

Title 26: Internal Revenue
PART 301—PROCEDURE AND ADMINISTRATION
Judicial Proceedings

§301.7508A-1 Postponement of certain tax-related deadlines by reasons of a federally declared disaster or terroristic or military action.

(a) *Scope.* This section provides rules by which the Internal Revenue Service (IRS) may postpone deadlines for performing certain acts with respect to taxes other than taxes not administered by the IRS such as firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E).

(b) *Postponed deadlines—(1) In general.* In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster (as defined in section 1033(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a postponement period (as defined in paragraph (d)(1) of this section) of up to one year that may be disregarded in determining under the internal revenue laws, in respect of any tax liability of the affected taxpayer (as defined in paragraph (d)(1) of this section)—

- (i) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed;
- (ii) The amount of interest, penalty, additional amount, or addition to the tax; and
- (iii) The amount of credit or refund.

(2) *Effect of postponement period.* When an affected taxpayer is required to perform a tax-related act by a due date that falls within the postponement period, the affected taxpayer is eligible for postponement of time to perform the act until the last day of the period. The affected taxpayer is eligible for relief from interest, penalties, additional amounts, or additions to tax during the postponement period.

(3) *Interaction between postponement period and extensions of time to file or pay—(i) In general.* The postponement period under section 7508A runs concurrently with extensions of time to file and pay, if any, under other sections of the Internal Revenue Code.

(ii) *Original due date prior to, but extended due date within, the postponement period.* When the original due date precedes the first day of the postponement period and the extended due date falls within the postponement period, the following rules apply. If an affected taxpayer received an extension of time to file, filing will be timely on or before the last day of the postponement period, and the taxpayer is eligible for relief from penalties or additions to tax related to the failure to file during the postponement period. Similarly, if an affected taxpayer received an extension of time to pay, payment will be timely on or before the last day of the postponement period, and the taxpayer is eligible for relief from interest, penalties, additions to tax, or additional amounts related to the failure to pay during the postponement period.

(4) *Due date not extended.* The postponement of the deadline of a tax-related act does not extend the due date for the act, but merely allows the IRS to disregard a time period of up to one year for performance of the act. To the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return.

(5) *Additional relief.* The rules of this paragraph (b) demonstrate how the IRS generally implements section 7508A. The IRS may determine, however, that additional relief to taxpayers is appropriate and may provide additional relief to the extent allowed under section 7508A. To the extent that the IRS grants additional relief, the IRS will provide specific guidance on the scope of relief in the manner provided in paragraph (e) of this section.

(c) *Acts for which a period may be disregarded—(1) Acts performed by taxpayers.* Paragraph (b) of this section applies to the following acts performed by affected taxpayers (as defined in paragraph (d)(1) of this section)—

(i) Filing any return of income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E)), or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(ii) Paying any income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E)), employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby), any installment of those taxes (including payment under section 6159 relating to installment agreements), or of any other liability to the United States in respect thereof, but not including deposits of taxes pursuant to section 6302 and the regulations under section 6302;

(iii) Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2); making distributions under section 408(d)(4); recharacterizing contributions under section 408A(d)(6); or making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3);

- (iv) Filing a petition with the Tax Court, or for review of a decision rendered by the Tax Court;

(v) Filing a claim for credit or refund of any tax;

(vi) Bringing suit upon a claim for credit or refund of any tax; and

(vii) Any other act specified in a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(2) *Acts performed by the government.* Paragraph (b) of this section applies to the following acts performed by the government—

(i) Assessing any tax;

(ii) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(iii) Collecting by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(iv) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax;

(v) Allowing a credit or refund of any tax; and

(vi) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(d) *Definitions*—(1) *Affected taxpayer* means—

(i) Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a covered disaster area;

(ii) Any business entity or sole proprietor whose principal place of business is located in a covered disaster area;

(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;

(iv) Any individual whose principal residence (for purposes of section 1033(h)(4)), or any business entity or sole proprietor whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a covered disaster area;

(v) Any estate or trust that has tax records necessary to meet a deadline for an act specified in paragraph (c) of this section and that are maintained in a covered disaster area;

(vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or

(vii) Any individual, business entity, or sole proprietorship not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are located in the covered disaster area;

(viii) Any individual visiting the covered disaster area who was killed or injured as a result of the disaster; or

(ix) Any other person determined by the IRS to be affected by a federally declared disaster (within the meaning of section 1033(h)(3)).

(2) *Covered disaster area* means an area of a federally declared disaster (within the meaning of section 1033(h)(3)) to which the IRS has determined paragraph (b) of this section applies.

(3) *Postponement period* means the period of time (up to one year) that the IRS postpones deadlines for performing tax-related acts under section 7508A.

(e) *Notice of postponement of certain acts.* If a tax-related deadline is postponed under section 7508A and this section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance (see §601.601(d)(2) of this chapter) describing the acts postponed, the postponement period, and the location of the covered disaster area. Guidance under this paragraph (e) will be published as soon as practicable after the occurrence of a terroristic or military action or declaration of a federally declared disaster.

