

TAX COURT – DECISION ALERT

KWONG V. UNITED STATES

In *Kwong v. United States*, a federal court ruled that COVID-19 disaster declarations automatically suspended IRS tax filing and payment deadlines for nearly three and a half years. If you were assessed penalties or interest between January 20, 2020, and July 10, 2023, you may be eligible for a refund. The ruling applies to individual, business, trust and payroll tax accounts. However, you as an individual, business owner, or trust fiduciary must act before the applicable deadline.

The legal landscape surrounding this decision includes several time-sensitive factors:

- **The Court’s Decision:** The U.S. Court of Federal Claims ruled that IRC § 7508A(d) provided automatic, mandatory relief that postponed tax deadlines nationwide until July 10, 2023 (60 days after the May 11, 2023, end of the COVID-19 emergency period).
- **Current Status:** The IRS has appealed this decision, and the final outcome remains unsettled. Refunds are not being issued automatically; taxpayers must proactively file a claim to preserve their legal rights.
- **Important Deadline:** For most affected taxpayers, the deadline to submit a formal or protective claim is July 10, 2026.
- **How to Claim:** Affected taxpayers—including individuals, businesses, trusts, and estates—may file IRS Form 843 (Claim for Refund and Request for Abatement) to preserve their eligibility for potential refunds.

It is important to note that your eligibility for a refund remains subject to ongoing litigation and that the current status of the court’s decision does not guarantee a refund. Because the decision is currently under appeal, the ultimate outcome remains uncertain.

Your next steps:

1. Determine if you paid or were assessed any interest or penalties in the time frame between January 20, 2020 and July 10, 2023.
 - How? Review your IRS tax account transcripts.
 - How do you get your transcripts? The fastest way is to access your personal or business transcripts through your Individual or Business IRS Online Account. If you do not have an account, you will need to create an account through ID.me, at the IRS.gov website. Alternatively, you can call the IRS and request the transcripts to be mailed to you.

An example of what a transcript looks like follows below. It is an excerpt from a recent National Taxpayer Advocate’s Blog:

Example: Identifying Penalty and Interest Entries

Below is a simplified fictional example of a taxpayer's account transcript for their 2021 income tax return filed after the original due date. It shows their withholding, a payment sent with the return, failure-to-file and failure-to-pay penalties, interest, and subsequent payments that fully satisfied the balance. The transaction dates show when the transactions occurred.

ACCOUNT BALANCE:	0.00			
ACCRUED INTEREST:	0.00			
ACCRUED PENALTY:	0.00			
TRANSACTIONS				
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20224005	10-24-2022	8,400.00
806	W-2 or 1099 withholding		04-18-2022	-4,700.00
610	Payment with return		10-24-2022	-700.00
166	Penalty for late filing	20224305	10-24-2022	832.50
276	Failure to pay tax penalty		10-24-2022	129.50
196	Interest charged		10-24-2022	58.36
971	Notice issued		10-24-2022	0.00
670	Subsequent payment		11-21-2022	-1,200.00
276	Failure to pay tax penalty		11-21-2022	15.00
196	Interest charged		11-21-2022	12.41
971	Notice issued		11-21-2022	0.00
670	Subsequent payment		12-19-2022	-2,847.77

Although this return was filed late under normal tax rules, it was submitted before July 11, 2023. Under the COVID-19 relief rules, it may be treated as timely. As a result, the penalties and related interest shown above may have been charged incorrectly and could be eligible for refund or abatement.

Unfortunately, we cannot make the determination of whether you paid or were assessed penalties without help from you. You must review your account and print out the transcripts. With your transcripts, we can help you determine if you should file a claim.

2. You determined you individually or your business or your trust have paid penalties and/or interest in the applicable date range (January 20, 2020 through July 10, 2023). **To protect your rights, you must file a claim for refund no later than July 10, 2026.**

- File Form 843 – Request for Refund or Abatement, if you have paid the penalties and interest and the refund amount can be calculated. This is considered a formal request for refund.

OR

- File a protective claim for refund or abatement, if you are unable to calculate the amount of the refund because it is unclear what the actual refund amount is.

OR

- File Form 843 – Request for Refund or Abatement, to request an abatement of penalties and interest that have yet to be paid.

Separate requests are required to be filed for each tax type, tax period and relief type (refund or abatement).

The **IRS Taxpayer Advocate home page**: <https://www.taxpayeradvocate.irs.gov> has additional detailed information regarding the Kwong case and taxpayer steps to protect their rights to a refund or abatement of penalties or interest assessed/paid during the applicable time frame.

We are here to help you through this process.

Your team at Musser Olsen PC