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From: [REDACTED]
Sent: Friday, June 02, 2017 7:39:24 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Disaster Tax Relief - advice from [REDACTED]

Thanks for your patience while I looked into this further. This isn't the first time similar questions about disaster relief and abatement of penalties/interest have arisen. In May of 2016, I worked a similar question involving disaster relief granted after severe storms/tornadoes/flooding hit parts of Texas. I will give the same advice in this instance as I gave back then.

- 1) Taxpayers who didn't pay before the due date don't get the benefit of IRC § 7508A with regard to the failure to pay penalties and interest that began accruing before the disaster hit. Under Treas. Reg. § 301.7508A-1(b)(2), an affected taxpayer is eligible for postponement of time to perform an act until the last day of the relief period if "the affected taxpayer is required to perform [the] tax-related act by a due date that falls within the postponement period." The tax-related act at issue here (the paying of tax) falls outside the postponement period – the postponement period began August 11, 2016, and ended January 17, 2017. Payment of tax would have been due April 15, 2016, which was before the postponement period began. So in the fact pattern Cong. Graves' office is asking us to consider, the penalties/interest began to accrue before the postponement period began. Consequently, taxpayers do not get a suspension of penalties/interest between August 11, 2016, and January 17, 2017. (If any of the affected taxpayers had valid extensions of time to pay, then the tax would have been due during the postponement period and the result would be different).
- 2) Take a look at Example 6 of Treas. Reg. § 301.7508A-1(f). In the example, A is a calendar-year taxpayer who timely filed an extension to file on April 15, 2009 (extended due date to October 15, 2009), but did not receive an extension to pay under section 6661. A was an affected taxpayer in a covered disaster area occurring on September 30, 2009. The time period for taxpayers to perform time-sensitive acts falling on or after September 30, 2009, and on or before December 2, 2009, was postponed to December 2, 2009. A's return was timely filed if filed on or before December 2, 2009, because the extended due date for the return fell within the postponement period. However, the payment due date preceded the postponement period and A was subject to failure to pay penalties

and accrual of interest during the postponement period. Absent reasonable cause, A is subject to the failure to pay penalty for the entire postponement period under section 6651(a)(2) and accrual of interest.

- 3) When explaining to Cong. Graves that relief from penalties and interest pursuant to IRC § 7508A is not available for his constituents, suggest instead that his constituents (or their representatives) should advocate for abatement based on reasonable cause due to the particular facts/circumstances in each case.

As I indicated last year in my advice to



Please let me know if you have any questions. Thanks.