

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8911]

RIN 1545-AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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

DATES: Effective Date: These regulations are effective December 30, 1999.

Applicability Date: For dates of applicability, see §§301.7508-1(b) and 301.7508A-1(h).

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains 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), effective for any period for performing an act that has not expired before August 5, 1997.

A notice of proposed rulemaking (REG-101492-98) was published in the **Federal Register** (64 FR 73444) on December 30, 1999. No public hearing was requested or held. One comment letter was received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Summary of Comments

1. IRA and Pension Contribution Deadlines

Section 301.7508A-1(c)(1) of the proposed regulations lists various tax-related deadlines that may be postponed. The commentator recommends that deadlines for contributions to an individual retirement account (IRA) or a pension plan be added to the list. The final regulations adopt this recommendation and also add the deadline for rollover contributions.

2. Notification of IRS When Taxpayer Moves Out of Disaster Area

The commentator suggests that the IRS develop a simple procedure for taxpayers to notify the IRS when they move out of a Presidentially declared disaster area. The commentator believes that the notification would ensure that relief under section 7508A will automatically apply to a taxpayer who has moved out of a Presidentially declared disaster area. Such taxpayers could also be advised of any further relevant filing guidance regarding the disaster.

The final regulations do not adopt this suggestion because it is not necessary for taxpayers moving out of a disaster area to notify the IRS to obtain relief under section 7508A. When a Presidentially declared disaster occurs, the IRS makes a decision whether to grant relief to taxpayers affected by the disaster. If a decision is made to grant relief, the IRS identifies most affected taxpayers located in the disaster area and places a marker on the affected tax accounts. A subsequent change of address will not remove the marker from the tax account. Thus, an affected taxpayer who relocates outside a disaster area will still automatically receive disaster relief.

Because the IRS may not be able to identify all taxpayers potentially affected by a Presidentially declared disaster, some taxpayers may have to identify themselves to the IRS to receive relief. To ensure that they receive the relief for which they are eligible, the IRS typically issues public guidance, such as a

news release, that describes how to claim relief. The guidance instructs taxpayers how to note on their tax return that they are affected taxpayers, and what, if any, additional information should be attached. When the IRS processes these tax returns, it manually places the disaster relief marker on the tax account. Subsequent changes of address will not affect the grant of relief.

3. Definition of Affected Taxpayer

The regulations list seven types of affected taxpayers, including "any business whose principal place of business is located in a covered disaster area." The commentator recommends that this definition be expanded to include all owners of a business.

The final regulations do not adopt this recommendation. The IRS and Treasury Department believe that the definition of affected taxpayer in the proposed regulations is sufficiently broad to cover all taxpayers within the intended scope of section 7508A. Although the final regulations do not provide a specific rule for business owners (other than sole proprietors), the IRS may nonetheless make a determination based on the facts and circumstances in a particular case that a business owner is an affected taxpayer under either §301.7508A-1(d)(1)(iv), which applies to an individual whose principal residence is not located in a disaster area, but whose records necessary to meet the deadline for a specified act are maintained in a covered disaster

area, or under §301.7508A-1(d)(1)(vii), which applies to any other person determined by the IRS to be affected by a Presidentially declared disaster. For example, in the case of a partnership, it is expected that partners whose ability to meet a deadline is significantly affected by a Presidentially declared disaster will be granted relief.

4. Deadline for Tax Deposits

The commentator also recommends that the deadline for tax deposits under section 6302 be added to the list. The commentator states that no distinction should be drawn between tax payments and tax deposits and that allowing a postponement of deposits would be less cumbersome than waiving the section 6656 deposit penalties for reasonable cause. To the contrary, due to the frequency with which tax deposits are due, the IRS believes it would be more administratively cumbersome to defer those deadlines. However, in cases where taxpayers are unable to make timely tax deposits under section 6302 because of a Presidentially declared disaster, the IRS will consider a reasonable cause waiver of the section 6656 failure to deposit penalty on a case by case basis. The IRS believes such a system is more administrable. Thus, this comment has not been adopted by the final regulations.

