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Louisiana Victims of Hurricane Ida Granted Tax Relief

IR-2021-175

The IRS has granted tax relief to the victims of Hurricane Ida in Louisiana that began on August 26. Accordingly, the IRS has offered relief to the entire state of Louisiana.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on August 26, 2021. As a result, the affected taxpayers will now have until January 3, 2022, to file returns and pay any taxes that were originally due during this period. This also includes individuals who had a valid extension to file their 2020 returns due to run out on October 15, 2021. The IRS noted, however, that because tax payments related to these 2020 returns were due on May 17, 2021, those payments are not eligible for this relief. Additionally, the January 3, 2022, deadline also applies to quarterly estimated income tax payments due on September 15, and the quarterly payroll and excise tax returns normally due on November 1, 2021. It also applies to tax-exempt organizations, operating on a calendar-year basis, that had a valid extension due to run out on November 15, 2021. In addition, penalties on payroll and excise tax deposits due on or after August 26 and before September 10 will be abated as long as the deposits were made by September 10, 2021.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who live outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.

Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred, or the return for the prior year. Therefore, taxpayers can claim these losses on the 2020 return they are filling out this tax season or the 2021 return to be filed next year.

Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number, i.e., 4611 doe Hurricane Ida in Louisiana, on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

Taxpayers Urged to Develop Emergency Preparedness Plans for Surviving Natural Disasters

IR-2021-174

The IRS has reminded taxpayers to develop emergency preparedness plans due to the upcoming hurricane season and the ongoing threat of wildfires in some parts of the country. September is declared as the National Preparedness Month.

Further, the IRS advised taxpayers to:

- secure critical documents such as tax returns, birth certificates, deeds, titles and insurance policies inside waterproof containers in a secure space;
- duplicate and scan key documents for backup storage on electronic media such as a flash drive, CD or in the cloud, which provide security and easy portability;
- record all property, especially expensive and high value items. The IRS disaster-loss workbooks in Publication 584 and Publication 584-B can help individuals and businesses compile lists of belongings or business equipment;
- employers who use payroll service providers should check payroll service provider's fiduciary bonds as they could protect the employer in the event of default by the provider;
- employers should create an Electronic Federal Tax Payment System account at EFTPS.gov to monitor their payroll tax deposits and receive email alerts; and
- reconstruct records after a disaster for tax purposes, getting federal assistance or insurance reimbursement. Further, taxpayers who have lost some or all their records during a disaster can visit the IRS's Reconstructing Records webpage.

In addition, taxpayers residing in a federally declared disaster can check for the available disaster tax relief on the IRS Tax Relief in Disaster Situations webpage or Around the Nation on IRS.gov. The IRS automatically identifies taxpayers located in the covered disaster area and applies filing and payment relief. Taxpayers impacted by a disaster can contact the IRS at 866-562-5227 to speak with an IRS specialist trained to handle disaster-related issues. Further, taxpayers impacted by a disaster outside of a federally declared disaster area may qualify for disaster relief. This includes taxpayers who are not physically located in a disaster area but their records essential for filing or payment deadlines postponed during the relief period are located in a covered disaster area.

Telephonic Hearings May Continue to Satisfy Public Approval Requirements for Exempt Bonds

Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the IRS extended until March 31, 2022, the time period during which telephonic hearings may satisfy the public approval requirement for private activity bonds, as originally provided in section 4.02 of Rev. Proc. 2020-21, I.R.B. 2020-22, 872, and modified by Rev. Proc. 2020-49, I.R.B. 2020-48, 1121. Reg. §1.147(f)-1(d)(2) provides that public hearings must be held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit. Due to the pandemic, state and local governmental units sought alternatives to in-person hearings held to meet the public approval requirement.

Rev. Proc. 2021-39

Victims of California Wildfires Granted Tax Relief

California Disaster Relief Notice (CA-2021-03)

The president has declared a federal disaster area in California. The disaster is due to wildfires that began on July 14, 2021. The disaster area includes Lassen, Nevada, Placer, and Plumas counties.

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

California Filing Deadlines Extended

The IRS extended certain deadlines falling on or after July 14, 2021, and before November 15, to November 15. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

California Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after July 14, 2021, and before November 15. Further, taxpayers have until November 15, to perform other time-sensitive actions due on or after July 14, 2021, and before November 15.

