

Part III - Administrative, Procedural, and Miscellaneous

**Hurricanes Katrina and Rita – Relief from Certain Backup Withholding Obligations**

Notice 2006-12

PURPOSE

This notice supplements 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 Hurricanes Katrina and Rita. Generally, section 3406 and the regulations thereunder impose on payors certain obligations with respect to backup withholding on reportable payments due to notification that the payee's taxpayer identification number (TIN) is incorrect. With respect to taxpayers affected by Hurricane Katrina or Rita, the IRS has determined that it is appropriate to postpone the time for payors to comply with these obligations.

Notice 2005-73, 2005-42 I.R.B. 723 (October 17, 2005) and News Releases IR-2005-112 and IR-2005-110 summarize certain relief granted with respect to Hurricanes Katrina and Rita, listing the counties and parishes eligible for Public Assistance or Individual and Public Assistance from the Federal Emergency Management Agency (FEMA) pursuant to Presidential disaster declarations. These counties and parishes constitute a "covered disaster area" within the meaning of section 301.7508A-1(d)(2).

The relief detailed below applies to all the counties and parishes that FEMA has designated or later designates as eligible for Individual or Individual and Public Assistance as a result of the devastation caused by Hurricane Katrina or Hurricane Rita.

## BACKGROUND

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, in respect of any tax liability of such taxpayer. 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 also 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 specific acts performed by taxpayers for which section 7508A relief may apply. Section 301.7508A-1(c)(1)(vii) allows the Secretary to specify additional acts to which section 7508A may apply.

Section 301.7508A-1(d)(1) describes several types of "affected taxpayers" eligible for relief under section 7508A. 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, with respect to Hurricane Katrina, the IRS previously determined that the following were affected taxpayers: (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's offices are 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. See Notice 2005-73; see also News Release IR-2005-110 (similar relief for Hurricane Rita).

#### RELIEF FROM CERTAIN BACKUP WITHHOLDING OBLIGATIONS

Pursuant to section 3406(a)(1)(B) and (e)(2), and section 31.3406(d)-5, payors must backup withhold on certain reportable payments after receiving notification from the IRS that the payee's TIN is incorrect ("incorrect TIN notice," also known as a CP 2100 or 2100A notice). The regulations require the payor to send a notice (commonly referred to as a "B" notice) to the payee within 15 business days of receiving an incorrect TIN notice from the IRS, requesting a signed Form W-9, and to backup

withhold on reportable payments after 30 business days if no Form W-9 is received. If the payor has received two incorrect TIN notices from the IRS with respect to an account within 3 years, it must also send a notice to the payee (commonly referred to as a second “B” notice) within 15 business days, but the payee must provide validation of the TIN from either the Social Security Administration or the IRS within 30 business days in order to avoid backup withholding. See also Rev. Proc. 93-37, 1993-2 C.B. 477, for specific requirements with respect to these notices.

The IRS annually sends out incorrect TIN notices to payors beginning in September. The IRS is aware that payors whose principal place of business is located in the covered disaster area may have difficulty meeting their obligations to send B notices and to backup withhold. These payors are “affected taxpayers.” See Notice 2005-73; News Release IR-2005-110. Other payors, who are located outside the covered disaster area and are not affected taxpayers, may need to send B notices to payees who are affected taxpayers. Since many of these affected taxpayers are temporarily displaced, payors may have difficulty locating those payees. The IRS is also aware that since Hurricanes Katrina and Rita, mail service has been disrupted in the covered disaster area. Given these considerations, the IRS has determined that it is appropriate, with respect to affected taxpayers, to postpone the time for payors to send B notices and begin backup withholding. See § 301.7508A-1(c)(1)(vii).

Therefore, incorrect TIN notices sent out by the IRS on or after August 29, 2005, and before February 28, 2006, to payors who are affected taxpayers or to payors with respect to payees that the payors reasonably believe are affected taxpayers should be

treated as if they were dated February 28, 2006. This will provide additional time for payors to update records as necessary and comply with the requirement to send B notices.

Accordingly, payors whose principal place of business is located within the covered disaster area or who are otherwise included within the definition of affected taxpayers, as described in Notice 2005-73, and who have received incorrect TIN notices dated on or after August 29, 2005, and before February 28, 2006, should treat such notices as if received on February 28, 2006 for purposes of complying with the backup withholding rules set forth in section 3406 and the regulations thereunder, regardless of the date shown on the incorrect TIN notice. Thus, the time for a payor to send a B notice to a payee, and to commence backup withholding on reportable payments, is postponed. A payor must send its B notices during the 15 business day period beginning after February 28, 2006, and ending on March 21, 2006, and must begin backup withholding on reportable payments, if necessary, after the close of the 30<sup>th</sup> business day after February 28, 2006 (April 11, 2006). Any such payors who have already mailed their B notices should not begin backup withholding on reportable payments unless the payees have not furnished their TINs in the manner required by April 11, 2006. If such payors have already mailed their B notices and commenced backup withholding, they should cease backup withholding. Payors should attempt to update their payee information and resend B notices to payees (unless the payees have already furnished the required response to the B notices) after February 28, 2006.

Payors whose principal place of business is located outside of the covered

disaster area and who are not otherwise included within the definition of affected taxpayer who have received incorrect TIN notices from the IRS dated on or after August 29, 2005, and before February 28, 2006, should treat such incorrect TIN notices as if received on February 28, 2006, only with respect to payees who they reasonably believe are affected taxpayers, for purposes of complying with the backup withholding rules set forth in section 3406 and the regulations thereunder, regardless of the date shown on the notice. Accordingly, the time for mailing B notices to such payees, and commencing backup withholding on reportable payments to such payees, is postponed as described above. Payors who have already mailed B notices to such payees should not begin backup withholding on reportable payments unless the payees have not furnished their TINs in the manner required by April 11, 2006. Payors who have already mailed B notices to such payees and commenced backup withholding should cease backup withholding. Payors should attempt to update their payee information and resend B notices to payees located in the affected area (unless the payees have already furnished the required response to the B notices) after February 28, 2006.

#### DRAFTING INFORMATION

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