

KWONG PROTECTIVE CLAIM

Eligibility & Preparation Checklist

IRC §§ 7508A(d) (2019), 7508A(f) (P.L. 119-64) | Kwong v. United States, 179 Fed. Cl. 382 (Nov. 25, 2025) | DOJ Appeal Pending — Federal Circuit

Client Name:

SSN / EIN:

Tax Year(s) Under Review:

Review Date:

ERO / Preparer Name:

IMPORTANT: Complete ALL parts of this checklist before filing a protective claim. A separate checklist is required for each tax year being evaluated. Do not combine multiple tax years on a single Form 843.

PART I — INITIAL ELIGIBILITY SCREEN (Stop and do not proceed if any answer is NO)

HOW TO USE: Answer each question YES or NO for the specific penalty or interest amount being evaluated. Each question must be answered YES to proceed. If any answer is NO, the client does not qualify for a Kwong protective claim for this penalty and tax year but may qualify for other relief. Document the result and see the note for next steps.

Eligibility Question	YES	NO
1. The specific penalty or interest being claimed relates to a federal income tax filing or payment obligation with a due date that fell between January 20, 2020 and July 10, 2023 (the § 7508A(d) mandatory postponement window).	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<p>► <i>If NO: The obligation at issue falls outside the postponement window, and Kwong does not apply to this claim. Note: Tax year 2023 returns with a standard April 15, 2024 due date are not eligible. The client may qualify for other penalty relief — see Part III for alternatives.</i></p>		
2. The IRS assessed a penalty or underpayment interest against the client that is directly related to the obligation identified in Question 1.	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<p>► <i>If NO: There is no assessed amount to claim for this tax year and penalty type. No further action needed on a Kwong claim. If the client has a general compliance concern, consider whether other relief options apply.</i></p>		
3. The penalty or interest identified above has been paid by the client — not merely assessed and unpaid.	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Eligibility Question	YES	NO
<p>► <i>If NO: A refund claim under § 6511 requires a paid amount. A Kwong protective claim is not available for unpaid assessments. However, the client may be eligible for a penalty abatement request, which follows a different procedure and does not require prior payment. Consider whether abatement is appropriate before closing the file.</i></p>		
4. The payment identified above was made on or after July 10, 2020 , or within three years of the date this claim is being filed, whichever is later.	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<p>► <i>If NO: The payment was made before July 10, 2020, and may fall outside the § 6511 lookback window under both the standard rule and the extended Kwong deadline. Do not file a Kwong protective claim. Document the payment date and review whether any other refund avenue is available. Note: this situation will be rare — most COVID-era penalty payments will satisfy this requirement.</i></p>		
5. Today's date is on or before July 10, 2026 — the protective filing deadline based on the <i>Kwong</i> reasoning, measured as three years from the extended § 7508A(d) deadline of July 10, 2023.	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<p>► <i>If NO: The protective filing deadline has passed, and a Kwong claim is time-barred for this client. Do not file. Document the result. If a penalty remains unpaid, consider whether an abatement request on other grounds — such as first-time abatement or reasonable cause — is still available.</i></p>		

STOP — PART I RESULT: If all five answers are YES, the client meets the threshold eligibility requirements for a *Kwong* protective claim. Proceed to Part II for a complete analysis before filing. If any answer is NO, a *Kwong* protective claim is not appropriate for this penalty and tax year. Document the reason, inform the client, and evaluate whether alternative relief options apply.

PART II — TAX YEAR AND PENALTY/INTEREST IDENTIFICATION

A. Tax Year Postponement Window Reference

Tax Year	Standard Due Date	IRS-Issued Extension	In § 7508A(d) Window?	Prior IRS Relief
2019	April 15, 2020	July 15, 2020 (Notice 2020-17)	✓ YES	Notice 2020-17; Notice 2022-36*
2020	April 15, 2021	May 17, 2021 (Notice 2021-21)	✓ YES	Notice 2021-21; Notice 2022-36*
2021	April 18, 2022	None Issued	✓ YES	None
2022	April 18, 2023	None Issued	✓ YES — due date fell before May 11, 2023 end of declaration	None
2023	April 15, 2024	N/A	X NO — due date falls after July 10, 2023	N/A

* Notice 2022-36 provided automatic penalty relief for certain late-filed 2019 and 2020 returns. Verify whether this relief was already applied to the client's account before filing a Kwong claim for those years. If relief was already applied, there may be no remaining penalty to claim.

Note: The § 7508A(d) postponement window runs from January 20, 2020 through July 10, 2023. For all years shown above as ✓ YES, this window applies regardless of whether the IRS issued a formal extension notice for that year. The IRS-issued extensions shown above are separate administrative actions and may have already resolved some penalties for 2019 and 2020 filers.

B. Identify Each Penalty and Interest Amount at Issue

INSTRUCTIONS: List each separate penalty or interest charge at issue for this tax year. File a separate Form 843 for each tax year. If you are going to combine failure-to-file, failure-to-pay, and interest on a single Form 843, please consult the form instructions.

