Received 08/12/26

Filed 08/12/26

Michael J. Wepplo & Tatyana R. Wepplo,

Petitioners

v.

Commissioner of Internal Revenue

Respondent

Docket No. 36722-21
Document No. 56

Brief on Behalf of the Tax Dispute Resolution Clinic at Texas A&M University School of Law as Amicus Curiae in Support of Petitioners

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

<u>BRIEF ON BEHALF OF THE TAX DISPUTE RESOLUTION CLINIC AT TEXAS A&M UNIVERSITY SCHOOL OF LAW AS AMICUS CURIAE IN SUPPORT OF PETITIONERS</u>

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INTEREST OF AMICUS CURIAE

Amicus is a Low-Income Taxpayer Clinic (LITC) that is part of the clinical education program at Texas A&M University School of Law. Amicus LITC is dedicated to assisting taxpayers of limited means in resolving controversies with the Internal Revenue Service and navigating the federal tax system. Amicus regularly represents taxpayers who lack the financial resources to retain counsel and who often carry outstanding tax liabilities for extended periods while seeking administrative or judicial relief. The question presented—whether Internal Revenue Code § 7508A(d) suspended the accrual of interest during the COVID-19 disaster period on tax liabilities that arose before the pandemic—has significant consequences for those taxpayers. Any interpretation of § 7508A(d) will affect the amount of tax debt owed by many financially vulnerable taxpayers and their ability to achieve tax compliance and economic stability. Amicus therefore has an institutional interest in the proper interpretation of § 7508A(d).

Texas A&M University School of Law is part of the Texas A&M University system, a public university system in the State of Texas. No publicly traded corporation owns 10% or more of its stock. Amicus' authority to file this brief derives from the Court's July 2, 2026 Order in the above-captioned case, which invited motions for leave to file an amicus brief under Rule 151.1 by August 28, 2026. Undersigned counsel certifies that no party or party's counsel authored this brief in whole or in part, and that no person or entity contributed money to fund its preparation or submission.

INTRODUCTION

The COVID-19 pandemic was one of the most disruptive events in modern American history. Beginning in early 2020, it upended daily life, disrupted businesses and employment, strained public-health systems, and created profound economic uncertainty for millions of Americans. Families faced job losses, reduced work hours, school closures, health challenges, caregiving obligations, and unprecedented obstacles to financial stability. Lower-income households often bore the greatest burden: with fewer financial reserves and less access to credit, many struggled to meet basic living expenses during a prolonged national emergency.

In those circumstances, taxpayers plainly needed temporary relief from obligations that, under normal conditions, would have been manageable. Congress responded with a series of extraordinary relief measures, including the Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020), the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020), various relief provisions in the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 1924 (2020), and the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021). Collectively, these enactments committed trillions of dollars in federal assistance through direct payments to individuals, unemployment assistance, forgivable business loans, tax relief, state and local government aid and other forms of federally-funded relief.

These relief measures complemented protections already embedded in federal law for disaster-related disruptions. In the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534, Congress expanded § 7508A by establishing a mandatory disregard period for specified tax deadlines and obligations, including underpayment interest, consisting of 60 days plus the period measured by the beginning and ending incident dates. All references to § 7508A in this brief are to the version enacted in the 2020 appropriations act, unless otherwise stated. The provision reflects a straightforward premise: extraordinary disruptions may require corresponding adjustments to the ordinary operation of the tax laws. This case concerns the scope of that relief.

The question presented has particular significance because it concerns interest accruing on tax liabilities that existed before the COVID-19 pandemic began. For many taxpayers, especially those of limited means, tax liabilities do not arise and disappear within a single year. Rather, they often remain outstanding for extended periods while taxpayers navigate financial hardship, administrative proceedings, collection alternatives, or litigation. The low-income taxpayers served by Amicus are therefore among those most likely to be affected by the Court's interpretation of § 7508A(d). Many entered the pandemic carrying existing tax debts and experienced additional economic hardship during the ensuing national emergency. The Court's resolution of the issues presented will directly affect the scope of disaster relief available to taxpayers who entered the pandemic with outstanding tax liabilities and the magnitude of the debts they now face.