The IRS excused late penalties for employment and excise tax deposits due on or after July 14, 2021 and before July 29, 2021. But, the taxpayer must make the deposits by July 29, 2021.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2020 or 2021 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation "**California Wildfires**" at the top of the return. This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

CDFI Fund Awards New Markets Tax Credits Worth $5 Billion

The Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) has announced New Markets Tax Credits worth $5 billion to create jobs and encourage investment and economic growth in low-income urban and rural communities nationwide. The CDFI Fund awarded tax credit allocations to 100 Community Development Entities (CDEs) through the calendar year 2020 round of the New Markets Tax Credit Program. The 100 CDEs were selected from 208 applicants that requested an aggregate total of $15.1 billion in tax credit allocation authority. The award recipients operate from 34 different states and the District of Columbia. The CDFI Fund plans to make one-fifth of the investments in rural communities. The award recipients will make approximately more than $1 billion in New Markets Tax Credit investments in non-metropolitan counties.

The list of awards can be found in the Award Book, along with other information about these awards, at https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit/award-announcement-step.

Victims of Tennessee Severe Storms and Flooding Granted Tax Relief

Tennessee Disaster Relief Notice (TN-2021-01 [TN-2021-02])

The president has declared a federal disaster area in Tennessee. The disaster is due to severe storms and flooding that began on August 21, 2021. The disaster area includes Dickson, Hickman, Houston, and Humphreys counties.

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

Tennessee Filing Deadlines Extended

The IRS extended certain deadlines falling on or after August 21, 2021, and before January 3, 2022, to January 3, 2022. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

Tennessee Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after August 21, 2021, and before January 3, 2022. Further, taxpayers have until January 3, 2022, to perform other time-sensitive actions due on or after August 21, 2021, and before January 3, 2022.

The IRS excused late penalties for employment and excise tax deposits due on or after August 21, 2021 and before September 7, 2021. But, the taxpayer must make the deposits by September 7, 2021.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2020 or 2021 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation "**Tennessee - Severe Storms and Flooding**" at the top of the return. This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

IRS Grants Dyed Diesel Fuel Penalty Relief

The IRS has announced that, in response to shortages of undyed diesel fuel caused by Hurricane Ida, it will not impose a penalty when dyed diesel fuel is sold for use or used on the highway for a number of parishes in the state of Louisiana. The Louisiana parishes include Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana. This relief is effective as of August 29, 2021, and will remain in effect through September 15, 2021. The penalty relief is available to any person that sells or uses dyed diesel fuel for highway use. In the case of the operator of the vehicle in which the dyed diesel fuel is used, the relief is available only if the operator or the person selling such fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use. The IRS will not impose penalties for failure to make semimonthly deposits of this tax. Ordinarily, dyed diesel fuel is not taxed, because it is sold for uses exempt from excise tax, such as to farmers for farming purposes, for home heating use, and to local governments. Further, this waiver is not applicable to the Internal Revenue Code penalty for using adulterated fuels that do not comply with applicable EPA regulations. Consequently, diesel fuel with sulfur content higher than 15 parts-per-million may not be used in highway vehicles.

IR-2021-176

Regulations Released on IRS Administrative Proceedings

T.D. 9952

The IRS has released final regulations which modify regulations relating to IRS administrative proceedings to reflect limitations that are required by the enactment of the Taxpayer First Act of 2019. The final regulations implement new rules regarding the persons who may be provided books, papers, records, or other data obtained pursuant to Code Sec. 7602 for the sole purpose of providing expert evaluation and assistance to the IRS. Further, the final regulations adopt limitations on the types of non-governmental attorneys to whom, under the authority of Code Sec. 6103(n), any books, papers, records, or other data obtained pursuant to Code Sec. 7602 may be provided. Moreover, these final regulations prohibit any IRS contractors from asking substantive questions of a summoned witness under oath or asking a summoned person's representative to clarify an objection or assertion of privilege. The regulations affect persons who are examined by the IRS and any persons who are questioned by the IRS under oath pursuant to Code Sec. 7602. They adopt earlier proposed regulations without change.

