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January 26, 2004**Rev. Proc. 2004-13****Table of Contents**

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SECTION 1. PURPOSE

.01 This revenue procedure provides an updated list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Internal Revenue Code (Code). Section 7508 of the Code postpones 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. Section 7508A of the Code permits a postponement of specified acts for taxpayers affected by a Presidentially declared disaster or a terroristic or military action. The list of acts in this revenue procedure supplements the list of postponed acts in section 7508(a)(1) of the Code and section 301.7508A-1(b) of the Regulations on Procedure and Administration.

.02 This revenue procedure does not, by itself, provide any postponements under sections 7508 or 7508A. In order for taxpayers to be entitled to a postponement of any act listed in this revenue procedure, the IRS generally will publish a Notice or issue other guidance (including an IRS News Release) providing relief with respect to a specific combat zone, Presidentially declared disaster, or a terroristic or military action.

.03 This revenue procedure will be updated as needed when the IRS determines that additional acts should be included in the list of postponed acts or that certain acts should be removed from the list. Also, taxpayers may recommend that additional acts be considered for postponement under sections 7508 and 7508A. See section 17 c of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 7508(a)(1) of the Internal Revenue Code permits a postponement of certain time-sensitive acts for individuals serving in the Armed Forces or in support of such Armed Forces in an area designated by the President as a combat zone under section 112. Among these acts are the filing of returns, the payment of tax, the filing of a Tax Court petition, and the filing of a refund claim. In the event of service in a combat zone, the acts specified in section 7508(a)(1) of the Code are *automatically postponed*. In addition, if the Service publishes a Notice or other guidance providing additional relief under section 7508, some or all of the acts listed in this revenue procedure may be postponed. Likewise, acts not listed in this revenue procedure may be included in published guidance.

.02 Section 7508A of the Code provides that certain acts performed by taxpayers on behalf of the government may be postponed if the taxpayer is affected by a Presidentially declared disaster or a terroristic or military action. A "Presidentially declared disaster" is defined in section 1033(h)(3) of the Code. A "terroristic or military action" is defined in section 692(c)(2) of the Code. Section 301.7508A-1(d)(1) of the regulations defines seven types of affected taxpayers, including any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a "covered disaster area" and any business entity or sole proprietor whose principal place of business is located in a "covered disaster area." Postponements under section 7508A are not available simply because a disaster or a terroristic or military action has occurred. Generally, the IRS will publish a Notice or issue other guidance (including an IRS News Release) authorizing the postponement. Such guidance will describe the *acts* postponed, the *duration* of the postponement, and the *location* of the covered disaster area. See, for example, Notice 2001-68, 2001-2 C.B. 504, *supplementing* Notice 2001-61, 2001-2 C.B. 305. When a Notice or other guidance for a particular disaster is published, or issued, the guidance generally will refer to this revenue procedure and may provide for a postponement of all the acts listed in the regulation and this revenue procedure. Alternatively, the guidance may provide that only certain acts listed in this revenue procedure are postponed based on the time when the disaster occurred, its severity, and other factors.

SECTION 3. SCOPE

This revenue procedure applies to individuals serving in the Armed Forces in a combat zone, or in support of such Armed Forces, to affected taxpayers within the meaning of section 301.7508A-1(d)(1) of the regulations, and to taxpayers whom the IRS determines are affected by a terroristic or military action.

SECTION 4. APPLICATION

.01 The tables below list sections of the Internal Revenue Code and Treasury Regulations requiring the *timely performance* of specified acts that may be postponed under sections 7508 and 7508A.

.02 In order to avoid unnecessary duplication, the following tables do not include acts specified in sections 7508 or 7508A or the regulations thereunder. Thus, for example, no mention is made in the following tables of the filing of tax returns or the payment of taxes (or an installment thereof) because these acts are already covered by sections 7508 and 7508A and the regulations thereunder. Also, the following tables do not refer to the making of accounting method elections or any other elections required to be made on tax returns or attachments thereto. Reference to these elections is not necessary because postponement of the filing of a tax return automatically postpones the making of any election required to be made on the return or an attachment thereto.

.03 The following tables refer only to postponement of acts performed by taxpayers on behalf of the government. Additional guidance will be published in the Internal Revenue Bulletin if a decision is made that acts performed by the government may be postponed under section 7508 or section 7508A.

	file Form 1139 (for corporations) or Form 1045 (for entities other than corporations) within 12 months after the end of such taxable year that generates such net operating loss, net capital loss, or unused business credit from which the carryback results.
4. Sec. 6656(e)(2)	A taxpayer who is required to deposit taxes and fails to do so is subject to a penalty under section 6656. Under section 6656(e)(2), the taxpayer may, within 90 days of the date of the penalty notice, designate to which deposit period within a specified tax period the deposits should be applied.

