

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-101492-98]

RIN 1545-AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

772SUMMARY: This document contains proposed regulations relating to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect taxpayers serving in a combat zone and taxpayers affected by a Presidentially declared disaster.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 30, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-101492-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-101492-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting

the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622-4940; concerning the hearing and submissions of written comments, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997.

In general, section 7508 provides that the time individuals serve in a "combat zone" plus 180 days will be disregarded in determining whether acts listed in section 7508(a)(1), such as filing returns, paying taxes, filing certain petitions with the

Tax Court, filing a claim for credit or refund, bringing suit, and assessing tax, are performed within the time prescribed. Under section 7508(a)(1)(K), the Secretary has the authority to provide by regulation other acts to which section 7508 will apply.

Section 7508A provides that, in the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster, the Secretary may postpone certain tax-related deadlines for up to 90 days. The deadlines that may be postponed are determined by cross-reference to section 7508(a)(1). Pursuant to section 7508A(b), the provision does not apply for purposes of determining interest on any overpayment or underpayment (if the underpayment arose prior to the disaster). See also H.R. Rep. No. 148, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 397 (1997).

#### **Explanation of Provisions**

Under section 7508, the proposed regulations provide that, in addition to the acts described in section 7508(a)(1), the IRS may postpone other acts specified in revenue rulings, revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

Under section 7508A, the proposed regulations provide that, for any tax, penalty, additional amount, or addition to the tax of an affected taxpayer in a Presidentially declared disaster area, the IRS may disregard up to 90 days in determining whether certain tax-related deadlines described in section 7508(a)(1) were satisfied and the amount of any credit or refund. The proposed regulations apply to taxpayer deadlines, such as the time for filing returns and paying taxes relating to most income taxes (including domestic service employment taxes), estate taxes, and gift taxes; filing certain court documents, including petitions filed in United States Tax Court for redetermination of a deficiency; and filing claims for refund. In addition, under the authority in section 7508(a)(1)(K), the proposed regulations provide that for purposes of section 7508A, the IRS may disregard up to 90 days in determining whether the deadlines for filing returns and paying taxes relating to certain excise taxes and employment taxes have been met. Although the proposed regulations do not apply to deadlines for depositing federal taxes pursuant to section 6302 and the underlying regulations, it is anticipated that the failure to deposit penalty under section 6656 will be waived in appropriate circumstances, and thus section 7508A relief will not be necessary.

The proposed regulations also provide for the postponement of certain government deadlines, such as the time for making assessments, taking collection action, and bringing suit. However, the IRS and Treasury Department anticipate that the authority to postpone government deadlines will only be used in limited circumstances when it is determined that such a postponement is necessary and appropriate.

The proposed regulations provide that an affected taxpayer is 1) any individual whose principal residence is located in a covered disaster area; 2) any business whose principal place of business is located in a covered disaster area; 3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area; 4) any individual whose principal residence or any business whose principal place of business is located outside the disaster area, but whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; 5) any estate or trust whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; 6) any individual who files a joint return with an affected taxpayer; or 7) any other person who is determined by the IRS to be affected by a Presidentially

declared disaster. A covered disaster area means the location of a Presidentially declared disaster to which the IRS determines section 7508A applies.

It is anticipated that the IRS's authority to grant extensions of time to file tax returns under section 6081 and to pay tax with respect to such returns under section 6161 will provide taxpayers with the necessary relief in the case of many Presidentially declared disasters. However, if the IRS determines that section 7508A applies, it will publish guidance to inform taxpayers of the counties included in the covered disaster area, the taxpayer and government deadlines to which section 7508A applies, and the period to be disregarded (up to 90 days). Guidance will be published as soon as practicable after the declaration of a Presidentially declared disaster.

Section 6404(h) provides that in the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such returns under section 6161, interest will be abated during the extension period. The proposed regulations clarify that if, in addition to an extension under sections 6081 and 6161, there is a postponement of tax-related deadlines under section 7508A, interest will be abated under section 6404(h) for the period of

time disregarded under section 7508A in addition to the period of time covered by the extensions of time to file and pay. The abatement of interest only applies in the case of underpayments of income tax that arise during the extension period.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and 8 copies) that are submitted timely to the IRS. The IRS and Treasury Department

specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Beverly A. Baughman, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.7508-1 also issued under 26 U.S.C.  
7508(a)(1)(K).