Penalty / Interest Type	IRC Section	Amount Assessed (\$)	Date Paid	Amount Paid (\$)
Failure-to-File Penalty	§ 6651(a)(1)			
Failure-to-Pay Penalty	§ 6651(a)(2)			
Underpayment (Est. Tax)	§ 6654			
Underpayment Interest	§ 6601			
Other (specify below)				

IRS Notice / CP Number(s) documenting the penalty or interest:

IRS Account Transcript obtained and reviewed:

PART III — PRIOR RELIEF AND DISQUALIFYING FACTORS

PURPOSE: Filing a Kwong claim for penalties already resolved, abated, or the subject of prior IRS action wastes administrative resources and may cause complications. Verify each item below before filing.

Prior Relief / Disqualifying Factor	YES	NO
1. Were any of the penalties at issue already abated under IRS Notice 2022-36 (automatic COVID relief for 2019/2020 late filers)?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ <i>If YES: Those specific penalties are already resolved. Remove from this claim. Verify on account transcript.</i>		
2. Has the client previously received First-Time Abatement (FTA) under IRM 20.1.1.3.6 for any of the same penalties?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Prior Relief / Disqualifying Factor	YES	NO
▶ If YES: Those penalties have already been abated. Do not include in this claim.		
3. Is there a currently open IRS examination, audit, or Appeals proceeding for the same tax year?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If YES: Do not file this claim without additional consideration. Filing may interact with the open proceeding.		
4. Is there an active Tax Court petition, refund suit, or other litigation involving the same tax year?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If YES: Stop. Do not file this claim without additional consideration. Filing a refund claim during active litigation may be procedurally improper.		
5. Has the IRS previously denied a refund claim for these same penalty amounts?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If YES: Determine whether the prior denial is now final. If the two-year suit period under §6532 has not expired, a refund suit may be appropriate.		
6. Are the penalties at issue covered by an existing Installment Agreement, OIC, or other IRS resolution agreement?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If YES: Filing this claim may have implications for the existing agreement. Do not file this claim without additional consideration.		
7. Has the client already filed a Form 843 protective claim for these same amounts for this tax year?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If YES: Do not file a duplicate. Track the pending claim and monitor for IRS action or disallowance notice.		

PRIOR RELIEF RESULT: If YES to items 3, 4, or 6: Stop and review further before any action is taken. If YES to items 1, 2, 5, or 7: Adjust the scope of the claim accordingly or determine no further action is needed.

PART IV — CLAIM VIABILITY AND COST-BENEFIT ASSESSMENT

NOTE: A protective claim preserves the client's rights but does not guarantee a refund. Given that the IRS has appealed Kwong and will likely deny or hold these claims, the cost of preparation and filing should be weighed against the potential recovery. This section guides that assessment.

A. Dollar Threshold Analysis

Assessment Question	YES	NO
Is the total potential recovery (penalties + interest at issue) greater than \$500?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
▶ If NO: The cost of preparation may exceed the potential recovery for most clients if fees are being charged for these services. Consider whether filing is in the client's best interest and document your analysis.		
Has the client been informed that the IRS will likely deny or hold this claim and that recovery may take years, if at all?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Assessment Question	YES	NO
▶ If NO: This disclosure must be made before filing. See Part VI — Client Disclosure.		

B. Total Potential Recovery

Item	Amount (\$)
Total failure-to-file penalties paid (§ 6651(a)(1))	\$
Total failure-to-pay penalties paid (§ 6651(a)(2))	\$
Total underpayment penalties paid (§ 6654)	\$
Total underpayment interest paid (§ 6601)	\$
Other (specify)	\$
TOTAL POTENTIAL RECOVERY	\$

PART V — FORM 843 COMPLETION CHECKLIST

INSTRUCTIONS: Confirm each item is complete before the Form 843 is submitted. A separate Form 843 must be filed for each tax year.

<input type="checkbox"/> Form 843 Field
<input type="checkbox"/> Top checkbox area: PENALTY: Check "Other (specify)" and write: "Abatement or refund of assessed penalties, interest, or additions to tax due to other reason allowed under law: IRC § 7508A(d); Kwong v. United States, 179 Fed. Cl. 382 (Nov. 25, 2025)."
<input type="checkbox"/> Taxpayer name, SSN, address: Complete with client's information exactly as it appears on the tax return for the year at issue.
<input type="checkbox"/> Line 1 — Tax Period: Enter the BEGINNING and ENDING dates of the specific tax year (e.g., 01/01/2021 – 12/31/2021). Prepare a SEPARATE Form 843 for each tax year.
<input type="checkbox"/> Line 2 — Amount: Enter the specific dollar amount of the penalty or interest paid that is the subject of this claim. Do not leave blank or write "TBD." Obtain from IRS account transcript or CP notice.
<input type="checkbox"/> Line 3 — Date(s) of Payment: Enter the actual date(s) the penalty or interest was paid. Obtain from IRS account transcript. This is required for the §6511 lookback analysis.
<input type="checkbox"/> Line 4 — Type of Tax: Check box "e — Income" for individual income tax (Form 1040) filers.