(f) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) Corporation X, a calendar year taxpayer, has its principal place of business in County M in State W. Pursuant to a timely filed request for extension of time to file, Corporation X's 2008 Form 1120, "U.S. Corporation Income Tax Return," is due on September 15, 2009. Also due on September 15, 2009, is Corporation X's third quarter estimated tax payment for 2009. Corporation X's 2009 third quarter Form 720, "Quarterly Federal Excise Tax Return," and third quarter Form 941, "Employer's Quarterly Federal Tax Return," are due on October 31, 2009. In addition, Corporation X has an employment tax deposit due on September 15, 2009.

(ii) On September 1, 2009, a hurricane strikes County M in State W. On September 7, 2009, certain counties in State W (including County M) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford

Act. Also on September 7, 2009, the IRS determines that County M in State W is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after September 1, 2009, and on or before November 30, 2009, has been postponed to November 30, 2009, pursuant to section 7508A.

(iii) Because Corporation X's principal place of business is in County M, Corporation X is an affected taxpayer. Accordingly, Corporation X's 2008 Form 1120 will be timely if filed on or before November 30, 2009. Corporation X's 2009 third quarter estimated tax payment will be timely if made on or before November 30, 2009. In addition, pursuant to paragraph (c) of this section, Corporation X's 2009 third quarter Form 720 and third quarter Form 941 will be timely if filed on or before November 30, 2009. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation X's employment tax deposit is due on September 15, 2009. In addition, Corporation X's deposits relating to the third quarter Form 720 are not postponed. Absent reasonable cause, Corporation X is subject to the failure to deposit penalty under section 6656 and accrual of interest.

Example 2. The facts are the same as in *Example 1*, except that because of the severity of the hurricane, the IRS determines that postponement of government acts is necessary. During 2009, Corporation X's 2005 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation X timely filed its 2005 Form 1120 on September 15, 2006. Without application of this section, the statute of limitation on assessment for the 2005 income tax year will expire on September 15, 2009. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to one year may be disregarded. Because September 15, 2009, falls within the period in which government acts are postponed, the statute of limitation on assessment for Corporation X's 2005 income tax will expire on November 30, 2009. Because Corporation X did not timely file an extension of time to pay, payment of its 2005 income tax was due on March 15, 2006. As such, Corporation X will be subject to the failure to pay penalty and related interest beginning on March 15, 2006. The due date for payment of Corporation X's 2005 income tax preceded the postponement period. Therefore, Corporation X is not entitled to the suspension of interest or penalties during the disaster period with respect to its 2005 income tax liability.

Example 3. The facts are the same as in *Example 2*, except that the examination of the 2005 taxable year was completed earlier in 2009, and on July 28, 2009, the IRS mailed a statutory notice of deficiency to Corporation X. Without application of this section, Corporation X has 90 days (or until October 26, 2009) to file a petition with the Tax Court. However, pursuant to paragraph (c) of this section, filing a petition with the Tax Court is one of the taxpayer acts for which a period of up to one year may be disregarded. Because Corporation X is an affected taxpayer, Corporation X's petition to the Tax Court will be timely if filed on or before November 30, 2009, the last day of the postponement period.

Example 4. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2008 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2009. H and W's principal residence is in County M in State Q.

(ii) On April 2, 2009, a severe ice storm strikes County M. On April 5, 2009, certain counties in State Q (including County M) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on April 5, 2009, the IRS determines that County M in State Q is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after April 2, 2009, and on or before June 2, 2009, has been postponed to June 2, 2009.

(iii) Because H and W's principal residence is in County M, H and W are affected taxpayers. April 15, 2009, the due date for the filing of H and W's 2008 Form 1040 and Schedule H, falls within the postponement period described in the IRS published guidance. Thus, H and W's return will be timely if filed on or before June 2, 2009. If H and W request an extension of time to file under section 6081 on or before June 2, 2009, the extension is deemed to have been filed by April 15, 2009. Thus, H and W's return will be timely if filed on or before October 15, 2009.

(iv) April 15, 2009, is also the due date for the payment due on the return. This date falls within the postponement period described in the IRS published guidance. Thus, the payment of tax due with the return will be timely if paid on or before June 2, 2009 the last day of the postponement period. If H and W fail to pay the tax due on the 2008 Form 1040 by June 2, 2009, and do not receive an extension of time to pay under section 6161, H and W will be subject to failure to pay penalties and accrual of interest beginning on June 3, 2009.

Example 5. (i) H and W, residents of County D in State G, intend to file an amended return to request a refund of 2008 taxes. H and W timely filed their 2008 income tax return on April 15, 2009. Under section 6511(a), H and W's amended 2008 tax return must be filed on or before April 16, 2012 (because April 15, 2012 falls on a Sunday, H and W's amended return was due to be filed on April 16, 2012).

