

Office of Chief Counsel
Internal Revenue Service
Memorandum

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(Procedure & Administration)

subject: Suspension of Interest for Payroll Taxes of BMF Taxpayers in a Combat Zone

This Chief Counsel Advice responds to your email request for assistance dated September 23, 2005. This advice may not be used or cited as precedent.

LEGEND

Taxpayer
Individual
Tax Quarter 1
Tax Quarter 2

ISSUES

1. Whether interest on delinquent payroll taxes of a partnership whose principal partner is an individual serving in a combat zone is suspended under I.R.C. § 7508 for the period the partner serves in a combat zone and for the next 180 days thereafter.
2. Whether section 7508, as amended by the Katrina Emergency Tax Relief Act of 2005 (KETRA), applies retroactively to entitle a partnership whose partner served in a combat zone a suspension of interest on delinquent payroll taxes.

CONCLUSIONS

1. Interest on delinquent payroll taxes of a partnership whose principal partner served in a combat zone is not suspended for the period the partner serves in a combat zone and for the next 180 days thereafter because (1) pre-KETRA section 7508 did not provide a postponement for, or suspend interest on, payroll taxes and (2) a partnership is not an individual serving in, or serving in support of, a combat zone who is entitled to relief under section 7508.
2. The amendments made to section 7508 by KETRA do not apply retroactively. Even if section 7508, as amended by KETRA, applied retroactively, the statute does not suspend payment of, and interest on, delinquent payroll taxes of a partnership because a partnership is not an individual.

FACTS

Taxpayer is a partnership whose principal partner is Individual. Individual requested abatement of interest on Taxpayer's payroll tax liabilities imposed under subtitle C for Tax Quarter 1 and Tax Quarter 2 that were not timely paid because Individual was serving in a combat zone at the time the liabilities were due. The time period for filing and paying Taxpayer's payroll tax liabilities occurred before August 25, 2005, the effective date of the KETRA amendments to section 7508.

LAW AND ANALYSIS

1. Relief under Pre-KETRA Section 7508

Prior to the enactment of KETRA, section 7508(a) provided that in the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated as a "combat zone", or when deployed outside the United States while participating in an operation designated as a "contingency operation," or hospitalized as a result of injury received while serving in such an area or operation during such time, the period of service in such area or operation, plus the period of continuous qualified hospitalization attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual –

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or

any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof; . . .

Payroll tax liabilities under subtitle C generally include Old-age, Survivor's, and Disability Insurance, Medicare, unemployment tax, and income tax withholding. Pre-amendment section 7508 specifically excluded payment of withholding taxes under subtitle C from postponement while an individual is serving in, or serving in support of, a combat zone. It follows that the other employment taxes under subtitle C were also excluded from section 7508. See, e.g., Notice 2003-21, 2003-17 C.B. 817, A-30 ("the deadline extensions do not apply to other tax and information returns, such as those for corporate income taxes, employment taxes, or excise taxes). Thus, as the time to pay payroll tax liabilities was not postponed under pre-KETRA section 7508, interest on those liabilities is not suspended.

As explained below, even if the amendment under KETRA applies retroactively to permit the suspension of interest on payroll tax liabilities, there could be no suspension of interest on Taxpayer's payroll tax liabilities because Taxpayer is a partnership and partnerships are not individuals who may serve in, or serve in support of, a combat zone.

2. Relief under Section 7508 as Amended by KETRA.

The Katrina Emergency Tax Relief of 2005 amends subparagraphs (A) and (B) of section 7508(a)(1) to permit the Service to suspend the performance of specific acts by an individual serving in or serving in support of the Armed Forces in an area designated as a combat zone or contingency operation including:

(A) Filing any return of income, estate, gift, employment, or excise tax;

(B) Payment of any income, estate, gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;.

P.L. 109-73, Title IV, § 403(a), 119 Stat. 2027. This amendment applies to any period for performing an act which has not expired before August 25, 2005. P.L. 109-73, Title IV, § 403(c). The periods for filing a return and paying the Taxpayer's payroll tax liabilities expired before this date. Thus, the time for performing these acts is not postponed and interest is not suspended on Taxpayer's payroll tax liabilities for the periods at issue under amended section 7508.

Even if section 7508, as amended, applied, the postponements and interest suspensions would not apply to the Taxpayer's payroll tax liabilities for the periods at issue because it is not an individual serving in, or serving in support of, a combat zone. If a word is not defined in the Internal Revenue Code, it should be interpreted using its common and ordinary meaning. Commissioner v. Soliman, 506 U.S. 168, 174 (1993);

Crane v. Commissioner, 331 U.S. 1, 6 (1947). The dictionary definition of “individual” within the context of section 7508 is “a single human being as contrasted with a social group or institution.” Merriam Webster Online, <http://www.merriamwebster.com> (last visited Dec. 5, 2005). When used in Title 26, “individual” is usually interpreted to mean a human being rather than an entity. See, e.g., Jonson v. Commissioner, 353 F.3d 1181, 1184 (10th Cir. 2003) (“individual” does not include deceased taxpayer for purposes of section 6015); I.R.C. § 1(a), (c) (discussing married and unmarried individuals); and I.R.S. L.G.M. GL-65 (March 21, 1997) (“individual” is used in section 6334(a)(9) rather than “taxpayer” because the levy exemption does not apply to a corporate taxpayer).

Taxpayer is a partnership. Individual is one of Taxpayer’s partners. A partnership is a voluntary association of two or more persons who jointly own and carry on a business for profit. Black’s Law Dictionary (8th ed. 2004). A partnership is a business entity not an individual who may serve in, or serve in support of, a combat zone. A partner’s service, even the principal partner’s service, in a combat zone does not result in combat relief for the partnership. Thus, under section 7508, as amended, interest is suspended on an individual’s payroll tax liabilities but not a partnership’s payroll tax liabilities. For purposes of section 7508, no acts of Taxpayer are suspended by reason of Individual serving in a combat zone.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

In requesting assistance, you referred to interim guidance issued by Compliance Policy on September 3, 2004. The subject of this memorandum was “BMF Accounts of Taxpayers Deployed to a Qualified Combat Zone.” You believed that this guidance instructed the Service to suspend the accrual of interest and penalties on payroll tax liabilities of certain BMF taxpayers. After consulting with Lawrence Randall, Policy Analyst, in Collection Policy, we have determined that such guidance was intended only to instruct the Service to suspend collection and enforcement actions with respect to certain BMF accounts of taxpayers that were deployed in a combat zone or contingency operation.

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Please call (202) 622-4940 if you have any further questions.