

## Estate and Gift Tax Return Due Dates Not Postponed

March 27, 2020

UPDATED March 27, 2020

The IRS's pronouncement delaying the due dates for certain tax returns is not broad enough to encompass gift and estate tax returns or fiscal year income tax returns; at present, these returns must be filed on time or an extension form must be filed.

Although the IRS has postponed the due date for income tax returns due on April 15, 2020 until July 15, 2020, that postponement does not apply to gift tax returns. Under normal circumstances, taxpayers who get an extension of time to file their income tax returns by filing a Form 4868 extension request automatically get the same extension of time to file their gift tax returns for the calendar year. But this special COVID-19 postponement does not extend the due date for gift tax returns, because the IRS is making a distinction between an "extension" and a "postponement." This creates a potential trap for the unwary!

If any gifts in excess of the annual exclusion amount were made in 2019, or if it is necessary to make a QTIP, gift-splitting, or other election on the gift tax return, it is important to either file the gift tax return by April 15, 2020 or apply for an extension before that date. A gift tax extension can be requested either by filing a Form 4868 requesting a 6-month extension for income tax and gift tax purposes or by filing a Form 8892 to extend only the gift tax return due date by 6 months. In either case, there is no available extension of time to pay gift tax; the tax, if any, must be paid by April 15.

If an extension is sought by both spouses in a marriage, a single Form 4868 with both names will request an extension for both spouses, whereas if a Form 8892 is used to apply for an extension, each spouse will have to file a separate extension request. If no income tax extension beyond July 15 is needed, those who need a gift tax filing extension may prefer to file the Form 8892.

The COVID-19 relief granted by the IRS so far likewise does not postpone the due date for any estate tax returns due in this period. For an extension of time to file an estate tax return, a Form 4768 must be filed with the IRS prior to the due date of the return. The same form can be used to request an extension of time to pay, but granting of that extension is not automatic.

Income tax filers who use a fiscal year (such as estates and electing revocable trusts) are not granted a postponement of the due date of their income tax returns under the COVID-19 relief. If an extension is needed, a Form 7004 should be filed.

This situation is fluid and the IRS may offer additional relief. Please contact us if you have any concerns.

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