



## Client Alert: Recent Court Decisions Create Potential Refund Opportunities for COVID-Era IRS Penalties and Interest

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Applicable taxpayers have a limited window—**potentially closing as soon as July 10, 2026**—to protectively claim refunds of IRS penalties and interest assessed during the COVID-19 pandemic. If you miss this July 10<sup>th</sup> deadline, you will likely forfeit any potential refund—regardless of the final outcome of the court cases discussed in this article.

While this opportunity affects millions of individual and entity taxpayers, it is not automatic. Impacted taxpayers must take affirmative action—such as filing formal refund or protective claims—before the statute of limitations to claim a credit, refund or abatement expires. Those who do not act in time may permanently lose the ability to recover these amounts.

Eligible taxpayers include:

- Individuals
- Businesses (Corporations, Partnerships and LLCs)
- Non-Profits
- Self-employed Taxpayers
- Estates
- Trusts

These timing pressures stem from two recent court decisions—*Abdo v. Commissioner* and *Kwong v. United States*—which are reshaping how the pandemic period is treated under the tax law and reopening issues many taxpayers assumed were long settled.

### Rethinking “Time” During the Pandemic

At the center of both decisions is a relatively obscure provision of the tax code: Internal Revenue Code § 7508A, which allows deadlines to be postponed during federally declared disasters. When Congress expanded this provision in 2019, it added language suggesting that certain time periods must be automatically disregarded, rather than adjusted at the IRS’s discretion.

For most taxpayers, that distinction went unnoticed. The IRS issued targeted relief during the pandemic, extending certain filing deadlines for specific months in 2020. But the statute itself raised a broader question: what if the law actually suspended deadlines for the entire COVID disaster period?

That question ultimately made its way to the courts.

### **Abdo: The First Crack in the IRS Approach**

The story begins with *Abdo v. Commissioner*, decided by the U.S. Tax Court in 2024. In that case, taxpayers filed a Tax Court petition after what appeared to be the normal deadline. The IRS argued the case should be dismissed as untimely.

The Tax Court disagreed.

Looking closely at § 7508A(d), the court concluded that the statute is clear, mandatory, and self-executing—meaning it operates automatically without requiring the IRS to grant relief. The court further held that Treasury regulations attempting to limit this relief could not override the statute.

As a result, the taxpayers' filing was deemed timely because the disaster-relief provision had effectively extended the deadline.

While *Abdo* focused on a relatively narrow issue (a filing deadline), it planted the seed for a much broader argument: if the statute automatically extends deadlines, what else might be affected?

### **Kwong: Expanding the Theory**

That broader question came to life in *Kwong v. United States*, decided in late 2025.

Here, the taxpayer wasn't just defending a filing deadline—he was seeking a refund of penalties the IRS had already assessed and collected. The IRS had denied his claim as untimely, relying on the usual rules for statute of limitations on claims for credit, refund or abatement of penalties and interest.

But the court revisited § 7508A(d) through the lens first established in *Abdo*.

The Court of Federal Claims concluded that the statute required a continuous postponement period spanning the entire federally declared COVID-19 disaster, running from January 20, 2020 through July 10, 2023.

That conclusion carried sweeping consequences. If deadlines were legally suspended during that entire period, then many tax filings and payments treated as "late" may not have been late at all. As the court's reasoning suggests, penalties and interest assessed during that window may have been improperly imposed. The court also held that the taxpayer's refund claim was timely, because the statute effectively paused the clock for filing such claims.

## A Combined Impact That Reaches Millions

Individually, Abdo and Kwong address technical procedural issues. Together, they create a much broader narrative: the COVID disaster period needs to be treated, for many tax purposes, as if the clock stopped running.

For taxpayers, that reinterpretation could be quite significant. Interest that accrued, penalties that were assessed, and deadlines that passed between early 2020 and mid-2023 may need to be reconsidered. Even taxpayers whose payment due dates occurred before January 20, 2020 may qualify for relief if interest or penalties continued accruing during the disaster period. Under Kwong, such accruals should not have legally occurred.

In practical terms, this means that **taxpayers who paid failure-to-file penalties, failure-to-pay penalties, failure-to-deposit penalties, interest, or underpayment interest during that period could have viable refund or abatement claims.** In addition, estimated tax penalties and international civil penalties are likely refundable/abatable as well (which is typically unheard of!).

## Other Time-Sensitive Acts to Evaluate

Rev. Proc. 2018-58 contains the most extensive catalog of “time-sensitive tax acts” eligible for postponement under IRC §7508A when taxpayers are affected by federally declared disasters. These acts extend well beyond standard filing and payment deadlines. Common examples that typically receive relief during disaster periods include:

- Filing petitions with the U.S. Tax Court
- Initiating suits for refund
- Filing claims for credit or refund
- Making retirement plan and pension contributions
- Completing like-kind exchanges
- Addressing involuntary conversions
- Responding to IRS notices
- Making business elections, including S corporation elections

The court’s determination that statutory deadlines were suspended during the COVID-19 disaster period may influence a range of tax outcomes tied to filing dates or statutory deadlines. This could affect the assessment of failure-to-file and failure-to-pay penalties, as well as deadlines for actions such as electing portability on an Estate Tax Return (Form 706).

As practitioners, we can reassess IRS filings previously deemed late to determine whether they now fall within the extended disaster-relief window established in Kwong.

## What Happens Next

Despite the significance of these decisions, the story is not over. The government is expected to challenge the Kwong decision on appeal, and the IRS has not yet issued comprehensive guidance addressing the broader implications.

That uncertainty creates a familiar dynamic in tax controversy: opportunity paired with risk. Taxpayers who act now may preserve their ability to benefit if the courts' interpretation ultimately prevails. Those who wait may lose that option if applicable deadlines expire.

Although Kwong and Abdo are federal cases, the decisions create ripple effects for state tax jurisdictions, especially those that tie their tax codes to federal law or adopt federal disaster-relief provisions by reference. Refund and penalty-abatement claims at the state level should be considered and, possibly, filed parallel to the federal claims.

## Moving Forward

These cases serve as a reminder that even well-settled assumptions—like when a tax deadline has passed—can change when courts revisit the underlying statute.

For many taxpayers, the practical next step is simply to look back. Reviewing whether penalties or interest assessed during the COVID-19 disaster period could uncover opportunities that were not previously apparent.

We are actively assisting clients in evaluating these developments, identifying potential claims, and determining the most appropriate course of action in light of evolving guidance.

Our firm is prepared to:

- Determine your eligibility under the Kwong and Abdo rulings to secure potential refunds or penalty abatements
- Prepare and file your protective claim with the IRS without delay
- Monitor the litigation and advise you on next steps as developments occur

**Time is critical.** We strongly recommend contacting us immediately to initiate your claim. Waiting could cost you the refund you are entitled to receive.

Please contact the professional at Prager Metis who handles your account to secure your position.

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Our team will help you stay abreast of current tax developments. Prager Metis will be communicating tax alerts regularly through a variety of channels, including newsletters, articles, client briefings and webinars.

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