SUMMARY OF THE ARGUMENT

Respondent advances two principal arguments: (1) § 7508A(d) does not require suspending the accrual of interest during the COVID-19 disaster period on liabilities that became due prior to the COVID-19 disaster; and (2) if § 7508A(d) does require the suspension of interest on pre-COVID tax liabilities, the disregarded period ended in March

2020 or, alternatively, is subject to the one-year limitation set forth in § 7508A(a). This brief does not attempt to comprehensively respond to Respondent's arguments; instead, it elaborates on and supplements Petitioners' discussion of how the relationship between §§ 7508 and 7508A informs the analysis of Respondent's two principal arguments.

1. <u>Application of § 7508A(d) Relief to Interest on Pre-Pandemic Liabilities</u>

Before turning to the role of § 7508 in determining whether § 7508A(d) requires the COVID-19 disaster period to be disregarded for purposes of computing underpayment interest, the Court may wish to consider a threshold question: whether Respondent's position is conceptually flawed from the outset.

Although the underlying tax liability may have predated the disaster period, the disputed interest did not. Section 6601 imposes interest only for the period an underpayment remains unpaid, and § 6622 requires that interest be compounded daily. As each additional day passes, additional interest accrues and becomes owed. The interest attributable to a particular day did not exist before that day occurred. This accords with the manner in which Respondent has viewed the accrual of interest. *E.g.*, I.R.S. Tech. Adv. Mem. 199944004, 1999 WL 1001526 (Nov. 5, 1999) (no interest is due until the due date passes; thereafter, one day's interest accrues each day the tax or accrued interest remains unpaid). A taxpayer with a pre-pandemic unpaid liability therefore incurred additional interest throughout the disaster period itself. Because that interest accrued during the disaster period, it falls within even Respondent's own theory.

If the Court nevertheless reaches the question whether § 7508A(d) requires the COVID-19 disaster period to be disregarded in computing underpayment interest regardless of when the underlying tax liability first became due, then § 7508A's relationship to the statutory provision after which it was modeled, § 7508, warrants consideration, along with other principles of statutory interpretation beyond the limited scope of this brief. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (presuming that when Congress adopts an existing statutory scheme, it adopts the settled construction accompanying that scheme); *Johnson v. United States*, 529 U.S. 694, 710 (2000) ("when a new legal regime develops out of an identifiable predecessor, it is reasonable to look to the precursor in fathoming the new law.")

Section 7508 directs that the protected period—essentially, the period during which military persons serve in combat zones –be disregarded with respect to liabilities including interest. At the time § 7508A(d) was enacted, § 7508 was understood to suspend interest on underpayments regardless of whether the underlying liability arose before or during the protected period. *E.g.*, Joint Committee on Taxation Staff Recommendations Relating to Penalties and Interest, JCS- 3-99 NO 8, 1999 WL 34834557, at *13 (July 22, 1999) (for combat-zone taxpayers, "the accrual of interest on any underpayment is suspended" during the protected period, and that the suspension applies to interest on "the underpayment of any tax, *whether or not related to a return that would otherwise have been due while the taxpayer was serving in the combat zone*.") (emphasis added); IRM 20.2.7.11.1, 2007 WL 9747208 (11-13-2018) ("If the taxpayer entered the [combat zone] during a tax year, but after the filing season for the prior year's return has passed . . . the [combat zone duration] plus 180 days is disregarded for purposes of calculating interest").

Respondent's position requires the Court to conclude that Congress incorporated § 7508's disregarded-period framework into § 7508A while silently narrowing its established application. Nothing in § 7508A's text supports that departure or imposes a limitation restricting relief to liabilities that first became due during the disaster period.

2. <u>The Correct Duration of the Disregarded Period</u>

Respondent argues that the disregarded period ended in March 2020, or alternatively one year after the disaster commenced.

Because § 7508 is not material to the March 2020 end date issue, Amicus offers only an observation: Respondent's position depends on treating a declaration of a "continuing" COVID-19 incident as if the incident period became fixed when the declaration was first issued. But that reading largely deprives the phrase "latest incident date" of meaning in the very circumstance for which it matters most: a continuing disaster whose endpoint is unknown at the outset. Section 7508A(d), however, contemplates that a continuing incident will ultimately have both a beginning and an ending date and measures the mandatory relief period by reference to both. A construction that limits relief for a once-in-a-generation pandemic to its first three months does not reconcile with that design.