Explanation of Other Revisions

Section 301.7508A-1(c)(1) of the final regulations expands the acts for which disaster relief is available to include: the filing of generation-skipping transfer tax returns; the payment of generation-skipping transfer tax; and the filing of any petition with the Tax Court.

Sections 301.7508A-1(d)(1)(ii) and (iv) of the final regulations have been revised to clarify that affected taxpayer includes any business entity or sole proprietor whose principal place of business is located in a covered disaster area.

Example 5 of the final regulations clarifies the application of section 7508A to the lookback period in section 6511(b)(2)(A). This period limits the amount that may be refunded to the taxpayer when a timely claim is filed under section 6511(a). In Example 5, H and W timely file their 2001 income tax return on April 15, 2002. Example 5 states that an amended return for 2001 will be timely if it is filed on or before July 14, 2005. As clarified by the final regulations, Example 5 further states that the section 6511(b)(2)(A) lookback period runs from July 14, 2005, back to April 15, 2002. Thus, the taxpayers are allowed a refund of estimated tax and tax withheld from wages for 2001, deemed paid on April 15, 2002, under section 6513(b).

The final regulations also clarify Examples 6 and 7. Under §301.7508A-1(f) of the final regulations, if there is an extension of time to file income tax returns under section 6081 and to pay income tax with respect to such returns under section

6161, and a postponement of tax-related deadlines under section 7508A, interest on an underpayment that arises during such period is abated under section 6404(h) for the period of time disregarded under section 7508A. This is illustrated by Example 8. By contrast, in Examples 6 and 7, extensions were not granted under sections 6081 and 6161 and interest was not abated under section 6404(h). Therefore, in Examples 6 and 7, no interest abatement would be permitted regardless of whether the underpayment arose before or during the extension period. Therefore, Examples 6 and 7 are amended by removing the statement that interest is not abated "because the underpayment arose prior to the extension period" and clarifying that because no extensions under sections 6081 and 6161 were granted, interest was not abated under section 6404(h).

Special Analyses

It has been determined that these final regulations are 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, the notice of proposed rulemaking

preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Bridget E. Finkenaur, Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). 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.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is 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 under 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 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. For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (as 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 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 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 under section 7508A and this section, the IRS will publish 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) 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 to pay income tax with respect to such returns 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 a disaster 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. In addition, Corporation M's deposits relating to the third quarter Form 720 are due without extension.

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's 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 a disaster 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's and W's principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H's and W's 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS 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's and W's 2001 Form 1040 and Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. (i) H and W, residents of County C in State Z, want to file an amended return to request a refund of 2001 taxes. H and W timely filed their 2001 income tax return on April 15, 2002. Without application of section 7508A, under section 6511(a), H's and W's amended 2001 tax return must be filed on or before April 15, 2005.

(ii) On April 1, 2005, an earthquake strikes County C. On April 5, 2005, the President declares a disaster 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 April 1, 2005, and ending on April 19, 2005, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Under paragraph (c) of this section, filing a claim for refund of tax is one of the taxpayer acts for which up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b)(1) of this section beginning on April 16, 2005, and ending on July 14, 2005. Accordingly, H's and W's claim for refund for 2001 taxes will be timely if filed on or before July 14, 2005. Moreover, in applying the lookback period in section 6511(b)(2)(A), which limits the amount of the allowable refund, the period from July 14, 2005, back to April 16, 2005, is disregarded under paragraph (b)(2) of this section. Thus, if the

claim is filed on or before July 14, 2005, amounts deemed paid on April 15, 2002, 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) 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 a disaster 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. Because there is no extension of time to file returns under section 6081 and no extension of time to pay under section 6161, interest is not abated under section 6404(h), and L is liable for the 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. Because there is no extension of time to file returns under section 6081 and no extension of time to pay under section 6161, interest is not abated under section 6404(h), and L will remain 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's and W's principal residence is in County D in State Q.

(ii) On March 1, 2002, severe flooding strikes County D. On March 5, 2002, the President declares a disaster within the meaning of section 1033(h)(3). The IRS determines that County D in State Q 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's and W's principal residence is in County D, 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's 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

Approved: November 30, 2000

Jonathan Talisman
Acting Assistant Secretary of the Treasury