



## NEW RULES FOR IRC §1031 EXTENSIONS

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Many times taxpayers are advised that there are no extensions to these time deadlines, but technically this is not correct. In general, a taxpayer's individual circumstances or problems are not taken into consideration by the Internal Revenue Service in determining whether or not a deadline for an exchange should be extended. However, there are mechanisms to provide for relief for multiple taxpayers affected by certain extraordinary circumstances.

In the past year Revenue Procedure 2004-13 (1/26/04), along with Notice 2005-3 (1/14/05) which retroactively modifies the earlier ruling, have significantly expanded a taxpayer's right to an extension of the time deadlines under certain adverse situations. Both the revenue procedure and notice modified the list of time sensitive acts under IRC §§ 7508 and 7508A, as well as expanding the categories of taxpayers who can qualify for the relief. In addition, the notice provides a 120-day postponement for the §1031 time deadlines.

Notice 2005-3 provides for a smoother mechanism for recognizing events which would provide for a postponement of time deadlines for exchanges. Pursuant to the terms of 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." Section 7508A also allows for the postponement of deadlines for certain terroristic or military actions. In addition, Notice 2005-3 provides for a postponement of time deadlines "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", as provided for in § 7508.

Although the postponements are considered automatic, taxpayers are not entitled to the relief unless and until the Service issues an IRS News Release or other guidance providing relief. In addition to the 45 and 180 day time deadlines, the 5 day time period to enter into a qualified exchange accommodation agreement for parking exchanges is extended as well.

Of equal significance is the expansion of who may claim a postponement of the time deadlines. Prior to Notice 2005-3 there were many circumstances in which a taxpayer was affected by disaster or other adverse condition, but did not qualify for a postponement under Revenue Procedure 2004-13 because they did not fit the definition of an affected person at that time.

Under Notice 2005-3 an affected taxpayer must have first sold its relinquished property, or have closed on a parked property for a reverse or improvement exchange, in order

to qualify for a postponement. In addition, the taxpayer must either be an "affected taxpayer", or have difficulty meeting the deadlines due to the Presidentially declared disaster. Among the reasons why a taxpayer may have difficulty are the location of its relinquished or replacement property in a Presidentially declared disaster area; or the principal place of business of a party to the transaction, such as the qualified intermediary, lender, or transferee, is located in the disaster area; or a similar reason.

While these rules do not provide for an extension for individual taxpayers, or for more common business reasons resulting in a failure to close on a real estate transaction, they do provide clarification and additional benefits for those taxpayers affected by adverse conditions. Taxpayers should contact their tax or legal counsel to verify whether they can qualify for the benefits of these rulings.