SECTION 15. TAX CREDIT ISSUES

Statute or Regulation	Act Postponed
1. Section 42(e)(3)(A)(ii)	A taxpayer has a 24-month measuring period in which the requisite amount of rehabilitation expenditures has to be incurred in order to qualify for treatment as a separate new building.
2. Treas. Reg. § 1.42-5(c)(1)	The taxpayer must make certain certifications at least annually to the Agency.
3. Treas. Reg. § 1.42-5(c)(1)(iii)	The taxpayer must receive an annual income certification from each low-income tenant with documentation to support the certification.
4. Treas. Reg. § 1.42-8(a)(3)(v)	The taxpayer and an Agency may elect to use an appropriate percentage under section 42(b)(2)(A)(ii)(I) by notarizing a binding agreement by the 5th day following the end of the month in which the binding agreement was made.
5. Treas. Reg. § 1.42-8(b)(1)(vii)	The taxpayer and an Agency may elect an appropriate percentage under section 42(b)(2)(A)(ii)(II) by notarizing a binding agreement by the 5th day following the end of the month in which the tax-exempt bonds are issued.
6. Sec. 42(d)(2)(D)(ii)(IV)	In order to claim section 42 credits on an existing building, section 42(d)(2)(B)(ii)(I) requires that the building must have been placed in service at least ten years before the date the building was acquired by the taxpayer. A building is not considered placed in service for purposes of section 42(d)(2)(B)(ii) if the building is resold within a 12-month period after acquisition by foreclosure of any purchase-money security interest.
7. Sec. 42(g)(3)(A)	A building shall be treated as a qualified low-income building only if the project meets the minimum set aside requirement by the close of the first year of the credit period of the building.
8. Sec. 42(h)(6)(J)	A low-income housing agreement commitment must be in effect as of the beginning of the year for a building to receive credit. If such a commitment was not in effect, the taxpayer has a one-year period for correcting the failure.
9. Sec. 42(h)(1)(E) and (F)	The taxpayer's basis in the building project, as of the later of the date which is 6 months after the date the allocation was made or the close of the calendar year in which the allocation is made, must be more than 10 percent of the taxpayer's reasonably expected basis in the project.
10. Sec. 47(c)(1)(C) and Treas. Reg. § 1.48-12(b)(2)	A taxpayer has a 24- or 60-month measuring period in which the requisite amount of rehabilitation expenditures have to be incurred in order to satisfy the "substantial rehabilitation" test.

11.	Treas. Reg. § 1.48-12(d)(7)	In the historic rehabilitation context, if the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the return on which the credit is claimed, the taxpayer must, prior to the last day of the 30th month, consent to extending the statute of limitations by submitting a written statement to the Service.
12.	Sec. 51(d)(12)(A)(ii)(II) and 51A(d)(1)	An employer seeking the Work Opportunity Credit or the Welfare-to-Work Credit with respect to an individual must submit Form 8850, <i>Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits</i> , to the State Employment Security Agency not later than the 21 st day after the individual begins work for the employer.

SECTION 16. TAX-EXEMPT BOND ISSUES

Statute or Regulation	Act Postponed
1. Treas. Reg. § 1.25-4T(c)	On or before the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. An election may be revoked, in whole or in part, at any time during the calendar year in which the election was made.
2. Treas. Reg. §§ 1.141-12(d)(3) and 1.142-2(c)(2)	An issuer must provide notice to the Commissioner of the establishment of a defeasance escrow within 90 days of the date such defeasance escrow is established in accordance with Treas. Reg. § 1.141-12(d)(1) or 1.142-2(c)(1).
3. Sec. 142(d)(7)	An operator of a multi-family housing project for which an election was made under section 142(d) must submit to the Secretary an annual certification as to whether such project continues to meet the requirements of section 142(d).
4. Sec. 142(f)(4) and Treas. Reg. § 1.142(f)(4)-1	A person engaged in the local furnishing of electric energy or gas (a local furnisher) that uses facilities financed with exempt facility bonds under section 142(a)(8) and expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f), may make an election to ensure that those bonds will continue to be treated as exempt facility bonds. The election must be filed with the IRS on or before 90 days after the date of the service area expansion that causes the bonds to cease to meet the applicable requirements.
5. Sec. 146(f) and Notice 89-12	If an issuing authority's volume cap for any calendar year exceeds the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority, such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes. Such election must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.
6. Sec. 148(f)(3) and Treas. Reg. § 1.148-3(g)	An issuer of a tax-exempt municipal obligation must make any required rebate payment no later than 60 days after the computation date to which the payment relates. A rebate payment is paid when it is

		filed with the IRS at the place or places designated by the Commissioner. A payment must be accompanied by the form provided by the Commissioner for this purpose.
7.	Treas. Reg. § 1.148-5(c)	An issuer of a tax-exempt municipal obligation must make a yield reduction payment on or before the date of required rebate installment payments as described in Treas. Reg. § 1.148-3(f), (g), and (h).
8.	Sec. 148(f)(4)(C)(xvi) and Treas. Reg. § 1.148-7(k)(1)	As issuer of a tax-exempt municipal obligation that elects to pay certain penalties in lieu of rebate must make any required penalty payments not later than 90 days after the period to which the penalty relates.
9.	Sec. 149(e)	An issuer of a tax-exempt municipal obligation must submit to the Secretary a statement providing certain information regarding the municipal obligation not later than the 15 th day of the 2 nd calendar month after the close of the calendar quarter in which the municipal obligation is issued.

SECTION 17. INQUIRIES

If you wish to recommend that other acts qualify for postponement, please write to the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division), CC:PA:APJP:B2, 1111 Constitution Avenue, NW, Washington, DC 20224. Please mark "7508A List" on the envelope. In the alternative, e-mail your comments to: Notice.Comments@irs.counsel.treas.gov, and refer to Rev. Proc. 2004-13 in the Subject heading.

SECTION 18. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2002-71, 2002-2 C.B. 850, is superseded.

SECTION 19. EFFECTIVE DATE

This revenue procedure is effective for acts that may be performed on or after January 26, 2004.

SECTION 20. DRAFTING INFORMATION

The principal author of this revenue procedure is Marcy W. Mendelsohn of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue procedure, contact Ms. Mendelsohn at (202) 622-4940 (not a toll-free call).

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