

Section 7508.—Time for Performing Certain Acts Postponed by Reason of Service in Combat Zone or Contingency Operation

(Also Sections 6081, 7508A; 11 U.S.C. §§ 507, 523, 727.)

Bankruptcy effects of disaster and combat zone relief. This ruling provides that the postponement of the time to file a return under section 7508 or 7508A of the Code does not change the date that the return is last due, including extensions, and therefore does not change the priority and dischargeability of the tax for bankruptcy purposes.

Rev. Rul. 2007-59

ISSUES

(1) Does a grant of relief by the Internal Revenue Service under section 7508A of the Internal Revenue Code, which postpones the time in which a taxpayer affected by a Presidentially-declared disaster may timely file an income tax return, change the date on which the return is “last due, including extensions” under section 507(a)(8)(A)(i) of Title 11 of the United States Code (Bankruptcy Code), and thereby affect the priority and dischargeability of the related tax liability in bankruptcy?

(2) Does relief under section 7508 of the Code, which postpones the time in which an individual taxpayer may timely file an income tax return, change the date on which the return is “last due, including extensions” under section 507(a)(8)(A)(i) of the Bankruptcy Code or “last due, under applicable law or under any extension” under section 523(a)(1)(B)(ii) of the Bankruptcy Code, and thereby affect the priority and dischargeability of the related tax liability in bankruptcy?

FACTS

Situation 1. A is an individual who uses the cash receipts and disbursements method of accounting and files federal income tax returns on a calendar year basis. On April 12, 2007, A timely requests a 6-month extension of time to file an income tax return for 2006. A’s principal residence for purposes of section

1033(h)(4) of the Code is in County X in State Y. On October 2, 2007, disaster Q strikes State Y. On October 5, 2007, the President declares a disaster within the meaning of section 1033(h)(3). The Service determines that County X is in a covered disaster area within the meaning of section 301.7508A-1(d)(2) of the Procedure and Administration Regulations for purposes of disaster Q. The Service issues a news release announcing relief for taxpayers affected by disaster Q. The news release defines the period from October 2, 2007, through December 31, 2007, as a disaster relief period and provides that the deadlines for specified acts, including the filing of an income tax return, that fall within the disaster relief period are postponed until December 31, 2007. A files an income tax return for 2006 showing a balance due on December 20, 2007. A files a Chapter 7 bankruptcy petition on November 24, 2010, listing the Service as a creditor with respect to the 2006 income tax liability. The case is treated as a “no-asset” Chapter 7 case, and the Service does not file a proof of claim with respect to A’s 2006 federal income tax liability. *See* Fed. R. Bankr. Proc. 2002(e). On January 18, 2011, the bankruptcy court grants A a discharge pursuant to section 727(a) of the Bankruptcy Code.

Situation 2. B is an individual who uses the cash receipts and disbursements method of accounting and files federal income tax returns on a calendar year basis. B serves in the United States Armed Forces in an area designated by the President of the United States by Executive Order as a combat zone for purposes of section 112 of the Code from March 17, 2005, through August 1, 2006. On September 20, 2006, B files an income tax return for 2004 showing a balance due. B files a Chapter 7 bankruptcy petition on November 3, 2008, listing the Service as a creditor with respect to the 2004 federal income tax liability. The case is treated as a “no-asset” Chapter 7 case, and the Service does not file a proof of claim. *See* Fed. R. Bankr. Proc. 2002(e). On December 11, 2008, the bankruptcy court grants B a discharge pursuant to section 727(a) of the Bankruptcy Code.

Situation 3. Same facts as *Situation 2*, except that B files a Chapter 7 bankruptcy petition on September 1, 2008, instead of November 3, 2008.

LAW AND ANALYSIS

Section 6072(a) of the Code provides that calendar year income tax returns for individuals are due on or before the 15th day of April following the close of the calendar year.

