

Part III - Administrative, Procedural, and Miscellaneous

Additional relief for certain taxpayers affected by the September 11, 2001 Terrorist Attack.

Notice 2002-40

PURPOSE

This notice supplements and expands the relief granted under section 7508A of the Internal Revenue Code (Code) in Notice 2001-61 and Notice 2001-68, for taxpayers affected by the September 11, 2001, Terrorist Attack. In Notice 2001-61 and Notice 2001-68, the Department of the Treasury and the IRS extended and postponed filing and payment due dates for affected taxpayers. At the time those notices were issued, the Code limited the amount of interest relief the IRS could provide to an affected taxpayer. Under section 6404(h), interest was abated only for income taxes due from an affected taxpayer located in the Presidentially declared disaster area and only if both an extension of time to file under section 6081 and an extension of time to pay under section 6161 were granted to the taxpayer. The Secretary's authority to provide relief under section 7508A was specifically limited to items other than interest. In addition, section 7508A permitted the Secretary to disregard no more than 120 days in the calculation of penalties.

On January 23, 2002, the President signed into law the Victims of Terrorism Tax Relief Act of 2001 (the Act). Section 112 of the Act repealed section 6404(h) and amended section 7508A (effective September 11, 2001), by providing, in part, that the Secretary may disregard up to one year in determining the amount of any interest or penalty. Under this increased authority, the Department of the Treasury and the IRS are providing relief from interest and expanded relief from the failure to pay penalty for certain affected taxpayers.

GRANT OF RELIEF

(1) For affected taxpayers with an original income tax return due date on or after September 11, 2001, and on or before November 30, 2001, that were previously granted a six-month extension of time to file and pay and a 120 day postponement of time to file and pay by paragraphs (1) and (2) of the Grant of Relief Section of Notice 2001-61, and for certain taxpayers who had difficulty in filing their federal income tax returns due on or after September 11, 2001, and on or before October 31, 2001, because of disruptions in the transportation and delivery of documents by mail or private delivery services resulting from the terrorist attack, that were previously granted a postponement of time to file and pay until November 15, 2001, by paragraph (5) of the Grant of Relief Section of Notice 2001-61, interest will not be due for the period of time that the payment is extended and postponed. For example, an affected fiscal year

taxpayer with an original due date of September 17, 2001, has until July 15, 2002, to file and pay as a result of the relief granted by Notice 2001-61. Under this notice, no interest will accrue from September 17, 2001, through July 15, 2002. Additionally, no failure to file or pay penalty will accrue from September 17, 2001, through July 15, 2002. This relief applies to all affected taxpayers (as defined in Notice 2001-61 and Announcement 2001-124) no matter where they are located.

(2) For affected taxpayers with an extended income tax return due date on or after September 11, 2001, and on or before November 30, 2001, that were previously granted a 120 day postponement of time to file by Notice 2001-61, and for taxpayers with an extended due date on or after December 1, 2001, and on or before January 31, 2002, that were previously granted a postponement of time to file until February 15, 2002, by paragraph (1) of the Additional Grant of Relief section of Notice 2001-68, interest will not be due for the period beginning September 11, 2001, and ending with the postponed due date of the return. In addition, the relief from the failure to pay penalty provided by Notice 2001-61 for the period September 11, 2001, through January 9, 2002 (120 days) is expanded to cover the period beginning September 11, 2001, and ending with the postponed due date of the return. For example, an individual income taxpayer with an extended due date of October 15, 2001, has a postponed filing due date of February 12, 2002, as a result of the relief granted by Notice 2001-61. Under this notice, no interest or failure to pay penalty will accrue from September 11, 2001, through February 12, 2002, on any balance originally due on April 16, 2001. Interest and the failure to pay penalty will be owed on any balance due for the period April 16, 2001, through September 10, 2001, and on any balance remaining due after February 12, 2002.

(3) Under paragraph (6) of the Grant of Relief section of Notice 2001-61, certain taxpayers were granted a reasonable cause waiver from the failure to deposit penalty if third quarter tax deposits due from September 11, 2001, through September 30, 2001, were deposited by November 15, 2001. For these taxpayers, the third quarter return and payment were generally due on October 31, 2001. In the absence of relief under section 7508A (as amended), interest would be imposed for the period from November 1, 2001, through November 15, 2001, on any balance due on October 31, 2001. Under this notice, taxpayers will not owe interest for this period on any employment and excise tax liability for which the failure to deposit penalty has been waived.

(4) The IRS may have already assessed interest and penalties relieved under this notice and taxpayers may have already paid these amounts. The IRS has identified taxpayers located in the covered disaster area specified in Notice 2001-61 who are eligible for the additional relief and have adjusted those accounts accordingly. If you were located in the covered disaster area and are entitled to receive a refund, you should receive a notice by May 28, 2002. Taxpayers not located in the covered disaster area who are entitled to this additional relief (or anyone else with any questions regarding the status of an adjustment or refund because of this notice), should contact the IRS at (866) 562-5227 (a toll-free call).

DRAFTING INFORMATION

This notice was authored 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 (202) 622-4940 (not a toll-free call).