

Disaster Relief for Taxpayers Affected by the September 11, 2001 Terrorist Attack

Notice 2001-68

PURPOSE

This notice supplements the tax relief granted in Notice 2001-61, 2001-40 I.R.B. 305 (October 1, 2001), for taxpayers affected by the September 11, 2001 Terrorist Attack (the "Terrorist Attack") by clarifying and expanding the definition of affected taxpayer, listing additional acts for which a postponement is granted, and providing other relief. The relief provided to taxpayers in this notice will apply retroactively to September 11, 2001.

This notice also postpones the deadlines for certain acts performed by the Internal Revenue Service (IRS). The postponement of these deadlines is not retroactive to September 11, 2001. Thus, the IRS deadlines are postponed only if the last day for performing the act (*e.g.*, making a tax assessment) would otherwise be on or after November 2, 2001.

Taxpayers who believe they are entitled to relief under this notice should mark "September 11, 2001 Terrorist Attack" in red ink on the top of their returns and other documents submitted to the IRS and petitions submitted to the United States Tax Court. ***Taxpayers should not put this notation on envelopes.*** Doing so may result in a delay in the delivery or processing of the return or document.

Taxpayers that do not qualify for relief under Notice 2001-61 or this notice may still qualify for extensions and relief from penalties for reasonable cause. Reasonable cause relief may also be available to taxpayers who did receive relief under Notice 2001-61 or this notice but who nevertheless could not meet their tax obligations within the relief period. A request for relief from

penalties for reasonable cause should be attached to the return with an explanation of the reasons supporting relief. If penalties are assessed, Form 843, *Claim for Refund and Request for Abatement*, may be completed as a request for reasonable cause relief from penalties.

A. MISSING TAXPAYERS

Individuals missing as a result of the Terrorist Attack are affected taxpayers as defined in Notice 2001-61 under the term "victims of the crash." Thus, the relief granted by Notice 2001-61 and this notice applies to individuals missing as a result of the Terrorist Attack.

B. POSTPONEMENT OF DEADLINES FOR SECTION 1031 EXCHANGES

As explained below, a 120-day postponement of time is granted to affected taxpayers for the acts listed in Rev. Proc. 2001-53, 2001-47 I.R.B. 506 (November 19, 2001), if the last day to perform the act would otherwise fall within the period beginning on September 11, 2001, and ending on November 30, 2001. One of the acts listed in Rev. Proc. 2001-53 is an exchange of property under section 1031. This notice provides three types of postponements relating to section 1031 exchanges.

(1) If the taxpayer (transferor) is an ***affected taxpayer*** under Notice 2001-61, then the last day of the identification period or the exchange period set forth in section 1.1031(k)-1(b)(2) of the regulations, relating to deferred like-kind exchanges, or the last day of any period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, 2000-40 I.R.B. 308 (October 2, 2000), relating to a qualified exchange accommodation arrangement, is postponed by 120 days if the following requirements are met:

(a) The relinquished property was transferred on or before September 11, 2001, or, in a transaction governed by

Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder on or before September 11, 2001; and

(b) Absent application of this notice, the identification period or the exchange period, or any time period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, would end on or after September 11, 2001, and on or before November 30, 2001.

(2) If a taxpayer (transferor) is ***not*** an affected taxpayer under Notice 2001-61, then the last day of the identification period or the exchange period set forth in section 1.1031(k)-1(b)(2), or the last day of any period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, is postponed by 120 days if the following requirements are met:

(a) The relinquished property was transferred on or before September 11, 2001, or, in a transaction governed by Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder on or before September 11, 2001; and

(b) Absent application of this notice, the identification period or the exchange period, or any time period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, would end on or after September 11, 2001, and on or before November 30, 2001, and

(c) It is difficult to meet a deadline set forth in section 1.1031(k)-1(b), or a deadline in section 4.02(3) through (6) of Rev. Proc. 2000-37, due to the Terrorist Attack for the following or similar reasons:

(I) The relinquished property or the replacement property is or was located in a covered disaster area (as defined in Notice 2001-61); or

(II) The principal place of business of any party to the transaction other than the transferor (*e.g.*, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution or a title insurance company) is located in a covered disaster area (as defined in Notice 2001-61); or

(III) Any party to the transaction other than the transferor (or an employee of such a party who is or was involved in the section 1031 transaction) was killed, injured, or is missing as a result of the Terrorist Attack; or

(IV) A document prepared in connection with the exchange (e.g., the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or land records were destroyed, damaged, or lost as a result of the Terrorist Attack; or

(V) A lender decided not to fund a real estate closing due to the Terrorist Attack or refused to fund a loan to the taxpayer because terrorism insurance was not available; or

(VI) A title insurance company was not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the Terrorist Attack.

(3) If a postponement is not otherwise granted under paragraphs (1) and (2), a postponement to September 24, 2001, similar to the postponement provided in Notice 2001-63, 2001-40 I.R.B. 308 (October 1, 2001), is granted if the following requirements are met:

(a) The relinquished property was transferred on or before September 11, 2001, or, in a transaction governed by Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder on or before September 11, 2001; and

(b) Absent application of this notice, the identification period or the exchange period, or any time period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, would end on or after September 11, 2001, and on or before September 17, 2001.

C. ADDITIONAL GRANT OF RELIEF

(1) This notice expands the relief provided by paragraph (2) of the Grant of Relief section of Notice 2001-61. The additional relief is for tax returns on an extension (not on a postponement under section 7508A) that expires on or after December 1, 2001, and on or before January 31, 2002. For these returns, the last date for filing the return

is postponed until February 15, 2002, under section 7508A. This additional relief is available only to taxpayers that have difficulty in meeting their federal tax obligations because their records, computers, or other essential supporting services were lost or damaged, or essential personnel were injured or killed, or are missing as a result of the Terrorist Attack.

(2) Under paragraph (4) of the Grant of Relief section of Notice 2001-61, the IRS granted to all affected taxpayers a 120-day postponement of time to perform the acts described in section 301.7508A-1(c)(1), if the last day to perform the act fell within the period beginning on September 11, 2001, and ending on November 30, 2001. One of these acts is the filing of any Tax Court petition. Under this notice, the relief provided by paragraph (4) is expanded as follows. If the last date for filing any Tax Court petition would otherwise be on or after December 1, 2001, and on or before December 31, 2001, the last date for filing the petition is postponed by 60 days under section 7508A.

(3) In addition to the acts specifically identified in section 301.7508A-1(c)(1), a 120-day postponement is granted for each act listed in Rev. Proc. 2001-53, for affected taxpayers if the last day to perform the act would otherwise fall within the period beginning on September 11, 2001, and ending on November 30, 2001. This postponement does not, however, apply to the acts required by section 148(f)(3) and section 1.148-3(g), section 1.148-5(c), section 148(f)(4)(C)(xvi) and section 1.148-7(k)(1), or section 149(e). Postponements of these acts for issuers of tax exempt bonds were provided in Announcement 2001-101, 2001-43 I.R.B. 374 (October 22, 2001). For purposes of tax-exempt bonds, the term "affected taxpayer" shall include any affected issuer as described in Announcement 2001-101. This postponement also does not apply to the deadline for Form 5500 and Form 5500-EZ filings. The Department of Labor's Pension and Welfare Benefits Administration Press Release No. 01-36 (released September 14, 2001) grants relief extending the

deadline for filing Form 5500 and Form 5500-EZ.

D. PARTNERS, S CORPORATION SHAREHOLDERS, AND BENEFICIARIES OF TRUSTS AND ESTATES

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 under this notice or Notice 2001-61, the partner, S corporation shareholder, or beneficiary of a trust or estate may 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 the partner, shareholder, or beneficiary is *not* postponed or extended by Notice 2001-61 or this notice 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.