Section 301.7508A-1 also issued under 26 U.S.C.  
7508(a)(1)(K) and 7508A(a). \* \* \*

Par. 2. Section 301.7508-1 is added to read as follows:

§301.7508-1 Time for performing certain acts postponed by reason of service in a combat zone.

(a) General rule. The period of time that may be disregarded for performing certain acts pursuant to section 7508 applies to acts described in section 7508(a)(1) and to other acts 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).

(b) Effective date. This section applies to any period for performing an act that has not expired before December 30, 1999.

Par. 3. Section 301.7508A-1 is added to read as follows:

§301.7508A-1 Postponement of certain tax-related deadlines by reason of Presidentially declared disaster.

(a) Scope. This section prescribes 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 taxes imposed for firearms

(chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E).

(b) Postponed deadlines. For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (defined in paragraph (d)(1) of this section), the IRS may disregard a period of up to 90 days in determining, under the internal revenue laws--

(1) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed; and

(2) The amount of any credit or refund.

(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 taxpayers--

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

(ii) Payment of any income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco

(subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof (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 thereunder;

(iii) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(iv) Allowance of a credit or refund of any tax;

(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, 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) Assessment of 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) Collection 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; and

(v) 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 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 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 location, such as a practitioner's office, in a covered disaster area;

(v) Any estate or trust whose tax records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner's office, 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 other person determined by the IRS to be affected by a Presidentially declared disaster (within the meaning of section 1033(h)(3)).

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

(e) Notice of postponement of certain acts. If any tax-related deadline is postponed pursuant to 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 number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance under this

paragraph (e) will be published as soon as practicable after the declaration of a Presidentially declared disaster.

(f) Abatement of interest under section 6404(h). In the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such return under section 6161, and, in addition, a postponement of tax-related deadlines under section 7508A, interest on an underpayment of income tax that arises during such period will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extension of time to file and the extension of time to pay.

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

Example 1. (i) Corporation M, a calendar year taxpayer, has its principal place of business in County A in State X. Pursuant to a timely filed request for extension of time to file, Corporation M's 1999 Form 1120, "U.S. Corporation Income Tax Return," is due on September 15, 2000. Also due on September 15, 2000, is Corporation M's third quarter estimated tax payment for 2000. Corporation M's 2000 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, 2000. In addition, Corporation M has an employment tax deposit due on September 15, 2000.

(ii) On September 1, 2000, a hurricane strikes County A. On September 6, 2000, the President declares that County A is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County A in State X is a covered disaster area and publishes guidance informing taxpayers that for acts

described in paragraph (c) of this section that are required to be performed within the period beginning on September 1, 2000, and ending on November 6, 2000, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because Corporation M's principal place of business is in County A, Corporation M is an affected taxpayer. Accordingly, Corporation M's 1999 Form 1120 will be filed timely if filed on or before December 14, 2000. Corporation M's 2000 third quarter estimated tax payment will be made timely if paid on or before December 14, 2000. In addition, because excise and employment tax returns are described in paragraph (c) of this section, Corporation M's 2000 third quarter Form 720 and third quarter Form 941 will be filed timely if filed on or before January 29, 2001. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation M's employment tax deposit is due on September 15, 2000.

Example 2. The facts are the same as in Example 1, except that during 2000, Corporation M's 1996 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation M timely filed its 1996 Form 1120 on September 15, 1997. Without application of this section, the statute of limitations on assessment for 1996 income tax will expire on September 15, 2000. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to 90 days may be disregarded. The IRS determines that an extension of the statute of limitations is necessary and appropriate under these circumstances. Because the September 15, 2000, expiration date of the statute of limitations on assessment falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on September 16, 2000, and ends on December 14, 2000. Accordingly, the statute of limitations on assessment for Corporation M's 1996 income tax will expire on December 14, 2000.

Example 3. The facts are the same as in Example 2, except that the examination of the 1996 taxable year was completed earlier in 2000, and on July 28, 2000, the IRS mailed a statutory notice of deficiency to Corporation M. Without application of this section, Corporation M has 90 days (or until October 26, 2000) 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 up to 90 days may be

disregarded. Because Corporation M is an affected taxpayer, Corporation M's petition to the Tax Court will be filed timely if filed on or before January 24, 2001.