Respondent's alternative one-year theory raises a different issue that directly implicates the structural relationships between §§ 7508, 7508A(a), and 7508A(d).

Section 7508A(a) is a discretionary relief provision that authorizes the Secretary to specify a period of up to one year that "may be disregarded" in computing the time for performing certain tax-related acts. The one-year period is merely the outer boundary of that discretion. Within that limit, the Secretary may determine the length of the relief period, whether measured in days, months, or a full year. The Secretary likewise retains discretion to determine which of the acts described in § 7508 qualify for relief, the taxpayers to whom relief will apply, the date from which relief will run, and other conditions, limitations, or parameters governing the relief. Thus, § 7508A(a) leaves virtually every material aspect of relief to the Secretary's judgment. By contrast, § 7508A(d), like § 7508, provides that a specified period "shall be disregarded" in computing time. Both § 7508A(a) and § 7508A(d) incorporate from § 7508 the acts for which relief is available, but only § 7508A(a) makes the parameters around that relief contingent on the Secretary's discretion.

Both this Court in *Abdo v. Commissioner*, 162 T.C. 148, 165 (2024), and the Court of Federal Claims in *Kwong v. United States*, 179 Fed. Cl. 382, 393 (2025) (appeal pending), correctly concluded that § 7508A(d)'s cross-reference to § 7508A(a) merely piggybacks the § 7508 categories of actions for which relief may be granted, and does not import features of discretionary authority present in § 7508A(a). In *Abdo*, the Court held that Congress made § 7508A(d) self-executing, rather than contingent on the Secretary's exercise of discretionary authority under § 7508A(a). In *Kwong*, the court concluded that § 7508A(d) operates independently of § 7508A(a)'s one-year cap, which is a limitation on discretionary relief rather than mandatory relief.

The premise in those decisions is sound. Section 7508A(d) does not incorporate § 7508A(a)'s one-year limitation, because it does not incorporate the discretionary regime to which that limitation belongs. In § 7508A(d), Congress did not authorize the Secretary to determine whether, or for how long, a period may be disregarded. Congress itself mandated that a period "shall be disregarded" and supplied its own duration formula. Respondent's reading isolates the one-year limitation from the discretionary framework of which it is a part and imports that limitation alone into subsection (d). Yet if § 7508A(d) inherited the one-year cap merely because the cap appears in § 7508A(a), the same reasoning would require importing subsection (a)'s other discretionary features as well. That cannot be correct. It would transform a mandatory relief provision enacted by Congress into a discretionary one, thereby collapsing the distinction Congress drew between the two provisions.

For similar reasons, Treasury Regulation § 301.7508A-1, on which Respondent relies, is invalid to the extent it imports into § 7508A(d) limitations that govern the Secretary's discretionary authority under § 7508A(a). The regulation conditions § 7508A(d)'s mandatory relief on the Secretary's prior exercise of discretionary authority to grant relief under § 7508A(a); imports § 7508A(a)'s one-year limitation, an outer-boundary of the Secretary's discretionary authority; applies a due-date limitation derived from the scope of the Secretary's prior implementation of its discretionary authority; and includes examples to illustrate these concepts.

Each of these features in Treasury Regulation § 301.7508A-1 represents elements of the Secretary's discretionary authority under § 7508A(a), and thus contradicts the text and structure of the statute. Respondent's interpretation repeats the error—rejected in *Abdo*—that conditions § 7508A(d)'s mandatory relief on the Secretary's discretionary authority under subsection (a), thereby converting a statutory command into an administrative option. Consistent with *Abdo*'s rejection of Treasury's attempt to make §

7508A(d)'s mandatory relief depend on discretionary action under subsection (a), the Court should reject Treasury's attempt to graft subsection (a)'s one-year maximum discretionary period onto § 7508A(d)'s separate incident-date formula—as the Court of Federal Claims did in *Kwong*.

ARGUMENT

I. Section 7508A(d) Disregards Interest Accruing During the Disaster Period Regardless of When the Underlying Tax Liability Became Due.