Section 6081(a) provides that the Secretary may grant a reasonable extension of time (generally not to exceed six months) for filing any return, declaration, statement, or other document required by the Code or by regulations. An individual who files an application for an extension of time to file an income tax return under section 1.6081-4T(b) of the temporary Income Tax Regulations between December 31, 2005, and November 4, 2008, will be allowed an automatic 6-month extension of time to file the return. Section 1.6081-4T(a) and (f) of the temporary Income Tax Regulations.

Section 7508A(a)(1) provides for the disregard of a period of time of up to one year in determining the timeliness of specified acts performed by taxpayers who are determined by the Service to be affected by a Presidentially-declared disaster or a terrorist or military action. Section 7508A relief is not automatic, but requires a grant of relief by the Service, which is generally in the form of a news release or a notice published in the Internal Revenue Bulletin. The specified acts include the acts described in section 7508(a), such as the filing of income tax returns.

Section 7508(a)(1) provides for the disregard of a period of time in determining the timeliness of specified acts performed by individuals serving in the United States Armed Forces, or serving in support of the Armed Forces, in an area designated by the President as a combat zone pursuant to section 112 or serving with respect to a contingency operation (as defined in 10 U.S.C. § 101(a)(3)). Unlike section 7508A relief, the relief is automatic and not dependent on a grant of relief by the Service. Generally, the relief extends throughout the individual’s period of service in the designated area or operation, plus any period of continuous qualified hospitalization attributable to an injury received while serving in the designated area or operation, plus the next 180 days. The specified acts include the filing of income tax returns. *See* section 7508(a)(1)(A).

An individual debtor in a Chapter 7 case may be granted a discharge. 11 U.S.C. § 727(a). A section 727(a) discharge covers all debts that arose before the bankruptcy case was filed, except those debts listed in section 523 of the Bankruptcy Code. 11 U.S.C. § 727(b). Pursuant to section 523(a)(1)(A) of the Bankruptcy Code, tax debts that are afforded eighth priority are excepted from discharge. Section 507(a)(8)(A)(i) of the Bankruptcy Code provides eighth priority for allowed unsecured pre-petition income tax claims for which a return is “last due, including extensions” after three years before the date of the filing of a bankruptcy petition.

Certain non-priority tax debts are also excepted from discharge under section 523(a)(1)(B) of the Bankruptcy Code. Section 523(a)(1)(B)(ii) of the Bankruptcy Code excepts from discharge any debt for a tax with respect to which a return was filed after the date on which it was “last due, under applicable law or any extension” and after two years before the date of the filing of a bankruptcy petition.

Situation 1. The due date for A’s 2006 income tax return is April 15, 2007. See section 6072. Because A timely requests an extension of time to file a 2006 income tax return, the date on which A’s 2006 return is due, including extensions, is October 15, 2007. See section 1.6081-4T of the temporary Income Tax Regulations.

A is an “affected taxpayer” as defined by section 301.7508A-1(d)(1)(i) of the Procedure and Administration Regulations with respect to disaster Q. Because the extended due date for A’s 2006 income tax return (October 15, 2007) falls within the disaster relief period granted in the news release, A may timely file a 2006 income tax return on or before December 31, 2007, the last day of the relief period.

Section 7508A relief does not change or extend the extended due date for filing A’s 2006 income tax return (October 15, 2007), which is fixed by sections 6072 and 6081(a) of the Code. Instead, section 7508A of the Code disregards the period of postponement and makes timely the filing of the 2006 return at any time during this period. Because section 7508A relief neither changes nor extends the extended due date, the postponement does not change the date on which the 2006 return is “last due, including extensions” under section 507(a)(8)(A)(i) of the Bankruptcy Code.

Therefore, the date on which A’s 2006 income tax return is last due, including A’s automatic 6-month extension, remains October 15, 2007, rather than the last day of the relief period, December 31, 2007. In the Chapter 7 bankruptcy proceeding, a claim for A’s 2006 income tax liability would not be entitled to eighth priority under section 507(a)(8)(A)(i) of the Bankruptcy Code because the date on which A’s 2006 income tax return is last due, including extensions, is October 15, 2007, which precedes November 24, 2007, the date that is three years before the filing of the bankruptcy petition. Accordingly, A’s 2006 income tax liability is not excepted from discharge under section 523(a)(1)(A) of the Bankruptcy Code.

