

Notice 2005-73, 2005-42 IRB, 09/21/2005, IRC Sec(s).

Purpose

This notice summarizes and clarifies the relief previously granted by the Internal Revenue Service (IRS) under sections 6081, 6161, 6656, and 7508A of the Internal Revenue Code with respect to taxpayers affected by Hurricane Katrina. The IRS is endeavoring to identify affected taxpayers who are eligible for relief. In order to assist the IRS in identifying affected taxpayers to ensure that they receive the relief to which they are entitled, affected taxpayers should mark "Hurricane Katrina" in red ink on the top of their returns and other documents for which the IRS has postponed the due dates. Affected taxpayers should also identify themselves as an affected taxpayer if the IRS sends them a notice or makes any other direct contact, *e.g.*, telephone calls.

In response to Hurricane Katrina, on August 28, 2005 and August 29, 2005, the President issued four federal disaster declarations covering the states of Alabama, Mississippi, Louisiana, and Florida. The presidential declarations authorized, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), the Federal Emergency Management Agency (FEMA) to provide Individual Assistance, Public Assistance, and assistance under the Hazard Mitigation Grant Program to counties and parishes in each state. Under that authority, FEMA determined that certain counties and parishes within those states were eligible for Individual Assistance, Public Assistance, or both. FEMA also determined that all counties and parishes in all four of the states were eligible to apply for assistance under the Hazard Mitigation Grant Program.

By news releases issued on August 30, 2005, September 2, 2005, September 8, 2005, and September 14, 2005, the IRS granted relief from filing and payment deadlines, and granted relief from the acts listed in Treas. Reg. § 301.7508A-1(c)(1) and Rev. Proc. 2005-27, 2005-20 I.R.B. 1050, for taxpayers in the counties and parishes designated by FEMA for Individual Assistance and/or Public Assistance. See IR-2005-84, IR-2005-91, IR-2005-96, and IR-2005-103. The counties and parishes designated by FEMA as being eligible for Individual Assistance and/or Public Assistance constitute a "covered disaster area" within the meaning of section 301.7508A-1(d)(2). See the Appendix to this Notice for a list of counties and parishes designated by FEMA for Individual Assistance and Public Assistance (counties and parishes designated by FEMA for Individual Assistance are generally also granted Public Assistance, but for purposes of this notice will be referred to as Individual Assistance areas). The IRS will continue to monitor closely the impact of Hurricane Katrina and may grant other relief under appropriate circumstances for affected taxpayers or affected areas.

The relief detailed below applies to all the counties and parishes listed in the Appendix to this Notice, and to counties and parishes that FEMA later designates as being eligible for individual and/or Public Assistance as a result of the devastation caused by Hurricane Katrina.

Background

Under the Stafford Act, the President can authorize FEMA to implement several different types of assistance in response to a disaster. Pursuant to this authority, and based on the severity of the disaster, FEMA designates certain areas affected by the disaster as eligible for Individual Assistance and/or Public Assistance.

When the President declares a disaster and FEMA designates areas for assistance, the IRS has authority under section 7508A to grant blanket relief to taxpayers. In addition, the IRS can grant blanket relief under sections 6081, 6161, and any other provision providing for a waiver of a penalty for reasonable cause, such as section 6656.

Ordinarily, the IRS only grants blanket relief for taxpayers associated with the areas FEMA designates for Individual Assistance because in those areas the devastation from the disaster is more widespread. However, in view of the extreme need for relief in the aftermath of Hurricane Katrina, the IRS granted relief for taxpayers associated with those areas designated by FEMA for Individual Assistance and Public Assistance.

Relief with respect to a Presidentially-declared disaster under sections 6081, 6161, 6656, and 7508A is only available when the IRS grants such relief. Generally, the IRS will publish a notice or issue other guidance (including an IRS News Release) authorizing the relief. Such guidance will describe the relief, the duration of the relief, and the location of the covered disaster area.

Summary of the Acts for Which a Period May be Disregarded

Section 6081 provides that the Secretary may grant a reasonable extension of time (generally not to exceed 6 months) for filing any return, declaration, statement, or other document required by the Internal Revenue Code or by regulations thereunder.

Section 6161 provides that the Secretary may grant a reasonable extension of time (generally not to exceed 6 months) for paying the amount (or any installments) of tax shown or required to be shown on any return or declaration required by the Code or by regulations thereunder.

Section 6656 provides for an addition to tax for any failure to deposit tax in a government depository as required by the Code or regulations on the date prescribed therefor, unless such failure is due to reasonable cause and not due to willful neglect.

