

Preserving Opportunity Ahead of the Statute: A Timely Consideration

May 2026



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Advisory often comes down to identifying opportunity before it is obvious and preserving flexibility before it is too late. From a tax perspective, that usually means acting while the window is still open, even if all of the facts are not yet settled.

We are in one of those moments now.

A Developing Legal Backdrop

There is a developing court case that has the potential to create meaningful refund opportunities tied to COVID-era tax filings, payments, and penalties. The specifics are still working their way through the system, but the broader takeaway is straightforward. If the taxpayer ultimately prevails, similarly situated taxpayers may have the ability to revisit positions taken during the pandemic period.

The important point is timing. The ability to benefit from a favorable outcome is not determined when the case is decided. It is determined by whether a taxpayer has preserved their rights before the statute of limitations expires.

This is where protective claims come into play.

Preserving Optionality Through Protective Claims

A protective claim is simply a mechanism to keep the door open. It allows a taxpayer to formally notify the IRS of a potential refund claim that depends on the outcome of pending litigation. It does not require certainty today. It requires awareness and timely action.

The case driving this conversation is Kwong. In that case, the Court of Federal Claims held that the COVID-19 federal disaster declaration automatically postponed tax deadlines from January 20, 2020 through July 10, 2023, rather than the much shorter relief period the IRS applied administratively.

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If that interpretation holds, a broad range of penalties and interest assessed during that window may not have been valid. The impact is not limited to a specific taxpayer or filing position. It potentially affects individuals, businesses, estates, and trusts that had filing or payment obligations during that period.

A Defined and Closing Window

The practical takeaway is a single date. July 10, 2026.

Based on the court's interpretation, that date now functions as the outside deadline for many refund and abatement claims tied to the COVID disaster period. In effect, the entire window from January 20, 2020 through July 10, 2023 is treated as postponed, and the statute runs forward from there.

For taxpayers who had penalties assessed, paid interest, or experienced delayed refunds during that period, this creates a defined, but closing, opportunity. After July 10, 2026, the ability to pursue those refunds is expected to be lost, regardless of how the litigation ultimately resolves.

Translating Insight into Action

In our experience, these are the types of decisions that do not feel urgent in the moment but become very clear in hindsight. Filing a protective claim is typically a low-cost, low-friction exercise. The cost of not filing, if the facts ultimately align, can be meaningful.

If there is any question as to whether your situation could intersect with these issues, now

is the time to evaluate it. We recommend connecting with your tax advisor to determine whether a protective claim is appropriate and to ensure it is filed timely.

Truxton is working with clients now to evaluate exposure, quantify potential claims, and coordinate the filing of protective claims where appropriate. If this may apply to you or your business, do not delay as time is of the essence to preserve your rights. ■