taxpayeradvocate.irs.gov/reports/2022-objectives-report-to-congress/full-report/ (last accessed August 25, 2026).

[21] David Hood, Naomi Jagoda, & Jasmine Ye Han, *Fixing the IRS: Paper Addiction Remains Agency's Kryptonite,* Daily Tax Report, April 18, 2022, *available at* https://news.bloombergtax.com/daily-tax-report/fixing-the-irs-paper-addiction-remains-agencys-kryptonite (last accessed August 25, 2026).

[22] David Hood, *IRS 'Buried' in Paper Returns Ahead of Difficult Tax Season,* Daily Tax Report, Jan. 12, 2022, *available at https://news.bloombergtax.com/daily-tax-report/irs-buried-in-paper-returns-as-tax-season-looms-advocate-says* (last accessed August 22, 2026).

electronically, for millions of taxpayers who had inconsistencies or errors in their returns or who filed paper returns, the 2022 filing season was not much better than 2021, and these taxpayers were waiting for refunds for six months and longer. As of April 22, 2022, the IRS had 2.3 million paper tax returns from the 2021 filing season that remained unprocessed and was not anticipated to catch up on those filings until the end of June 2022, at which point it would begin processing paper returns filed beginning January 24, 2022. Fewer than 20 percent of calls managed to get through to the IRS, with an average of 29 minutes on hold.[23]

In August 2022, a Washington Post reporter and photographer toured the IRS Austin Service Center and highlighted the IRS's antiquated manual processes and photographed the backlog of unprocessed tax returns, letters, notices and taxpayer responses.[24] The Taxpayer Advocate report issued in June included an

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[23] National Taxpayer Advocate, *Objectives Report to Congress, Fiscal Year 2023*, at 2-5 (June 30, 2022), *available at* https://www.taxpayeradvocate.irs.gov/reports/2023-objectives-report-to-congress/full-report/ (last accessed August 25, 2026).

[24] Catherine Rampell, *Why Does the IRS Need $80 Billion? Just Look at Its Cafeteria*, Washington Post, August 9, 2022, *available at* https://www.washingtonpost.com/opinions/interactive/2022/irs-pipeline-tax-return-delays/ (last accessed August 22, 2026).

image of the IRS Austin Service Center cafeteria, filled with paper returns and correspondence.[25]

FEMA declared that the COVID-19 pandemic disaster incident period ended on March 10, 2023. The Taxpayer Advocate noted that the 2023 filing season was "vastly improved" from "the worst service in memory" that had prevailed during the COVID-19 pandemic. IRS had worked through nearly all backlogged returns before starting filing season 2023, meaning that for the first time since COVID-19 began, the IRS was not starting the filing season at a deficit with individual filed returns. However, as of April 22, 2023, there were still 2.6 million original individual and business paper income tax returns awaiting processing. In addition, there were 5.9 million individual and business electronic and paper-filed income tax returns that the IRS suspended for various reasons, including returns suspended from the previous filing season. Although IRS general toll-free phone line performance improved to 85 percent, this was accomplished by reallocating customer service representatives to the phone lines, at a cost of processing delays for

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[25] National Taxpayer Advocate, *Objectives Report to Congress, Fiscal Year 2023,* at 2.

correspondence and amended returns, which are normally processed by these employees.[26]

Respondent's narrow view of disaster declarations and the role of FEMA in determining the length of the disaster time period apparently dictates its argument that the disaster incident period was at most a year, maybe only 60 days. If it took the IRS years to recover, then why would mandatory relief for taxpayers be limited to a shorter time period? The statute says no such thing.

Respondent also objects to petitioner's position because it would "reward delinquent taxpayers."[27] Taxpayers who were litigating their proposed deficiencies in the Tax Court during the COVID-19 disaster incident period should not be labeled as "delinquent" when they had the statutory right to contest the proposed liabilities in this Court. The pandemic undoubtedly impacted the timely resolution of many docketed cases and resulted in additional assessed interest, despite respondent's characterization of those taxpayers as "delinquent" and not entitled to the relief provided in § 7508A(d). Respondent cannot credibly argue that

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[26] National Taxpayer Advocate, *Objectives Report to Congress, Fiscal Year 2024* at 1-2 (June 21, 2023), *available at* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/06/JRC24_FullReport.pdf (last accessed August 25, 2026).

[27] Respondent Opposition at 15.

taxpayers are entitled to no more than a year (or less) of relief, or that the incident period was but one day[28] when the IRS was unable to properly administer the tax system for at least three and one-half years.

II. ANY DOUBT ABOUT THE CONSTRUCTION OF § 7508A(d) SHOULD BE RESOLVED IN FAVOR OF THE TAXPAYER.

Respondent suggests that the government believes the disaster incident period under § 7508A(d) was maybe only a one-day event with perhaps a 60-day extension, or at most a one-year event, but apparently believes the period for discretionary relief extended until 2024. The fact that respondent offers different interpretations of the statute's intended timeframe strongly suggests that the government has doubts about the plain meaning of the provision.

Given respondent's implicit acknowledgement of uncertainty about the proper construction of the statute, that doubt should be resolved in favor of the taxpayer and against the government. *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Borenstein v. Commissioner*, 919 F.3d 746, 752 (2d Cir. 2019); *Flight Options, LLC v. United States*, 177 F.4th 709, 717 (6th Cir. 2026). Courts have repeatedly warned that the meaning of a tax statute is not to be determined by implication or guesswork about what Congress intended. *Gould v. Gould*, 245 U.S. at 153.

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[28] Respondent Opposition at 18.

Respondent argues at length that the meaning of the statute can be divined by looking at the structure of § 7508 and 7508A(d), but at the end of the day, that very argument and its reliance on implications and surmises reflects doubt about the proper construction of the statute. As this Court has long held, when there is doubt or a close call, statutory provisions must be construed against the Commissioner. *Apache Corporation v. Commissioner*, 165 T.C. 210, 228-29 (2025).

CONCLUSION

Section 7508A(d) created a mandatory postponement period from January 20, 2020 to July 10, 2023 during which interest could not be assessed on any unpaid tax debts.

* * *

Dated: August 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

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