



What Is All the Hype About Covid-Related Interest?

by **Robert S. Horwitz**

On February 6, 2026, Western Digital Corp. filed a refund suit in the Court of Federal Claims seeking the refund of \$20,764,747 of underpayment interest that accrued during the period of the federally declared disaster during Covid-19. *Western Digital Corp. v. United States*, No. 26-215. Richard Rubin reported on the case on February 16, in an article entitled *Tax Deadlines Accidentally Got Turned Off for Three Years. Now What?* This led to blogs being posted about how taxpayers should file claims for refund of interest on tax that accrued during the Covid pandemic. So, what is all the fuss about?

Internal Revenue Code § 7508A authorizes the Secretary of Treasury, in the case of a taxpayer affected by a federally declared disaster, terrorist act or military action, to specify a period of up to 1 year that may be disregarded “in determining ... 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, fire, 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.

Under this statute, IRS can relieve a taxpayer living in a federally declared disaster area of certain filing and payment requirements and disregards the running of interest and penalties during for a period of up to one year.

In December 2019, Congress added subsection (d) to § 7508A, which became effective on December 26, 2019. That amendment provided for a mandatory period during which the items that are disregarded begins “on the earliest incident date specified in the declaration” and ends “60 days after the latest incident date so specified.”



On March 13, 2020, President Trump also declared a nationwide emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) for the pandemic. President Trump later approved major disaster declaration requests under the Stafford Act for all 50 states, five territories, the District of Columbia, and the Seminole Tribe of Florida. President Biden approved major disaster declaration requests from the Navajo Nation and the Poarch Band of Creek Indians. President Trump also issued disaster declarations for individual states that made the earliest incident date January 20, 2020. The Covid disaster declaration ended May 11, 2023. As a result, the disregarded period ended 60 days later, or on July 10, 2023.

In Notice 2020-23, the IRS announced that the due date for filing and payment was extended to July 15, 2020, for tax returns due on or after April 1, 2020, and by July 15, 2020. In 2021, for tax returns due for 2020, the IRS extended the filing and payment due dates from April 15 to May 17, 2021

Due to the ongoing nature of the Covid disaster declaration, in late 2021, Congress woke up to the fact that the disregarded period under § 7508A could be indefinite. In November 2021, it therefore enacted § 7508A(d) to provide that the mandatory extension period ends 120 days after the later of the earliest incident date or the date of the declaration.¹ In June 2020, Treasury issued Treas. Reg. § 301.7508A(g), which provides that in case of a declaration with no ending incident date, the beginning and the ending incident date are the same.

How did we get to Western Digital's claim that interest on tax liabilities was suspended from January 20, 2020, to July 10, 2023? There were two cases involving court filing deadlines during Covid. *Abdo v. Commissioner*, 162 T.C. 148 (April 2, 2024), and *Kwong v. United States*, 179 Fed. Cl. 382 (Nov. 25, 2025). Both cases involved court filing deadlines.

Abdo involved the filing of a Tax Court petition. The Abdos received a notice of deficiency dated December 2, 2019. The 90-day period for filing a petition in Tax Court to challenge the petition ended March 2, 2020. The Abdos filed their petition on March 17, 2020, and the IRS moved to dismiss the petition as untimely. The Tax Court held that the language of § 7508A(d) was clear and unambiguous: the

¹ Sec. 7508A has been amended several times since 2021. Each amendment retained the mandatory 120-day extension of the 2021 amendment.



mandatory date began on the earliest incident date and ended 60 days after the last incident date. Since a special declaration was declared for Ohio, where the Abdos resided, which set the earliest incident date as January 20, 2020, their petition was timely. On August 7, 2024, several months after the Tax Court's opinion was issued, a stipulated decision was entered determining there was no tax deficiency.