(ii) On April 2, 2012, an earthquake strikes County D. On April 6, 2012, certain counties in State G (including County D) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on April 6, 2012, the IRS determines that County D in State G is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after April 2, 2012, and on or before October 2, 2012, has been postponed to October 2, 2012.

(iii) Under paragraph (c) of this section, filing a claim for refund of tax is one of the taxpayer acts for which the IRS may disregard a period of up to one year. The postponement period for this disaster begins on April 2, 2012, and ends on October 2, 2012. Accordingly, H and W's claim for refund for 2008 taxes will be timely if filed on or before October 2, 2012. Moreover, in applying the lookback period in section 6511(b)(2)(A), which limits the amount of the allowable refund, the period from October 2, 2012, back to April 2, 2012, is disregarded under paragraph (b)(1)(iii) of this section. Thus, if the claim is filed on or before October 2, 2012, amounts deemed paid on April 15, 2009, under section 6513(b), such as estimated tax and tax withheld from wages, will have been paid within the lookback period of section 6511(b)(2)(A).

Example 6. (i) A is an unmarried, calendar year taxpayer whose principal residence is located in County W in State Q. A intends to file a Form 1040 for the 2008 taxable year. The return is due on April 15, 2009. A timely files Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return." Due to A's timely filing of Form 4868, the extended filing deadline for A's 2008 tax return is October 15, 2009. Because A timely requested an extension of time to file, A will not be subject to the failure to file penalty under section 6651(a)(1), if A files the 2008 Form 1040 on or before October 15, 2009. However, A failed to pay the tax due on the return by April 15, 2009 and did not receive an extension of time to pay under section 6161. Absent reasonable cause, A is subject to the failure to pay penalty under section 6651(a)(2) and accrual of interest.

(ii) On September 30, 2009, a blizzard strikes County W. On October 5, 2009, certain counties in State Q (including County W) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on October 5, 2009, the IRS determines that County W in State Q is a covered disaster area and announces that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after September 30, 2009, and on or before December 2, 2009, has been postponed to December 2, 2009.

(iii) Because A's principal residence is in County W, A is an affected taxpayer. Because October 15, 2009, the extended due date to file A's 2008 Form 1040, falls within the postponement period described in the IRS's published guidance, A's return is timely if filed on or before December 2, 2009. However, the payment due date, April 15, 2009, preceded the postponement period. Thus, A will continue to be subject to failure to pay penalties and accrual of interest during the postponement period.

Example 7. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040 for the 2008 taxable year. The joint return is due on April 15, 2009. After credits for taxes withheld on wages and estimated tax payments, H and W owe tax for the 2008 taxable year. H and W's principal residence is in County J in State W.

(ii) On March 3, 2009, severe flooding strikes County J. On March 6, 2009, certain counties in State W (including County J) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on March 6, 2009, the IRS determines that County J in State W is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after March 3, 2009, and on or before June 1, 2009, has been postponed to June 1, 2009.

(iii) Because H and W's principal residence is in County J, H and W are affected taxpayers. April 15, 2009, the due date for filing the 2008 joint return, falls within the postponement period described in the IRS published guidance. Therefore, H and W's joint return without extension will be timely if filed on or before June 1, 2009. Similarly, H and W's 2008 income taxes will be timely paid if paid on or before June 1, 2009.

(iv) On April 30, 2009, H and W timely file Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return." H and W's extension will be deemed to have been filed on April 15, 2009. Thus, H and W's 2008 income tax return will be timely if filed on or before October 15, 2009.

(v) H and W did not request or receive an extension of time to pay. Therefore, the payment of tax due with the 2008 joint return will be timely if paid on or before June 1, 2009. If H and W fail to pay the tax due on the 2008 joint return by June 1, 2009, H and W will be subject to failure to pay penalties and accrual of interest beginning on June 2, 2009.

Example 8. (i) H and W, individual calendar year taxpayers, entered into an installment agreement with respect to their 2006 tax liabilities. H and W's installment agreement required H and W to make regularly scheduled installment payments on the 15th day of the month for the next 60 months. H and W's principal residence is in County K in State X.

(ii) On May 1, 2009, severe flooding strikes County K. On May 5, 2009, certain counties in State X including County K) are determined by the Federal government to be disaster areas within the meaning of section 1033(h)(3), and are eligible for assistance under the Stafford Act. Also on May 5, 2009, the IRS determines that County K in State X is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after May 1, 2009 and on or before July 1, 2009, has been postponed to July 1, 2009.

(iii) Because H and W's principal residence is in County K, H and W are affected taxpayers. Pursuant to the IRS's grant of relief under section 7508A, H and W's installment agreement payments that become due during the postponement period are suspended until after the postponement period has ended. H and W will be required to resume payments no later than August 15, 2009. Skipped payments will be tacked on at the end of the installment payment period. Because the installment agreement pertains to prior year tax liabilities, interest and penalties will continue to accrue. H and W may, however, be entitled to abatement of the failure to pay penalties incurred during the postponement period upon establishing reasonable cause.

(g) *Effective/applicability date.* This section applies to disasters declared after January 15, 2009.

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