Respondent argues that § 7508A(d) does not require suspending the accrual of interest during the COVID-19 disaster period on liabilities that became due prior to the COVID-19 disaster. The statutory structure conflicts with this contention. It confirms that § 7508A(d), through § 7508A(a)'s incorporation of § 7508, carries forward § 7508's longstanding framework under which disaster relief applies to pre-existing liabilities. The Court may avoid the issue, however, due to a separate and fundamental flaw in Respondent's position: even under Respondent's own premise that relief turns on when the relevant obligation arises, interest accrues daily, meaning interest accruing during the pandemic arose during the disregard period and falls within § 7508A(d)'s scope.

A. The Interest Accrued During the Disaster Period and Therefore Falls Within Respondent's Own Theory of Relief

A threshold issue may obviate the need to reach the principal discussion of § 7508 below. Respondent's argument incorrectly equates the date the principal tax first became due with the periods during which interest later accrues. The principal tax may have predated the disaster period, but interest attributable to later periods did not exist before those periods occurred. Section 6601 imposes interest only for the period an underpayment remains unpaid, and Treasury regulations confirm that interest continues to accrue until payment is received. I.R.C. § 6601(a); Treas. Reg. § 301.6601-1(a). Daily compounding reinforces that temporal character. Under § 6622, each day's accrued interest becomes part of the balance on which additional interest is computed the following day. I.R.C. § 6622(a); Treas. Reg. § 301.6622-1(a).

As Respondent summarized in a Technical Advice Memorandum:

> Under this statutory scheme [Section 6622] a taxpayer incurs no obligation to pay interest on federal taxes until immediately after the taxpayer fails to pay the tax by the due date. At that time the taxpayer becomes liable for a single day's interest on the unpaid tax. For each additional day any portion of the tax or accumulated interest thereon remains unpaid, the taxpayer becomes liable for an additional day of interest on the unpaid tax and interest. Consequently, interest on unpaid federal taxes and interest thereon economically accrues, that is, the taxpayer becomes liable for such interest, on a daily basis . . .

I.R.S. Tech. Adv. Mem. 199944004 (Nov. 5, 1999). The amount of underpayment interest therefore is not fixed on the original tax due date. It changes continuously as additional days become part of the underpayment period, and even previously accrued interest generates additional interest if left unpaid. Treas. Reg. § 301.6622-1(c)(2).

The consequence follows directly. The interest owing on January 21, 2020, did not exist on January 20, 2020. The interest owing on March 1, 2021, did not exist months earlier. Each increment of interest arose only as additional days became part of the underpayment period. The Code thus treats underpayment interest as a continuously accruing obligation, not as a fixed attribute of the underlying tax established once and for all on the original due date. See I.R.C. §§ 6601(a), 6622(a).

Section 7508A(a)(2) reflects that same understanding. Congress referred to "the amount of any interest" for "periods after such date," meaning after the disaster commences. Congress directed attention to the periods for which interest is computed rather than the historical date on which the underlying tax first became due. Respondent's interpretation instead collapses the entire stream of future interest into a single historical due date, treating all interest that will ever accrue on a liability as though it came into existence the moment the tax first became payable. Sections 6601 and 6622 reject that premise.

That is why Respondent's proposed limitation fails even on its own terms. A preexisting tax liability generates additional interest each day it remains unpaid. The relevant question is not when the principal tax first became due, but whether the interest at issue accrued during the period Congress directed the Secretary to disregard. Because the disputed interest accrued during that period, it falls squarely within the statutory command.

B. Section 7508's Categories, Which Congress Imported into § 7508A(d), Have Always Reached Interest on Preexisting Liabilities.

Section 7508A(d) does not define its own, freestanding category of covered actions. It disregards the mandatory period "in the same manner as a period specified under subsection (a)," I.R.C. § 7508A(d)(1), and subsection (a) in turn defines what may be disregarded by reference to "any of the acts described in paragraph (1) of section 7508(a)" and "the amount of any interest...for periods after such date." I.R.C. § 7508A(a)(1)–(2). Both of those categories trace back to § 7508 itself, which, as originally enacted in 1954, and materially unchanged since, provides that the combat-zone period "shall be disregarded" in determining matters "in respect of any tax liability," including "any interest, penalty, additional amount, or addition to the tax." I.R.C. § 7508(a).

Congress therefore incorporated § 7508's categories of covered tax consequences into § 7508A(a), and from there into § 7508A(d), rather than defining new and narrower categories for the disaster-relief statute.