Section 7508A provides the Secretary with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer the Secretary determines is affected by a Presidentially-declared disaster. Section 7508A(a)(2) also provides the Secretary with authority to disregard a period of up to one year in determining the amount of any interest, penalty, additional amount, or addition to the tax for an affected taxpayer. Pursuant to section 7508A(a) and section 301.7508A-1, a period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws. Section 301.7508A-1(c)(1) lists several acts performed by taxpayers for which section 7508A relief may apply. Among these acts are the filing of certain tax returns; the payment of certain taxes; the making of deductible contributions to certain retirement plans and individual retirement arrangements; the filing of a Tax Court petition; the filing of a claim for credit or refund of tax; and the bringing of a lawsuit upon a claim for credit or refund of tax.

Revenue Procedure 2005-27 provides a list of time-sensitive acts, the performance of which may be postponed under section 7508A. The list of acts in Rev. Proc. 2005-27 supplements the list of postponed acts in section 301.7508A-1 of the regulations. The acts set forth in Rev. Proc. 2005-27 are those that the IRS commonly postpones in the event of a Presidentially-declared disaster.

Affected Taxpayers Whose Acts May be Postponed

Section 301.7508A-1(d)(1) describes several types of “affected taxpayers” eligible for postponement of up to one year. These taxpayers include any individual whose principal residence, and any business entity whose principal place of business, is located in the covered disaster area; any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in the covered disaster area; any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose records necessary to meet a filing or payment deadline are maintained in the covered disaster area; any estate or trust that has tax records necessary to meet a filing or payment deadline in a covered disaster area; and any spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife. Therefore, taxpayers located outside of the covered disaster area may qualify for relief.

Additionally, under section 301.7508A-1(d)(1)(vii), the IRS may determine that any other person is affected by a Presidentially-declared disaster and therefore eligible for relief. Accordingly, the IRS has determined that the following persons are also affected by Hurricane Katrina and its aftermath: (1) all workers assisting in the relief activities in the covered disaster areas, regardless of whether they are affiliated with recognized government or philanthropic organizations; (2) any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose tax professional/practitioner is located in the covered disaster area; and (3) individuals, visiting the covered disaster areas, who were killed or injured as a result of Hurricane Katrina and its aftermath. For purposes of (3) above, the estate of an individual visiting the covered disaster who was killed as a result of the hurricane is also considered to be an affected taxpayer.

Summary Of Relief Granted With Respect To Hurricane Katrina

The news releases issued by the IRS on August 30, 2005, September 2, 2005, September 8, 2005, and September 14, 2005, granted the following relief:

(1) Affected taxpayers as defined by section 301.7508A-1(d)(1) and clarified by this notice have until January 3, 2006, to file certain federal tax returns otherwise due (originally or on extension) on or after August 29, 2005 (August 24, 2005, for Florida affected taxpayers), and on or before January 3, 2006, and to pay the tax shown or required to be shown on those returns. In addition, the period from August 29, 2005 (August 24, 2005 for Florida affected taxpayers), until January 3, 2006, will be disregarded in the calculation of any interest and any failure to file or pay addition to tax under section 6651. Thus, any interest or addition to tax for failure to file a return or to pay the tax due accruing as of August 29, 2005 (August 24, 2005 for Florida affected taxpayers), would stop accruing as of that date and would start accruing again after January 3, 2006 (or such later date that the IRS might subsequently provide), if the return was not filed or tax was not paid by that date. An affected taxpayer who receives an IRS notice asserting a penalty for this period should call the number on the notice or the IRS toll-free disaster hotline at 1-866-562-5227 to receive penalty abatement. The applicable returns include individual income tax returns (Forms 1040, 1040A, 1040EZ, 1040NR, or 1040NR-EZ), gift tax returns (Forms 709 and 709-A), partnership returns (Form 1065), corporate income tax returns (Forms 1120 and 1120S), estate and trust income tax returns (Form 1041), estate tax returns (Form 706), annual returns filed by tax-exempt organizations (Form 990 (series)), certain excise tax returns (Form 720) and employment tax returns (Form 941). See Treas. Reg. § 301.7508A-1(c)(1)(i) for a list of affected returns.

(2) Although a postponement is provided for filing certain excise tax and employment tax returns, and making payments of excise tax and employment tax, most employers and entities responsible for excise and employment tax must, under section 6302 and the regulations thereunder, deposit the tax throughout the return period (usually every quarter). Although the time for making these deposits has not been extended under section 7508A, the IRS has authority under sections 6656 and 7508A(a)(2) to waive the penalty that would otherwise apply to a failure to make a timely deposit. The IRS has concluded that taxpayers affected by Hurricane Katrina may have difficulty in making timely federal tax deposits in accordance with section 6302. Accordingly, for deposits required to be made by affected taxpayers on or after August 29, 2005 (August 24, 2005 for Florida affected taxpayers), and on or before January 3, 2006, the IRS will waive the addition to tax under section 6656 for the failure to timely make any deposit of tax if the deposit is made on or before January 3, 2006.

The relief from the failure to timely deposit addition to tax is intended for taxpayers who are unable to meet their deposit obligations because their (or their service provider's) records, computers, or other essential supporting services were damaged, or essential personnel were injured, by the hurricane or any subsequent flooding. Thus, although the waiver applies to all affected taxpayers, taxpayers that are reasonably able to make their deposits are encouraged to do so.

