

CHANGES DURING COVID-19: GIFT TAX RETURN AND PAYMENT OF TAX POSTPONED BUT ADDITIONAL TAX POSTPONEMENTS AND CLARIFICATIONS REQUESTED

Posted on April 7, 2020 by Lisa M. Adams



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On March 18, 2020, in response to the COVID-19 pandemic, the Treasury Department (“Treasury”) and the IRS issued [Notice 2020-18](#) extending the due date for filing income tax returns and making income tax payments to July 15, 2020 from April 15, 2020.

ACTEC Seeks Postponement for Filing Estate, Gift, and Exempt Organization Returns

In response to the Treasury's postponement of income tax returns and income tax payments, the American College of Trust and Estate Counsel (“ACTEC”) [sent the Treasury a letter seeking guidance](#) for other types of returns and tax payment obligations on March 27, 2020.

The types of returns and payments included in ACTEC’s letter include, but are not limited to, the following:

- Estate Tax Returns ([Form 706](#) and the Form 706 series) and estate tax payments;
- Gift Tax Returns ([Form 709](#)) and payment of gift and generation-skipping transfer tax;
- Information Regarding Beneficiaries Acquiring Property from a Decedent ([Form 8971](#));

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- Exempt Organization Returns ([Form 990](#) and related filings);
- Private Foundation Returns ([Form 990-PF](#) and related filings) and payment of tax.

Unlike the majority of the tax returns and payments listed above, Estate Tax Returns and Estate Tax liabilities are **due nine (9) months** after a taxpayer's date of death. For Estate Tax Returns and Estate Tax liabilities due after March 13, 2020, ACTEC suggests **postponement to July 15, 2020**.

ACTEC's letter to Treasury also seeks **postponement to July 15, 2020** for making 2019 HSA contributions, Archer MSA contributions, IRA contributions and a holiday for taxpayers required to take Minimum Required Distributions for tax year 2020 and for the IRS to consider permitting usage of verified electronic signatures (such as DocuSign and Dotloop etc.) so individuals can sign and file valid returns.

ACTEC Request for Clarification of Notice 2020-18

Last, ACTEC's letter also seeks clarification on whether the duration of a taxpayer's extension of time is valid:

- for six months from the original due date, April 15, 2020 to October 15, 2020, **OR**
- from the postponement date stated in Notice 2020-18, July 15, 2020 to January 15, 2021.

Notice 2020-20 On the same date as ACTEC's letter was sent, March 27, 2020, the Treasury Department and the IRS issued Notice 2020-20 addressing the due date for Gift Tax Returns ([Form 709](#)) and payment of gift tax and generation-skipping transfer tax.

Notice 2020-20 extended the due date from **April 15, 2020 to July 15, 2020** for taxpayers to report taxable gifts on Form 709 and pay any federal gift or generation-skipping transfer tax originally due with their return.

No interest, penalty, or additions to tax will be assessed to the taxpayer during the period of postponement (April 15, 2020 to July 15, 2020) for failure to file Form 709 or failure to pay the gift or generation-skipping transfer tax. The postponement relief is automatic for taxpayers and there is no need to file Form 8892 ([Application for Automatic Extension of Time to File Form 709](#)).

However, if a taxpayer is seeking an extension to **October 15, 2020**, the normal six (6) month extension date from April 15, 2020 to file Form 709, the taxpayer must file his/her extension request on Form 8892 on or before July 15, 2020.

Note, however, interest, penalties, and additions to the tax will begin to accrue on July 16, 2020 and cannot be extended to October 15, 2020 by Form 8892.

To date, the Treasury has not responded to ACTEC's request for the postponement of other returns and payments of tax nor has it clarified the duration of a taxpayer's extension of time to file. As such, it is safest to assume that the original due dates remain in place and taxpayers should proceed as if they are operating under the "ordinary course of business" rules.

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