E. RELIEF FROM PENALTY FOR FAILING TO FILE PARTNERSHIP RETURN BY MAGNETIC MEDIA

Any partnership that is an affected taxpayer, as defined in Notice 2001-61 and this notice, and that is required to file a partnership return by magnetic media (electronically) under section 6011(e) will not be assessed a penalty under section 6721 for failing to file the partnership return electronically if the partnership elects to file a paper return. This relief is for partnership returns that have an original due date or extended due date (not a postponed due date under section 7508A) on or after September 11, 2001, and on or before November 30, 2001. Taxpayers who qualify should write "September 11, 2001 Terrorist Attack" in red ink on the top of their paper Form 1065. The IRS will abate any penalty that is improperly assessed.

F. ACTS PERFORMED BY THE GOVERNMENT

(1) If the last date otherwise prescribed by law for making a tax assessment is on or after November 2, 2001, and the taxpayer received a 120-day postponement of time to file a Tax Court petition under paragraph (4) of the Grant of Relief section of Notice 2001-61, then the last date otherwise prescribed by law for making an assessment is correspondingly postponed by 120 days. This additional time for making an assessment is needed for the following reason. Under section 6503, the period of limitations on assessment is suspended when a statutory notice of deficiency is mailed. The section 6503 suspension period (generally 150 days) includes the period (generally 90 days) after the issuance of a statutory notice of deficiency during which the taxpayer is permitted to file a Tax Court petition and the IRS is prohibited from making an assessment. *See* I.R.C. §§ 6213(a) and 6213(c). Under Notice 2001-61, affected taxpayers are entitled to an additional 120 days to file a Tax Court petition in response to the notice of deficiency. In some cases, the period of limitations on assessment could expire

prior to the expiration of the expanded period during which an affected taxpayer may file a Tax Court petition.

(2) Similar to paragraph (1), if the last date otherwise prescribed by law for making a tax assessment is on or after November 2, 2001, and the taxpayer receives a 60-day postponement of time to file a Tax Court petition under paragraph (2) of the Additional Grant of Relief section of this notice, the last date otherwise prescribed by law for making a tax assessment is correspondingly postponed by 60 days.

(3) Documents maintained by the IRS (including the Office of Chief Counsel) in New York City were destroyed or lost in the Terrorist Attack, or remain in buildings that are inaccessible. The destruction or loss of these documents (or the IRS's lack of access to them) will materially interfere with the IRS's ability to timely administer the Internal Revenue Code with respect to certain taxpayers. The taxpayers to whom these records relate are "affected taxpayers" for the limited purpose of this paragraph. In these cases, a 120-day postponement is granted for the following government acts if the last date for performance of the act is on or after November 2, 2001, and on or before November 30, 2001: making an assessment of any tax; issuing a statutory notice of deficiency; allowing a credit or refund of any tax; collecting by the Secretary, by levy or otherwise, the amount of any liability in respect of any tax; bringing suit by the United States, or any office on its behalf, in respect of any tax liability; returning property under section 6343; and the discharge of an executor from personal liability for a decedent's taxes under section 6905. The IRS will notify, as soon as practicable, any affected taxpayers, as defined under this paragraph, of the government act or acts that will be postponed.

G. TAXPAYER INQUIRIES

If you wish to recommend that other acts qualify for postponement under this notice, Notice 2001-61, or Rev. Proc. 2001-53, please write to the Office of Associate Chief Counsel, Procedure and

Administration (Administrative Provisions and Judicial Practice Division), CC:PA:APJP:Br2, 1111 Constitution Avenue, NW, Washington, DC 20224, or send an e-mail message to *Notice.Comments@irs.counsel.treas.gov*. Please write "7508A List" on the envelope or in the subject matter area of the e-mail.

H. DRAFTING INFORMATION

This notice was drafted by the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this notice you may call the toll-free disaster hotline at (866) 562-5227 or (202) 622-4940 (not a toll-free call).