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 2001 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2002. H and W fully and timely paid all taxes for the 2001 taxable year, including domestic service employment taxes, through withholding and estimated tax payments. H and W's principal residence is in County B in State Y.

(ii) On April 2, 2002, a severe ice storm strikes County B. On April 5, 2002, the President declares that County B is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County B in State Y is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 2, 2002, and ending on April 19, 2002, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because H and W's principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H and W's 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on April 16, 2002, and ends on July 14, 2002, a Sunday. Pursuant to section 7503, if the last day for performing an act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Accordingly, H and W's 2001 Form 1040 will be filed timely if filed on or before July 15, 2002. In addition, the Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. The facts are the same as in Example 4, except H and W want to file an amended return to request a refund of 1998 taxes. H and W timely filed their 1998 income tax return on April 15, 1999. Without application of this section, H and W's amended 1998 tax return must be filed on or before April 15, 2002. However, pursuant to paragraph (c) of this section, filing a claim for refund of a tax is one of the taxpayer acts for which

up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b) of this section beginning on April 16, 2002, and ending on July 14, 2002. Accordingly, H and W's claim for refund for 1998 taxes will be filed timely if filed, as in Example 4, on or before July 15, 2002.

Example 6. (i) L is an unmarried, calendar year taxpayer whose principal residence is located in County R in State T. L does not timely file a 2001 Form 1040, "U.S. Individual Income Tax Return," which is due on April 15, 2002, and does not timely pay tax owed on that return. Absent reasonable cause, L is subject to the failure to file and failure to pay penalties under section 6651 beginning on April 16, 2002.

(ii) On May 10, 2002, a tornado strikes County R. On May 14, 2002, the President declares that County R is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County R in State T is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on May 10, 2002, and ending on June 27, 2002, 90 days will be disregarded in determining whether the acts are timely.

(iii) On May 31, 2002, L files a 2001 Form 1040, "U.S. Individual Income Tax Return," and pays the tax owed for 2001.

(iv) Because L's principal residence is in County R, L is an affected taxpayer. For purposes of penalties under section 6651, 90 days are disregarded under paragraph (b) of this section beginning on May 10, 2002. Because L files the return on May 31, 2002, the penalties under section 6651 will run from April 16, 2002, until May 10, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through May 31, 2002.

Example 7. The facts are the same as in Example 6, except L does not file the 2001 Form 1040 until November 25, 2002. Ninety days are disregarded under paragraph (b) of this section beginning on May 10, 2002, and ending on August 8, 2002. Therefore, the section 6651 penalties will run from April 16, 2002, until May 10, 2002, and from August 9, 2002, until November 25, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through November 25, 2002.

Example 8. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year. The joint return is due on April 15, 2002. After credits for withholding under section 31 and estimated tax payments, H and W owe tax for the 2001 taxable year. H and W's principal residence is in County C in State Z.

(ii) On March 1, 2002, severe flooding strikes County C. On March 5, 2002, the President declares that County C is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County C in State Z is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on March 1, 2002, and ending on April 25, 2002, 90 days will be disregarded in determining whether the acts are performed timely. The guidance also grants affected taxpayers an additional 6 month extension of time to file returns under section 6081 and an additional 6 month extension of time to pay under section 6161.

(iii) Because H and W's principal residence is in County C, H and W are affected taxpayers. Pursuant to the published guidance, H and W have until January 13, 2003, to file their return and pay the tax. This date is computed as follows: Under sections 6081 and 6161, H and W will have an additional 6 months, until October 15, 2002, to file and pay the tax. Further, under paragraph (f) of this section, 90 days are disregarded in determining the period of the extension. Therefore, H and W's return and payment of tax will be timely if filed and paid on or before January 13, 2003. In addition, under section 6404(h), underpayment interest under section 6601 is abated for the entire period, from April 16, 2002, until January 13, 2003.

(h) Effective date. This section applies to disasters declared after December 30, 1999.

Robert E. Wenzel  
Deputy Commissioner of Internal Revenue