

Part III – Administrative, Procedural and Miscellaneous

Additional Relief for Like-Kind Exchanges for Which Deadlines May Be Postponed Under §§ 7508 and 7508A of the Internal Revenue Code

Notice 2005-3

This notice advises taxpayers that the Internal Revenue Service and Treasury Department will modify retroactively Rev. Proc. 2004-13, 2004-4 I.R.B. 335, to provide additional tax relief to taxpayers (transferors) involved in § 1031 like-kind exchange transactions affected by a Presidentially declared disaster, a terroristic or military action, service in a combat zone, or service with respect to contingency operations. Rev. Proc. 2004-13 will be modified to expand the list of time-sensitive acts under §§ 7508 and 7508A as described below under EXPANDED LIST OF TIME-SENSITIVE ACTS. Rev. Proc. 2004-13 also will be modified as described below under SPECIAL RELIEF FOR § 1031 TRANSACTIONS to (1) expand the categories of taxpayers qualifying for relief, and (2) provide additional postponements of certain § 1031 deadlines.

Under this notice, taxpayers are entitled *immediately* to additional tax relief if, with respect to a Presidentially declared disaster, the Service has issued an IRS News Release or other guidance authorizing postponement of deadlines under § 7508A. For example, additional relief under this notice is immediately available to victims of Hurricanes Charley, Frances, Ivan and Jeanne, and Tropical Storm Bonnie, who were granted relief in prior IRS News Releases. Taxpayers may rely on this notice until Rev. Proc. 2004-13 is modified as described in this notice.

BACKGROUND

Under § 1031, taxpayers generally do not recognize gain or loss on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment. In the case of a deferred like-kind exchange under § 1031(a)(3), however, two particular requirements must be met. First, replacement property must be identified by midnight of the 45th day after the taxpayer transfers the relinquished property (45-day identification period). Section 1.1031(k)-1(b)(2)(i) of the Income Tax Regulations. Second, under § 1.1031(k)-1(b)(2)(ii), the taxpayer must receive the replacement property by midnight of the earlier of—

(1) The 180th day after the taxpayer transfers the relinquished property (180-day exchange period); or

(2) The due date (including extensions) of the taxpayer's income tax return for the taxable year in which the taxpayer transferred the relinquished property (due date of return exchange period).

Rev. Proc. 2000-37, 2000-2 C.B. 308, modified by Rev. Proc. 2004-51, 2004-33 I.R.B. 294, provides a safe harbor under which transactions will qualify for treatment under § 1031 if a taxpayer meets the requirements of a 5-business day period to enter into a qualified exchange accommodation agreement (QEAA), a 45-day identification period, a 180-day exchange period, and a 180-day combined time period, which are set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37.

Generally, section 7508 postpones the time for performing specified acts for individuals serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in a combat zone, or with respect to a contingency operation.

Generally, section 7508A permits the Secretary to postpone specified deadlines for taxpayers affected by a Presidentially declared disaster (as defined in § 1033(h)(3)) or a terroristic or military action (as defined in § 692(c)(2)).

Rev. Proc. 2004-13 provides an updated list of time sensitive acts, the performance of which may be postponed under §§ 7508 and 7508A. The list of acts in Rev. Proc. 2004-13 supplements the list of acts that are *automatically* postponed under § 7508 and the list of acts in the regulations under § 7508A for which the Service may authorize postponements. Rev. Proc. 2004-13 does not itself entitle taxpayers to any postponements under § 7508 or § 7508A. Rather, for taxpayers to be entitled to a postponement with respect to any act listed in Rev. Proc. 2004-13, the Service generally will issue an IRS News Release or other guidance providing such relief with respect to a specific Presidentially declared disaster area, terroristic or military action, service in a combat zone, or service with respect to contingency operations.

EXPANDED LIST OF TIME-SENSITIVE ACTS

Section 6 of Rev. Proc. 2004-13 will be modified to add to the list of time-sensitive acts, the performance of which may be postponed under §§ 7508 and 7508A, the acts described in section 4.02(3), (4), (5) and (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, relating to certain like-kind exchanges of property under § 1031.

SPECIAL RELIEF FOR § 1031 TRANSACTIONS

Overview

Rev. Proc. 2004-13 also will be modified to include a 120-day postponement for meeting certain § 1031 like-kind exchange deadlines under the circumstances set forth below under *General Rule* and *Additional Relief for Substantially Damaged Identified Property*. Taxpayers may use the postponement rules provided by this notice in lieu of the general extension dates provided by the IRS News Release or other guidance issued with respect to a specific Presidentially declared disaster. The deadlines to which the 120-day postponements apply are—

(1) The 45-day identification period and the 180-day exchange period (*but not the due date of return exchange period*) for deferred like-kind exchanges set forth in § 1.1031(k)-1(b)(2); and

(2) The 5-business day period to enter into a QEAA, the 45-day identification period, the 180-day exchange period, and the 180-day combined time period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51.

General Rule

The last day of a 45-day identification period set forth in § 1.1031(k)-1(b)(2), the last day of a 180-day exchange period set forth in § 1.1031(k)-1(b)(2), and the last day of a period set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, that falls on or after the date of a Presidentially declared disaster is postponed by 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance announcing tax relief for victims of the specific Presidentially declared disaster, whichever is later.

A taxpayer who is a transferor qualifies for a postponement under the *General Rule* only if—

(1) The relinquished property was transferred on or before the date of the Presidentially declared disaster, or in a transaction governed by Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, qualified indicia of ownership were transferred to the exchange accommodation titleholder on or before that date; and

(2) The taxpayer (transferor)—

(a) Is an “affected taxpayer” as defined in § 301.7508A-1(d)(1) of the Procedure and Administration Regulations; or

(b) Has difficulty meeting the 45-day identification or 180-day exchange deadline set forth in § 1.1031(k)-1(b)(2), or a deadline set forth in section 4.02(3) through (6) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, due to the Presidentially declared disaster for the following or similar reasons:

(i) The relinquished property or the replacement property is located in a covered disaster area (as defined in § 301.7508A-1(d)(2)) as provided in the IRS News Release or other guidance (the covered disaster area);

(ii) The principal place of business of any party to the transaction (for example, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;

(iii) Any party to the transaction (or an employee of such a party who is involved in the § 1031 transaction) is killed, injured, or missing as a result of the Presidentially declared disaster;

(iv) A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the

deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the Presidentially declared disaster;

(v) A lender decides not to fund either permanently or temporarily a real estate closing due to the Presidentially declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the Presidentially declared disaster; or

(vi) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the Presidentially declared disaster.

Additional Relief for Substantially Damaged Identified Property

The postponement described in the *General Rule* also applies to the last day of a 45-day identification period described in § 1.1031(k)-1(b)(2) and the last day of a 45-day identification period described in section 4.05(4) of Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51, that falls prior to the date of a Presidentially declared disaster if an identified replacement property (in the case of an exchange described in § 1.1031(k)-1), or an identified relinquished property (in the case of an exchange described in Rev. Proc. 2000-37, modified by Rev. Proc. 2004-51) is substantially damaged by the Presidentially declared disaster.

EFFECTIVE DATE

Taxpayers may apply the proposed modifications to Rev. Proc. 2004-13 described in this notice for acts that may be performed on or after January 26, 2004, the effective date of Rev. Proc. 2004-13.

DRAFTING INFORMATION

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