Under settled interpretive principles, Congress is presumed to carry forward the established construction accompanying a statutory framework it adopts. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (presuming that when Congress adopts an existing statutory scheme, it adopts the settled construction accompanying that scheme); *see also Johnson v. United States*, 529 U.S. 694, 710 (2000) ("when a new legal regime develops out of an identifiable predecessor, it is reasonable to look to the precursor in fathoming the new law."); *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) ("Congress' repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.").

Because § 7508A(d) inherits those categories rather than replacing them, the category of interest it covers carries the meaning § 7508's interest category has always had—a meaning established well before § 7508A(d) was ever enacted.

As early as 1960, the IRS interpreted § 7508 as suspending interest during the disregarded period without regard to when the underlying tax liability arose. It explained that for individuals serving in a combat zone, the disregarded period includes the period of service or related hospitalization and the following 180 days, and that "[n]o interest is charged on any deficiency or allowed on any overpayment during the period to be disregarded." Rev. Proc. 60-17, 1960-2 C.B. 942, § 9. In other words, the Service focused on the timing of the interest accrual, not the vintage of the underlying tax debt.

Thirteen years later, the IRS General Counsel confirmed the same understanding, explaining that the disregarded period applies not only to whether compliance acts were timely performed, but also to determining "the amount of interest due either the government or the taxpayer." General Counsel Memorandum ("GCM") 35298, 1973 WL 34315 (Apr. 6, 1973). The GCM then specifically addressed refund interest (which at the time § 7508 treated the same as underpayment interest) and concluded § 7508 "precludes the Service from paying interest on a refund to a serviceman for a period during which he was serving in a combat zone." Again the Service focused on the timing of the interest accrual, not the vintage of the underlying tax debt.

Further, the refund-interest context in the GCM is especially revealing because it does not naturally turn on whether a tax liability arose before or after combat-zone service. Overpayments can result from withholding, estimated tax payments, amended returns, or later adjustments, and the date from which an overpayment exists is often less obvious than the due date of a tax liability. Yet the GCM did not distinguish between overpayments arising before and after the disregarded period. Instead, it treated the disregarded period itself as excluded from the interest computation, concluding that no interest accrued during the period a service person is deployed in combat. The GCM described that result as "extremely harsh" and urged legislative correction, which Congress provided by exempting overpayment interest from the rule while leaving underpayment interest subject to the general disregarded-period rule, under which interest does not accrue during the combat period regardless of when the underlying tax debt arose.

By 2000, Congress's own committee staff had reached the same conclusion in describing how the inherited category operates under § 7508. The Joint Committee staff explained that, for combat-zone taxpayers, "the accrual of interest on any underpayment is suspended" during the protected period, and that the suspension applies to interest on "the underpayment of any tax, *whether or not related to a return that would otherwise have been due while the taxpayer was serving in the combat zone*." Description of the "Taxpayer Bill of Rights 2000," JCX- 42-00, 2000 WL 35577808, at *9 (April 3, 2000) (emphasis added); Joint Committee on Taxation Staff Recommendations Relating to Penalties and Interest, 1999 WL 34834557, at *13, *supra* (same).

The IRS has administered § 7508's application to underpayment interest consistent with that understanding. For example, Chief Counsel Advice ("CCA") 200912030 confirms that § 7508 applies the suspension to interest accruing during the protected period even where the underlying liability already existed. There, the IRS concluded that § 7508 did not affect interest or penalties before the relevant effective date, but that relief applied to "interest, penalties, and other actions occurring during combat zone service" after that date. CCA 200912030, 2009 WL 726480 (Mar. 20, 2009). The Internal Revenue Manual likewise directs the Service to "disregard interest accrual" during the protected combat-zone period. IRM 20.2.7.11.1, 2007 WL 9747208 (11-13-2018) ("Scenario 2-If the taxpayer entered the [combat zone] during a tax year, but after the filing season for the prior year's return has passed . . . the [combat zone duration] plus 180 days is disregarded for purposes of calculating interest"); IRM 20.2.7.11.2, 2007 WL 9747209 (12-20-2023) (same in more concise wording). These manual provisions remain in force today.