Participation of Person Described in Code Sec. 6103(n)

The Secretary may not, under the authority of Code Sec. 6103(n), provide any books, papers, records, or other data obtained pursuant to Code Sec. 7602 to any person authorized under Code Sec. 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS. Further, persons providing expert evaluation and assistance may include, but are not limited to, the following: (1) persons with specialized expertise in certain substantive areas, including, but not limited to, economists, engineers, attorneys specializing in an area relevant to an issue in the examination (such as patent law, property law, environmental law, or foreign, state, or local law (including foreign, state, or local tax law)), industry experts, or other subject-matter experts; (2) persons providing support as ancillary service contractors including, but not limited to, court reporters, translators or interpreters, photocopy services, providers of data processing programs or equipment, litigation support services, or other similar contractors; and (3) whistleblower-related contractors.

Hiring of Certain Non-government Attorneys

The IRS may not hire an attorney as a contractor to assist in an examination under Code Sec. 7602 unless the attorney is hired by the IRS as a specialist in foreign, state, or local law (including foreign, state, or local tax law), or in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney. Further, persons authorized by Code Sec. 6103(n) and with whom the Secretary may provide books, papers, records, or other data obtained pursuant to Code Sec. 7602 may also attend a summons interview and provide assistance to the IRS or Office of Chief Counsel employees in attendance, but may not question the summoned witness under oath or ask a summoned person's representative to clarify an objection or assertion of privilege.

In addition, court reporters who are hired as contractors by the IRS to make a record of an IRS summons interview are permitted to ask typical housekeeping questions of a summoned witness. Translators and interpreters who are hired as contractors by the IRS to assist in the interview of a summoned witness are permitted to translate any of the questions that are asked of the witness by an IRS or Office of Chief Counsel officer or employee and to ask questions which may be necessary to clarify the translation.

Tax Court Had Jurisdiction Over Innocent Spouse Case

N.E. Vera, 157 TC —, No. 6, Dec. 61,921

The Tax Court had jurisdiction to determine the appropriate relief available to an individual who sought innocent spouse relief for two tax years at issue. Initially, the taxpayer submitted a request for innocent spouse relief for one tax year, which the IRS denied in a final determination. Subsequently, the taxpayer filed an untimely petition for Tax Court review which was dismissed for lack of jurisdiction. Later, the taxpayer submitted a request for innocent spouse relief for an additional tax year at issue (two tax years). The IRS issued a final determination denying relief as to both years on the merits. The Tax Court held it had jurisdiction to hear the case even though the IRS previously denied relief for one year and argued that the year was included in the notice by mistake.

Notice Is Evaluated on its Face

The Tax Court has jurisdiction to review a final determination denying innocent spouse relief. The Tax Court concluded that when evaluating whether a notice serves as the predicate for jurisdiction, it generally does not look beyond the face of the notice unless its text is ambiguous or inconsistent. In this case, the notice unambiguously denied relief for two years. The court also stated that nothing in the law or regulations prohibits the Commissioner from issuing more than one final determination as to a given tax year. Thus, the notice could be a final determination conferring jurisdiction, even though there had been a prior final determination.

Individual No Longer Carrying on Trade or Business; Not Liable for Penalty

C.P. Morgan, Est., TC Memo. 2021-104, Dec. 61,922(M)

An individual (husband) was no longer carrying on a trade or business under Code Sec. 162. The husband and his wife filed their petition jointly. However, the husband later died. The court permitted a motion to change parties. The wife was appointed as the personal representative of her husband's estate.

Not Carrying on Trade or Business

The husband's entities were placed in receivership during the tax year at issue. Therefore, the IRS's disallowance of the Schedule C and Schedule E deductions in issue were sustained. Even though the husband's hard work continued post receivership, his homebuilding trade or business was ended by it. Moreover, the husband's continued activities in the aftermath of the recession and receivership use of one of his LLCs (L1) to search for a new trade or business and its continued existence did not constitute an active trade or business.

NOL Deduction Denied

The taxpayers were denied a net operating loss (NOL) deduction. L1's expenses for the tax years at issue were not deductible under Code Sec. 162. L1's expenses could not carry over under Code Sec. 172 because they were not the result of operating a trade or business. Another LLC (L2) of the taxpayers' had distributive losses. These losses were limited by the taxpayers' failure to substantiate their outside basis. Further, the taxpayers introduced no sufficient evidence supporting their outside basis in L2, failing entitlement for an NOL.

Not Liable for Accuracy Related Penalty

The taxpayers were not liable for an accuracy related penalty under Code Sec. 6662(a). The taxpayers' understatement was substantial and exceeding 10 percent of the tax required. The taxpayers' reliance on advice from two tax preparers was credible. The return position was taken with reasonable cause and in good faith. Finally, the taxpayers provided necessary and accurate information to the tax preparers, who would summarize all data necessary for their return and provide supporting documents.