Situation 2. The due date for B’s 2004 income tax return is April 15, 2005. See section 6072. Because B is an individual serving in the United States Armed Forces in an area designated by the President of the United States by Executive Order as a combat zone from March 17, 2005, through August 1, 2006, the time within which B may timely file a 2004 income tax return is postponed for the period of service in the Armed Forces plus 180 days. Section 7508. The postponement also includes any unexpired portion of the time prescribed for filing a return that existed when B entered the combat zone. See Rev. Rul. 76-425, 1976-2 C.B. 447. B would thus have until February 26, 2007, to timely file a 2004 income tax return.

Section 7508 relief does not change or extend the due date for filing B’s 2004 income tax return, which is fixed by section 6072. Instead, section 7508 of the Code disregards the period of postponement and makes timely the filing of the 2004 return at any time during this period. Because section 7508 relief neither changes nor extends the due date, the postponement does not change the date on which the 2004 return is “last due, including extensions” under section 507(a)(8)(A)(i) of the Bankruptcy Code. Therefore, the date on which B’s 2004 income tax return is “last due, including extensions” remains April 15, 2005, rather than the last day of the relief period, February 26, 2007. In the Chapter 7 bankruptcy proceeding, a claim for B’s 2004 income tax liability would not be entitled to eighth priority under section 507(a)(8)(A)(i) because the date on which B’s 2004 income tax re-

turn is last due, including extensions, is April 15, 2005, which precedes November 3, 2005, the date that is three years before the filing of the bankruptcy petition. Accordingly, B’s 2004 income tax liability is not excepted from discharge under section 523(a)(1)(A) of the Bankruptcy Code.

Situation 3. As with Situation 2, the date on which B’s 2004 income tax return is “last due, including extensions” remains April 15, 2005, rather than the last day of the relief period, February 26, 2007. In the Chapter 7 bankruptcy proceeding, a claim for B’s 2004 income tax liability would not be entitled to eighth priority under section 507(a)(8)(A)(i) because the date on which B’s 2004 income tax return is last due, including extensions, is April 15, 2005, which precedes September 1, 2005, the date that is three years before the filing of the bankruptcy petition. Accordingly, B’s 2004 income tax liability is not excepted from discharge under section 523(a)(1)(A) of the Bankruptcy Code.

The date on which B’s 2004 income tax return is “last due, under applicable law or under any extension” under section 523(a)(1)(B)(ii) of the Bankruptcy Code is likewise unaffected by the section 7508 relief. Because B’s 2004 return is filed after April 15, 2005, the date on which the return is “last due, under applicable law or under any extension” and because the date of the petition (September 1, 2008) is less than two years from the date on which the 2004 return is filed (September 20, 2006), the 2004 income tax liability is excepted from discharge under sections 523(a)(1)(B)(ii) and 727(b) of the Bankruptcy Code.

HOLDINGS

(1) The Service’s grant of relief under section 7508A of the Code, which postpones the time in which a taxpayer affected by a Presidentially-declared disaster may timely file an income tax return, does not change the date on which a return is “last due, including extensions” under section 507(a)(8)(A)(i) of the Bankruptcy Code. This holding would also apply to an “affected taxpayer” other than an individual under section 301.7508A-1(d)(1) of the Procedure and Administration Regulations.

(2) Section 7508 relief, which postpones the time in which an individual

may timely file an income tax return, does not change the date on which the return is “last due, including extensions” under section 507(a)(8)(A)(i) of the Bankruptcy Code or “last due, under applicable law or under any extension” under section 523(a)(1)(B)(ii) of the Bankruptcy Code.

DRAFTING INFORMATION

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