In sum, the inherited category from § 7508 has a settled pedigree running continuously from the enactment of § 7508's predecessor to the present day, spanning the enactment of § 7508A itself in 1997 and of § 7508A(d) in 2019. The above authorities, from 1960 to the present, share the same premise: § 7508 disregards the combat period when computing interest, regardless of the vintage of the underlying liability.

Section 7508's plain text accords with this historic interpretation. Its parenthetical—"including any interest, penalty, additional amount, or addition to the tax"—modifies the phrase "any tax liability" and makes explicit that the disregard period applies not only to the underlying tax but also to interest and penalties associated with that liability. The statute does not limit this relief to tax liabilities that arose during or after deployment; the text applies broadly to "any tax liability" of the qualifying individual.

Nor does § 7508A(a)(2) support a different result, as Respondent contends. Section 7508A(a)(2) reflects a drafting choice in formulating a discretionary disaster-relief regime, not a silent imposition of an origin-of-liability limitation absent from § 7508 itself. Section 7508A(a)(2) refers to "the amount of any interest" for "periods after such date," not liabilities first arising after such date. I.R.C. § 7508A(a)(2). Congress thus focused on when interest accrues, not when the underlying tax liability became due. Had Congress intended to restrict relief to liabilities arising after the disaster date, it could easily have said so. The point is especially telling because the interest category Congress incorporated from § 7508 had long been understood to suspend interest during the disregarded period regardless of when the underlying liability arose.

II. If the Mandatory Disregard Rule Applies to Pre-Disaster Liabilities, the Disregarded Period Extended Through July 10, 2023.

Respondent contends that, even if § 7508A(d) applies to the computation of interest on pre-disaster period tax debts, the mandatory disregarded period ended no later than March 20, 2020, or alternatively no later than one year after January 20, 2020. Consistent with this brief's limited role, Amicus focuses on Respondent's alternative one-year-cap theory, which implicates the statutory structure of §§ 7508 and 7508A, and precedes that discussion with only a brief observation concerning the incident-date formula which does not turn on the overall statutory design.

A. The COVID-19 Incident Period Continued Through May 11, 2023, Taking the Disregard Period That Adds 60 Days to July 10, 2023.

Section 7508A(d) measures the mandatory disregarded period by reference to two dates: the "earliest incident date" and the "latest incident date." It therefore contemplates that the relevant incident will have both a beginning and an ending date and measures relief by reference to both.

The duration of an incident is not always known when a disaster declaration is first issued. That is particularly true of a declaration describing a "continuing" incident whose endpoint cannot be identified at the outset—which was the case for all or most Covid-19 declarations. Respondent's reading nevertheless treats the incident period as effectively fixed on the date of the original declaration, reducing the statutory inquiry to the earliest incident date. That reading largely drains the phrase "latest incident date" of operative effect in the very circumstance where it matters most. Congress chose a two-date formula, not a one-date formula. Section 7508A(d) measures relief by reference to both the beginning and ending of the incident, and a reading that limits relief for a pandemic that continued for years to the first three months does not give full effect to that choice.

Applying § 7508A(d)(1) as written is therefore straightforward when applied to the scenario at issue in this case. As the Court of Federal Claims held in *Kwong v. United States*, 179 Fed. Cl. 382, 390 (2025): The earliest incident date was January 20, 2020. The latest incident date was May 11, 2023. The mandatory postponement period ended sixty days after that latest specified date, not sixty days after the disaster first began.

B. The Statutory Structure of § 7508 and § 7508A Confirms That § 7508A(d) Does Not Import Discretionary Features from § 7508A(a) Including the One-Year Cap.

1. Section 7508A(d) Employs the Same Underlying Framework as § 7508 While Rejecting the Discretionary Structure of § 7508A(a)

Unlike the March 2020 endpoint issue discussed above, Respondent's alternative one-year theory implicates the relationship between §§ 7508 and 7508A, and the overall statutory structure.

Section 7508A(a) is a discretionary relief provision that imports categories of eligible relief from § 7508 and affords the Secretary latitude regarding the extent to which relief within those categories will be extended to taxpayers. It authorizes the Secretary to "specify a period of up to 1 year" that may be disregarded in computing the time for performing certain tax-related acts and in determining certain tax consequences. I.R.C. § 7508A(a). The one-year period is merely the outer boundary of that discretion. Within that boundary, the Secretary determines the length of the relief period, whether measured in days, months, or a full year. The Secretary likewise retains discretion to determine whether relief will be granted, which taxpayers qualify, the date from which relief will run, and other conditions or limitations governing its application.