<input type="checkbox"/>	Line 5 — Type of Return: Check box "i — 1040" for individual filers. Check "j — 1120" for C-corp filers. Select the return type that corresponds to the tax year at issue.
<input type="checkbox"/>	Line 6 — IRC Section for Penalty: Enter the specific IRC section: § 6651(a)(1) for failure-to-file; § 6651(a)(2) for failure-to-pay; § 6654 for underpayment of estimated tax, etc. Do not leave blank.
<input type="checkbox"/>	Line 7 — Reason: Check box "c — Reasonable cause or other reason allowed under the law." The §7508A(d) mandatory postponement constitutes an "other reason allowed under the law."
<input type="checkbox"/>	Line 8 — Explanation: Use the sample explanation provided with this package. Confirm it: (1) accurately describes Kwong's holding (§6532 deadline extension); (2) uses "may have been erroneously assessed" — not "improperly assessed"; (3) cites both §7508A(d) AND §7508A(f) (P.L. 119-64); (4) identifies the claim as protective pending Federal Circuit appeal.
<input type="checkbox"/>	Signature and Date: Client must sign under penalties of perjury. If married filing jointly, both spouses must sign if the claim relates to a joint return.
<input type="checkbox"/>	Paid Preparer section: Complete if the claim is prepared by a paid tax professional. Include PTIN.
<input type="checkbox"/>	Mailing: Send via certified mail, return receipt requested. Retain the tracking number and delivery confirmation in the client file.

PART VI — REQUIRED CLIENT DISCLOSURES

REQUIRED: Each of the following disclosures must be made to the client before filing. Check each box to confirm the disclosure was made, and the client understood. This documentation protects the ERO and their firm.

<input type="checkbox"/>	Required Client Disclosure
<input type="checkbox"/>	This claim is based on a single trial-level court decision (Kwong v. United States) that is currently on appeal to the Federal Circuit. The law is unsettled.
<input type="checkbox"/>	The IRS has not acquiesced in the Kwong decision and has stated it will defend its regulatory position. The IRS will likely deny or hold this claim in suspense.
<input type="checkbox"/>	Filing this protective claim preserves the client's procedural rights under the statute of limitations. It does not guarantee a refund or abatement.
<input type="checkbox"/>	If the IRS issues a formal notice of disallowance, the client will have two years from the date of that notice to file suit in federal court under IRC § 6532(a). Further action and costs would be required.
<input type="checkbox"/>	The Federal Circuit may uphold, narrow, or reverse the Kwong holding entirely. If the government prevails on appeal, there will be no recovery.

<input type="checkbox"/>	Even if the Kwong holding is affirmed, additional administrative or court proceedings may be required before any refund is issued.
<input type="checkbox"/>	The client understands that this is a protective filing only and authorizes the ERO to submit the claim on the terms described above.

PART VII — ESCALATED FOR ADDITIONAL CONSIDERATION

!	STOP and consider before filing if any of the following apply:
<input type="checkbox"/>	Open IRS examination, audit, or Appeals proceeding exists for the same tax year (Part III, Item 3)
<input type="checkbox"/>	Active Tax Court petition or refund suit pending for the same tax year (Part III, Item 4)
<input type="checkbox"/>	Existing installment agreement or offer in compromise covers the tax year at issue (Part III, Item 6)
<input type="checkbox"/>	The prior refund claim denial may already be final, and the § 6532 two-year suit period is approaching expiration
<input type="checkbox"/>	The claim involves more than \$25,000 in potential recovery
<input type="checkbox"/>	The client is a business entity (C-corp, S-corp, partnership) — additional analysis required
<input type="checkbox"/>	The penalty involves payroll taxes, trust fund recovery, or other non-income tax obligations
<input type="checkbox"/>	Any facts, circumstances, or legal issues are present that make this claim unclear or complex

FINAL DETERMINATION

INSTRUCTIONS: After completing all parts, check ONE box below to document your determination. Attach this completed checklist to the client file regardless of outcome.

<input type="checkbox"/>	<p>ELIGIBLE — PROCEED TO FILE PROTECTIVE CLAIM</p> <p><i>All eligibility criteria are met. No disqualifying factors present. The client has been fully disclosed. Proceed with Form 843 filing.</i></p>
<input type="checkbox"/>	<p>INELIGIBLE — DO NOT FILE</p> <p>Reason: _____</p> <p><i>Document the reason in the client file and communicate the result to the client.</i></p>
<input type="checkbox"/>	<p>UNCERTAIN — ESCALATE FOR ADDITIONAL CONSIDERATION</p> <p>Issue requiring additional review: _____</p> <p><i>Do not file until you have reviewed the subject issue further and approved the protective claim.</i></p>

ERO / Preparer Signature:

Printed Name: _____

Date:

CONFIDENTIAL — For Internal Use Only. Retain in client file. Do not distribute to the client or third parties without supervisor approval. | Rev. June 2026