Revised Procedures for Pre-Approved 403(b) Opinion Letters and 401(a) Interim Amendments

Rev. Proc. 2021-37; Rev. Proc. 2021-38

The IRS issued revised procedures for issuing Opinion Letters regarding Code Sec. 403(b) pre-approved plans for the second Remedial Amendment Cycle (Cycle 2). Rev. Proc. 2013-22, I.R.B. 2013-18, 985, is modified and superseded, and Rev. Proc. 2019-39 is modified. In addition, the IRS modified the interim amendment deadline for pre-approved Code Sec. 401(a) plans. Rev. Proc. 2016-37, I.R.B. 2016-29, 136 is modified.

403(b) Procedures Made More Like 401(a)

The procedures for the Code Sec. 403(b) pre-approved plan program are modified to be closer to the procedures that apply to Code Sec. 401(a) pre-approved plans. The changes include:

- eliminating the distinction between prototype and volume submitter plans;
- issuing a Cumulative List of Changes in the Code Sec. 403(b) Requirements (Cumulative List) for reviewing plans submitted for Cycle 2;
- permitting the submission during the Employer Adoption Window of an application for a determination letter using Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, by (1) an Adopting Employer of a Nonstandardized Plan that makes amendments to the plan that are not extensive, or (2) an Adopting Employer of any Code Sec. 403(b) Pre-approved Plan (whether a Standardized Plan or a Nonstandardized Plan) that adds language to satisfy the requirements of Code Sec. 415 due to the required aggregation of plans; and
- providing details regarding the system of cyclical Remedial Amendment Periods that follows the Initial Remedial Amendment Period.

The On-Cycle submission period for Cycle 2 applications will begin on May 2, 2022, and end on May 1, 2023. The revised procedures extend the deadline for making interim amendments with respect to a change in Code Sec. 403(b) Requirements, for most plans, until the end of the second calendar year following the calendar year in which the change in Code Sec. 403(b) Requirements is effective with respect to the plan.

The revised procedure provides rules for permitting the participation of employees of certain church-related organizations in a Code Sec. 403(b) Pre-approved Plan that is intended to be a Retirement Income Account.

The revised procedure is effective on July 1, 2020, the day Cycle 2 began, and, except as otherwise stated, applies to applications for an Opinion Letter submitted solely with respect to Cycle 2 and subsequent Cycles. The extended deadline for interim and initial amendments are effective for Form Defects first occurring on or after July 1, 2020, the day Cycle 2 began.

Interim Amendment Deadline For Pre-Approved Qualified Plans Modified

The interim amendment deadline set forth Rev. Proc. 2016-37, I.R.B. 2016-29, 136, is modified to provide that an interim amendment made to a pre-approved plan qualified under Code Sec. 401(a) is adopted timely if the amendment is adopted by the end of the second calendar year after the calendar year in which the change in qualification requirements is effective with respect to the plan.

Under this modification, the interim amendment deadline is no longer determined with reference to Code Sec. 401(b), and, accordingly, an employer's tax-filing deadline is no longer relevant in determining the date by which an interim amendment must be adopted. As a result of this modification, the interim amendment deadline applicable to a governmental plan and which is determined by reference to the interim amendment deadline for a plan that is not a governmental plan, is modified. These changes to the interim amendment deadline are consistent with the deadline for adopting interim amendments with respect to Code Sec. 403(b) pre-approved plans.

TAX BRIEFS

Collection Due Process

An IRS Appeals Officer did not abuse her discretion in denying an individual's request to have her account placed into currently not collectible (CNC) status. Further, the IRS's motion for summary judgment was granted. The record showed that the taxpayer failed to furnish the necessary documentation for the IRS Appeals Officer to properly consider placing her account in CNC status or collection alternatives

Webb, TC, Dec. 61,923(M)

Whistleblower Awards

Two individuals' claim for a whistleblower award was denied and ruled not credible. The taxpayers alleged that their former landlord (target) owned other properties from which she collected rents and did not report income. The Small Business/Self-Employed (SBSE) classifier suggested the allegations were not specific, credible or were speculative. Finally, the IRS did not abuse its discretion by not offering the taxpayers the opportunity to supplement their claim before rejecting it.

Chow, TC, Dec. 61,924(M)