In short, § 7508A(a) leaves nearly every operational feature of relief to the Secretary's judgment, save one: the actions and computations eligible for relief, which are borrowed from § 7508. Section 7508A(a) was not enacted on a blank slate. Congress built upon the framework already established in § 7508 rather than creating an entirely new regime governing disregarded periods. Section 7508 had long supplied the framework governing how a disregarded period affects tax administration. Section 7508A(a) retained substantially the same framework but embedded it within a discretionary administrative regime. Congress therefore made a deliberate drafting choice to preserve that underlying framework while adding features associated with discretionary relief. The one-year cap is one of those discretionary features.

Section 7508A(d) reflects a different set of congressional choices. It, too, borrows the categories of relief from § 7508 (via § 7508A(a)), but Congress then prescribed a mandatory set of rules rather than the discretionary ones found in § 7508A(a). Section 7508A(d) returns to the same mandatory formulation used in § 7508, directing that the relief period "shall be disregarded." Compare I.R.C. § 7508(a), with I.R.C. § 7508A(d)(1). Congress then supplied its own duration formula tied to the earliest and latest incident dates associated with the disaster. I.R.C. § 7508A(d)(1)(A)-(B). And Congress identified the categories of eligible relief through the same framework already reflected in § 7508 and referenced through § 7508A(a). The result is a provision that utilizes the same underlying framework while replacing the discretionary features of § 7508A(a) with congressionally prescribed rules governing whether relief applies and how long it lasts.

The disagreement arises from the language Congress used to identify the categories of eligible relief. Section 7508A(d) provides that the disaster period shall be disregarded "in the same manner as a period specified under subsection (a)." I.R.C. § 7508A(d)(1). Respondent contends that this phrase imports into § 7508A(d) not only the categories of relief, but also discretionary features from § 7508A(a). The statutory structure points in the opposite direction. The phrase appears after Congress had already prescribed a mandatory relief period and supplied its own duration formula. Read in context, the cross-reference serves to identify the established § 7508 framework within which the mandatory rule operates. It does not suggest that Congress intended simultaneously to import limitations that exist only because § 7508A(a) delegates discretion to the Secretary. Indeed, such a reading would transfer into § 7508A(d) restrictions tied to a fundamentally different statutory design.

That conclusion is reinforced by familiar interpretive principles. Section 7508 supplied the governing framework when Congress enacted § 7508A(d), and Congress legislated against that settled backdrop. Courts routinely presume that when Congress adopts an existing statutory framework, it adopts the settled construction accompanying that framework. *Lorillard v. Pons*, 434 U.S. at 580-81; *Johnson v. United States*, 529 U.S. at 710; *Bragdon v. Abbott*, 524 U.S. at 631. Nothing in § 7508A(d) suggests that Congress intended the phrase "in the same manner" to carry with it features of § 7508A(a) that exist solely because § 7508A(a) delegates discretion to the Secretary. The phrase identifies the § 7508 framework within which the mandatory disaster-period rule operates; it does not transform that mandatory rule into a discretionary one.

This is not the first time Respondent has advanced a contrary reading. In *Abdo*, Respondent argued that § 7508A(d)'s cross-reference imported a requirement for threshold discretionary action under § 7508A(a). This Court disagreed. *Abdo v. Commissioner*, 162 T.C. at 165. In *Kwong*, the government argued that the same language imported § 7508A(a)'s one-year limitation into § 7508A(d)—as Respondent argues here. The Court of Federal Claims disagreed. *Kwong v. United States*, 179 Fed. Cl. at 393. In both cases, the courts recognized that § 7508A(d) incorporates the established § 7508 framework governing disregarded periods without incorporating the discretionary restrictions associated with § 7508A(a). The Court in this case should similarly so conclude.