(3) The due date of any estimated tax payment for tax year 2005 originally due on or after August 29, 2005 (August 24, 2005 for Florida affected taxpayers), and before January 3, 2006, for taxpayers located in the covered disaster area, and other affected taxpayers, is postponed until January 3, 2006. This applies to estimated tax payments made by individuals, corporations, estates, and trusts. Thus, for individuals and calendar year corporations, the third estimated tax payment for tax year 2005, due on September 15, 2005, is not due until January 3, 2006. Affected taxpayers will not be subject to penalties for failure to pay estimated tax installments for tax year 2005 with respect to installments that were originally due on or after August 29, 2005 (August 24, 2005 for Florida affected taxpayers), and before January 3, 2006, as long as such installments are paid by January 3, 2006.

(4) A postponement until January 3, 2006, is granted for each act listed in section 301.7508A-1(c)(1) and Rev. Proc. 2005-27 for affected taxpayers, excluding Florida affected taxpayers, if the last day to perform the act would otherwise fall within the period beginning on August 29, 2005, and

ending on January 3, 2006. For Florida affected taxpayers, the period begins on August 24, 2005, and ends on January 3, 2006.

(5) Partners, S corporation shareholders, and beneficiaries of trusts and estates use the information reported to them on Schedule K-1 by their partnerships, corporations, trusts, or estates to prepare their own income tax returns. If the income tax return of the partnership, S corporation, trust or estate was postponed or extended, the partner, S corporation shareholder, or beneficiary of a trust or estate might not receive the Schedule K-1 prior to the due date or extended due date of the partner's, shareholder's, or beneficiary's income tax return. The income tax return of a partner, shareholder, or beneficiary is **not** postponed or extended solely because the entity (the partnership, S corporation, trust, or estate) is an affected taxpayer.

Partners, shareholders, and beneficiaries of trusts and estates may request extensions of time to file their income tax returns. See I.R.C. § 6081. If the Schedule K-1 is not received by the extended due date, the partner, shareholder, or beneficiary should prepare and file the income tax return on a timely basis by making a reasonable estimate in good faith of items of income, gain, loss, deduction, and credit attributable to the taxpayer's interest in the entity. Later, when the Schedule K-1 is received, the taxpayer should prepare an amended return reflecting the items reported on the Schedule K-1. If the taxpayer's original return underestimated items of income or gain, or overstated items of deduction, loss, or credit, and a late payment penalty attributable to these items is assessed, the taxpayer should request an abatement of the penalty for reasonable cause. If the original return was prepared in good faith based on reasonable estimates of the tax items attributable to the entity, the IRS will waive or abate penalties for late payment.

(6) Taxpayers who believe they are entitled to relief under the news releases issued on August 30, 2005, September 2, 2005, September 8, 2005, and September 14, 2005, as clarified by this notice, should mark "Hurricane Katrina" in red ink on the top of their return and other documents submitted to the IRS. In the counties and parishes designated for Individual Assistance, relief will automatically be granted, but affected taxpayers are nonetheless strongly encouraged to mark their returns and other documents or otherwise alert the IRS to the need for relief. In the counties and parishes designated for Public Assistance, and for other affected taxpayers, relief will be granted if the IRS is notified of the need for relief. Accordingly, these taxpayers need to mark their returns and documents, or otherwise alert the IRS to the need for relief.

Drafting Information

The principal author of this notice is Dillon Taylor of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Dillon Taylor at (202) 622-4940 (not a toll-free call).

Appendix

The August 28, 2005 declaration for Florida, as amended on September 6, 2005, covers the following 11 counties designated for Public Assistance: Bay, Broward, Collier, Escambia, Franklin, Gulf, Miami-Dade, Monroe, Okaloosa, Santa Rosa, and Walton.

The August 29, 2005 declaration for Alabama, as amended on September 9, and 11, 2005, covers the following 10 counties designated Individual Assistance: Baldwin, Choctaw, Clarke, Greene, Hale, Mobile, Pickens, Sumter, Tuscaloosa, and Washington; and the following 12 counties eligible for Public Assistance: Bibb, Colbert, Cullman, Jefferson, Lamar, Lauderdale, Marengo, Marion, Monroe, Perry, Wilcox, and Winston.

The August 29, 2005 declaration for Mississippi, as amended on September 4, 6, and 11, 2005, covers the following 47 counties designated for Individual Assistance: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Franklin, Forrest, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo; and the following 35 counties designated for Public Assistance: Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Clay, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Leflore, Lee, Marshall, Monroe, Montgomery, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, and Yalobusha.

The August 29, 2005 declaration for Louisiana, as amended on September 9, 2005, covers the following 31 parishes designated for Individual Assistance: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana; and the following 33 parishes designated for Public Assistance: Allen, Avoyelles,

Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn.