

October 15, 2009, the extended due date to file A's 2008 Form 1040, falls within the postponement period described in the IRS's published guidance, A's return is timely if filed on or before December 2, 2009. However, the payment due date, April 15, 2009, preceded the postponement period. Thus, A will continue to be subject to failure to pay penalties and accrual of interest during the postponement period.

*Example 7.* (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040 for the 2008 taxable year. The joint return is due on April 15, 2009. After credits for taxes withheld on wages and estimated tax payments, H and W owe tax for the 2008 taxable year. H and W's principal residence is in County J in State W.

(ii) On March 3, 2009, severe flooding strikes County J. On March 6, 2009, certain counties in State W (including County J) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on March 6, 2009, the IRS determines that County J in State W is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after March 3, 2009, and on or before June 1, 2009, has been postponed to June 1, 2009.

(iii) Because H and W's principal residence is in County J, H and W are affected taxpayers. April 15, 2009, the due date for filing the 2008 joint return, falls within the postponement period described in the IRS published guidance. Therefore, H and W's joint return without extension will be timely if filed on or before June 1, 2009. Similarly, H and W's 2008 income taxes will be timely paid if paid on or before June 1, 2009.

(iv) On April 30, 2009, H and W timely file Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return." H and W's extension will be deemed to have been filed on April 15, 2009. Thus, H and W's 2008 income tax return will be timely if filed on or before October 15, 2009.

(v) H and W did not request or receive an extension of time to pay. Therefore, the payment of tax due with the 2008 joint return will be timely if paid on or before June 1, 2009. If H and W fail to pay the tax due on the 2008 joint return by June 1, 2009, H and W will be subject to failure to pay penalties and accrual of interest beginning on June 2, 2009.

*Example 8.* The facts are the same as in *Example 7* except that H and W file the joint 2008 return and pay the tax due on April 15, 2009. Later, H and W discover additional deductions that would lower their taxable income for 2008. On June 1, 2012, H and W file a claim for refund under section 6511(a). The amount of H and W's overpayment exceeds the amount of taxes paid on April 15, 2009. Section 6511(a) generally requires that a claim for refund be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. Section 6511(b)(2)(A) includes within the lookback period the period of an extension of time to

file. Thus, payments that H and W made on or after June 1, 2009 would be eligible to be refunded. Because the period from April 15, 2009 to June 1, 2009 is disregarded, the payments H and W made on April 15, 2009 (including withholding or estimated tax payments deemed to have been made on April 15, 2009) would also be included in the section 6511(b)(2)(A) lookback period. Thus, H and W are entitled to a full refund in the amount of their overpayment.

*Example 9.* (i) H and W, individual calendar year taxpayers, entered into an installment agreement with respect to their 2006 tax liabilities. H and W's installment agreement required H and W to make regularly scheduled installment payments on the 15th day of the month for the next 60 months. H and W's principal residence is in County K in State X.

(ii) On May 1, 2009, severe flooding strikes County K. On May 5, 2009, certain counties in State X (including County K) are determined by the Federal government to be disaster areas within the meaning of section 1033(h)(3), and are eligible for assistance under the Stafford Act. Also on May 5, 2009, the IRS determines that County K in State X is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after May 1, 2009 and on or before July 1, 2009, has been postponed to July 1, 2009.

(iii) Because H and W's principal residence is in County K, H and W are affected taxpayers. Pursuant to the IRS's grant of relief under section 7508A, H and W's installment agreement payments that become due during the postponement period are suspended until after the postponement period has ended. H and W will be required to resume payments no later than August 15, 2009. Skipped payments will be tacked on at the end of the installment payment period. Because the installment agreement pertains to prior year tax liabilities, interest and penalties will continue to accrue. H and W may, however, be entitled to abatement of the failure to pay penalties incurred during the postponement period upon establishing reasonable cause.

(g) *Effective/applicability date.* This section applies to disasters declared after January 15, 2009.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 6, 2009.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2560

RIN 1210-AB24

#### Civil Penalties Under ERISA Section 502(c)(4)

##### Correction

In rule document Z8-31188 beginning on page 17 in the issue of Friday, January 2, 2009 make the following correction:

On page 17, in the second column, in the **DATES** heading, March 3, 2008 should read March 3, 2009.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1236]

RIN 1625-AA87

#### Security Zone; Steam Generator Transit, Captain of the Port Zone San Diego; San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving security zone around steam generators as they transit through and when moored in the Captain of the Port (COTP) zone San Diego. This security zone is needed to prevent vessels from transiting in the vicinity of the generators to help ensure the safety and security of the operation. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port, San Diego, or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. on January 2, 2009, to 11:59 p.m. on January 22, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-1236 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590,