2. Treasury Regulation § 301.7508A-1 Is Invalid to the Extent It Imports Discretionary Features of § 7508A(a) Into § 7508A(d)

The distinction recognized in *Abdo* and *Kwong* also impacts the validity of Treasury Regulation § 301.7508A-1. The APA requires a reviewing court to set aside agency action that is "not in accordance with law" or "in excess of statutory authority." 5 U.S.C. § 706(2)(A), (C). After *Loper Bright*, courts must exercise their independent judgment in determining whether Treasury's interpretation conforms to the statute enacted by Congress. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-92 (2024).

Treasury Regulation § 301.7508A-1 repeatedly treats § 7508A(d)'s reference to § 7508A(a) as authority to import discretionary features of § 7508A(a) into § 7508A(d)'s mandatory relief provision. The regulation conditions relief under § 7508A(d) on prior discretionary action under § 7508A(a), imports § 7508A(a)'s one-year outer-boundary limitation, applies due-date limitations derived from Treasury's administration of discretionary relief, and includes examples illustrating those concepts. Each of those limitations stems from the Secretary's authority under § 7508A(a), not from the mandatory relief Congress enacted in § 7508A(d).

Those provisions reflect the same underlying error. Treasury reads § 7508A(d)'s "in the same manner" cross-reference to § 7508A(a) as license to carry over not merely the categories of eligible relief, but also the restrictions that accompany the Secretary's discretionary authority under § 7508A(a). Yet Congress drew a deliberate distinction between the two provisions. Under § 7508A(a), the Secretary decides whether relief will be granted and, within statutory limits, determines its duration and conditions. Under § 7508A(d), Congress itself made those decisions. Congress mandated relief, prescribed the duration formula, and directed that the resulting period "shall be disregarded." A regulation cannot collapse that distinction by importing into § 7508A(d) limitations that belong to a different statutory regime.

The regulation's one-year cap provides a clear illustration. The one-year figure in § 7508A(a) is not a rule establishing the duration of relief; it merely limits the length of relief the Secretary may choose to provide—up to one year. If the cross-reference carried over discretionary choices from § 7508A(a), there would be no principled way to conclude which such choices that Congress imported including which duration – 365 days rather than 180 days, 90 days, 30 days, or any other period – the Secretary might have selected.

Section 7508A(d), however, does not leave duration to administrative choice. Congress supplied its own incident-date formula and directed that the resulting period "shall be disregarded." Treasury's interpretation imports the maximum period the Secretary could have chosen for discretionary relief without any basis for concluding Congress intended that period rather than the incident-based formula Congress actually prescribed.

Abdo and *Kwong* support that conclusion. In *Abdo*, the Court reviewed Treasury's decision that § 7508A(d)'s reference to § 7508A(a) conditioned the mandatory relief under § 7508A(d) on discretionary action under § 7508A(a). This Court rejected that argument and held that § 7508A(d) establishes a self-executing mandatory rule. *Abdo v. Commissioner*, 162 T.C. at 165, 174-75. In *Kwong*, the Court of Federal Claims reviewed the same cross-reference and whether Treasury was correct that § 7508A(a)'s one-year ceiling limits the duration of relief under § 7508A(d). The Court of Federal Claims rejected that argument because Congress had already prescribed a different duration formula in § 7508A(d). *Kwong v. United States*, 179 Fed. Cl. at 393. Although the particular limitations differed, both courts identified the same flaw: Treasury attempted to use § 7508A(d)'s reference to § 7508A(a) as a vehicle for importing restrictions that exist only as part of the discretion delegated to the Secretary in § 7508A(a).

The same flaw is present here. Congress created a discretionary relief provision in § 7508A(a) and imposed limits on the Secretary's authority in administering that relief. Congress separately created a mandatory relief provision in § 7508A(d) and prescribed its duration directly. Treasury may implement both provisions, but it may not use one to rewrite the other. Because the regulation's one-year cap derives from the discretionary structure of § 7508A(a) rather than the mandatory structure of § 7508A(d), it is contrary to the statute Congress enacted and cannot stand.

CONCLUSION

The Court should conclude that under the facts of this case § 7508A(d) creates a mandatory postponement period from January 20, 2020 through July 10, 2023 during which interest did not accrue on unpaid tax debts — regardless of when the unpaid tax debts arose.

Date: August 11, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing amicus brief was served on the parties on August 11, 2026, via email to the emails on their briefs filed in this matter including:

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Undersigned counsel has received responses from the parties at these email addresses, confirming that they are valid and regularly used for communication.

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