PERSPECTIVE

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Is This Week's IRS Extension a Double Mulligan?

By Robert W. Wood

Tax Day is traditionally April 15, although many of us go on extension and file in October. Of course, the usual automatic extension does not delay your payment obligation, which is still due by April 15th. But early in 2023 just as people were starting to think about their 2022 tax returns, both the IRS and California Franchise Tax Board gave Californians until October 16th because of severe winter storms that occurred early in 2023. Most Californians loved that delay.

After all, not even having to pay in April was a real treat. In fact, the only group that did not like the delay was tax advisers, especially accountants who grappled with everyone—businesses and individuals alike, filing in October. Since the IRS and FTB storm extensions applied to individuals, businesses, nonprofits and even estimated taxes, an avalanche of tax filings and payments came due on October 16h. But wait, there's more to this story.

Literally on the October 16 filing deadline, both the IRS and the FTB gave 30 more days, to November 16th. Before we talk about what specifically was extended, if you filed your returns by October 16, is there any news here? The answer is yes, you still might care about the new November 16 deadline if you would like a rare chance to do a do-over. It works like this.

You usually cannot *correct* a tax return without *amending* the return. There is nothing wrong with amending one, but amended returns can sometimes draw scrutiny. Also, some tax elections can only be made on an *original* tax return that was timely filed, not on an amended return. These are some of the reasons that, once in a while, if you file your return early—say in February of a normal year—you might want to file a new *original* return before April 15 to replace it. The second return—called a superseding return—must be filed by the due date, and must be clearly labeled as a superseding return.

Put simply, it is a do over. If you file a 'superseding' return before the due date of the original return (including extensions), it can take the place of the originally filed return. In effect, the "errors" of the first original return didn't happen. A superseding return be used to make an election that cannot be made on an amended return, or to make certain other changes. So with this year's unusual timing, if you act by November 16, there's still time for a second chance.

Of course, there are dangers even with a do over. The IRS may become confused if you try this unusual procedure. Timing and proof of when you filed each one is important. But it is still an important rule to know about, especially if you made mistakes on October 16 that you now want to fix. Beyond this exception, you can fix mistakes only by amending your return.

The IRS further postponed tax deadlines for most California taxpayers to Nov. 16, 2023. The IRS added another month. As a result, most individuals and businesses in California will now have until Nov. 16 to file their 2022 returns and pay any tax due. Fifty-five of California's 58 counties—all except Lassen, Modoc and Shasta counties—qualify. This IRS relief is based on three different FEMA disaster declarations covering severe winter storms, flooding, landslides, and mudslides over a period of several months.

Late on October 16, California conformed to the IRS additional time, and extended the state tax filing and payment deadline to November 16 too. For the IRS and California, there can often be line-drawing questions about who qualifies. The IRS normally provides relief, including postponing various tax filing and payment deadlines, for any area designated by the Federal Emergency Management Agency (FEMA). As long as their address of record is in a disaster-area locality, individual and business taxpayers automatically get the extra time, without having to ask for it.

What returns and payments qualify for the Nov. 16 deadline? Eligible returns and payments include:

1. 2022 individual income tax returns and payments normally due on April 18.
2. For eligible taxpayers, 2022 contributions to IRAs and health savings accounts.
3. Quarterly estimated tax payments normally due on April 18, June 15 and Sept. 15.
4. Calendar-year 2022 partnership and S corporation returns normally due on March 15.
5. Calendar-year 2022 corporate and fiduciary income tax returns and payments normally due on April 18.
6. Quarterly payroll and excise tax returns normally due on May 1, July 31 and Oct. 31.
7. Calendar-year 2022 returns filed by tax-exempt organizations normally due on May 15.
8. Other returns, payments and time-sensitive tax-related actions also qualify for the extra time. See the IRS disaster relief page for details.

The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. Therefore, taxpayers do not need to contact the agency to get this relief.

It is possible an affected taxpayer may not have an IRS address of record located in the disaster area, for example, because they moved to the disaster area after filing their return. In these kinds of unique circumstances, the affected taxpayer could receive a late filing or late payment penalty notice from the IRS for the postponement period. The taxpayer should call the number on the notice and ask to have the penalty abated.

In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers who live outside the disaster area should contact the IRS at 866-562-5227.

Apart from the tax filing and payment delays, there are other tax benefits too. Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (in this instance, the 2023 return normally filed next year), or the return for the prior year (2022). Taxpayers have extra time – up to six months after the due date of the taxpayer's federal income tax return for the disaster year (without regard to any extension of time to file) – to make the election.

Qualified disaster relief payments are generally excluded from gross income. In general, this means that affected taxpayers can exclude from their gross income amounts received from a government agency for reasonable and necessary personal, family, living or funeral expenses, as well as for the repair or rehabilitation of their home, or for the repair or replacement of its contents.

Additional relief may be available to affected taxpayers who participate in a retirement plan or individual retirement arrangement (IRA). For example, a taxpayer may be eligible to take a special disaster distribution that would not be subject to the additional 10% early distribution tax and allows the taxpayer to spread the income over three years. Taxpayers may also be eligible to make a hardship withdrawal. Each plan or IRA has specific rules and guidance for their participants to follow.

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