Kwong is a refund suit. In early 2020, Kwong filed a refund claim for penalties he paid for several years. The refund claim was denied in late 2020. A taxpayer must file a refund suit within two years after the refund claim is denied. He filed his complaint seeking a refund in the Court of Federal Claims in February 2023, more than two years after the claim was denied. The government moved for summary judgment on the ground the complaint was filed late. The Court held that under § 7508A(d), the filing period was extended to July 10, 2023. Thus, the complaint was timely. The Court noted that the November 2021 amendment to subsection (d) was effective as to disasters declared after that date. Thus, the government's motion was denied.² The case is still pending before the Court of Federal Claims.

Western Digital filed its complaint in the Court of Federal Claims. In March 2023, it settled a Tax Court case for 2010, 2011, and 2012, agreeing to a deficiency of \$53,635,842. It paid the deficiency plus \$20,764,747 of underpayment interest and filed a Form 843 (Claim for Refund and Request for Abatement), requesting a refund of the underpayment interest based on the claim that under § 7508A(d) interest should not have accrued during from January 20, 2020, through July 10, 2023. Western Digital intends to move for summary judgment. If it does so and the Court grants the motion, the government will probably appeal to the Federal Circuit. Whether the appellate court will ultimately hold that § 7508A(d) suspended the running of interest is unknown.

Who should consider filing a claim for refund or abatement under § 7508A(d)? A taxpayer for whom interest and penalties accrued or was paid for the period the Covid declaration was in effect, i.e., from early 2020 to July 10, 2023. Thus, a taxpayer who was assessed or paid interest or a failure to pay or failure to file penalty for that period potentially could arguably file a request to abate or for a refund,

²The Court granted the motion as to two of the years in issue because the taxpayer failed to file timely refund claims with the IRS as to those years.



What can taxpayers seek abatement or refund of? Besides interest, any “penalty, addition to tax, or additional amount.” This would include not only failure to file, failure to pay, and failure to deposit/estimated payment penalties under IRC §§ 6651-6656, but also an array of possible assessable penalties contained in IRC §§ 6672, et seq., including failure to furnish W-2s to employees (§6674), failure to file returns with respect to foreign trusts, corporations and partnerships (§§6677, 6679) and failure to file partnership and S corporation returns (§§6698, 6699), and foreign information return penalties under IRC §§6038-6038D. It may also apply in certain situations to a trust fund recovery penalty for withholding tax for which deposits or payments were due during January 20, 2020, through July 10, 2023. An argument could be made that the IRS could not assert a penalty during that period, such as an accuracy-related penalty or a preparer penalty, and thus penalties asserted and assessed during that period are void.

When can a taxpayer file a claim for refund or abatement? If you have already paid interest or a penalty that may be covered by §7508A(d), you have two years after the date of payment to file a claim. If you paid more than two years before you file the claim, the claim is too late. If you paid within the past two years, you can still file a claim for refund. If you have not yet paid, you can file a request for abatement of the interest, penalty, addition to tax or additional amount. Caveat: If a court has already upheld the penalty or interest, such as a Tax Court decision or in a suit to reduce the assessment to judgment, you probably cannot seek refund or abatement under the doctrine of *res judicata*.

How does a taxpayer make a claim for refund or abatement? The claim should be made on Form 843. You should check the “Other” box and attach to the form an explanation of why the interest or penalty should be refunded or abated. Because litigation on this issue is pending, you should mark the claim as a protective claim. If you don’t mark it as a protective claim, the IRS could disallow your claim, in which case you will have to file a suit in a United States district court or the Court of Federal Claims, which could require you to pay substantial attorney fees and costs. If you are currently involved in a Tax Court proceeding or the defendant in a tax collection action by the government, you would need to raise your claim during the lawsuit.



The above is not meant to be legal advice. If you are interested in a refund or abatement under § 7508A, you should consult with a qualified tax professional, who can help determine whether you are entitled to refund or abatement, can prepare a valid claim on your behalf and represent you before the IRS.

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