

Disaster Relief Deadline Postponements

Revenue Procedure 2018-58 permits postponements of the IRC §1031 45-day Identification Period and 180-day Exchange Period deadlines to certain taxpayers affected by Federally (formerly called “Presidentially”) declared disasters and terroristic and military actions.

1. The IRS will issue a Notice (“Disaster Relief Notice”) or other guidance when this relief is available and will post it on the IRS website under “Disaster Relief”: www.irs.gov/newsroom/tax-relief-in-disaster-situations. FEMA notices and Presidential Declarations do not postpone 1031 deadlines. The notice must be issued by the IRS. (Rev. Proc. 2018-58 §17.01)

2. You must meet the terms of the specific Disaster Relief Notice AND the terms of Rev. Proc. 2018-58 to qualify for a postponement. It is important to check the IRS’ website (above link) for updates to the Notices after the initial publication.

“Affected Taxpayers” that meet the definition in the Disaster Relief Notice may choose the relief provided in either Section 6 OR Section 17 of Rev. Proc. 2018-58. Excerpts from Revenue Procedure 2018-58, setting forth the requirements for postponement of the deadlines for the Identification Period and the Exchange Period can be found here.

3. Section 6 applies only to Affected Taxpayers as defined in the Disaster Relief Notice. Section 6 postpones deadlines falling between the Disaster Date in the Disaster Relief Notice and the last day of the Postponement Period to the last day of the Postponement Period.

- Example 1: Disaster Date is June 14. Last day of the Postponement Period is October 15. Exchanger meets the definition of an “Affected Taxpayer” in the Disaster Relief Notice. Affected Taxpayer sells Relinquished Property on June 15 (AFTER the Disaster Date), and the 45th day is July 30. Under Section 6, the Identification Period deadline is postponed to October 15, the last day of the Postponement Period. The 180th day is not postponed because it did not fall between the disaster date and the last day of the Postponement Period.

4. Section 17 of the Rev. Proc. applies to “Affected Taxpayers” as defined in the Disaster Relief Notice and “Non-Affected Taxpayers” who meet certain criteria. However, for Section 17 to apply, the Relinquished Property must have been transferred, or the parked property parked ON OR BEFORE the Disaster Date. Section 17 permits both 1031 deadlines to be postponed for 120 days or until the last day of the Postponement Period (whichever is later). NOTE: The postponement may not go beyond: (a) the due date (including extensions) of the taxpayer’s tax return for the year of the transfer; or (b) one year (§17.02).

- Example 2: Same facts as Example 1. Affected Taxpayer cannot benefit from Section 17 postponements because the exchange began AFTER the Disaster Date. Affected Taxpayer does not receive a 120-day postponement.
- Example 3: Same facts as Example 1 except that Affected Taxpayer sells Relinquished Property on June 1 (BEFORE the June 14 Disaster Date). The 45th day is July 16 and the 180th day is November 28. If Affected Taxpayer chooses Section 17 relief, then both the 45 and 180-day deadlines qualify to be postponed for 120 days or until the last day of the Disaster Period (whichever is later).

5. “Non-Affected Taxpayers” meeting the criteria set forth in Section 17 and whose exchange commenced ON OR BEFORE the Disaster Date, may qualify for 120-day postponements of either or both of the 45 and 180 day deadlines, but cannot qualify for any relief under Section 6. Additionally, to qualify for the postponement under Section 17, Non-Affected Taxpayers must have difficulty meeting the 45-day and 180-day deadlines because of the disaster, for the any of the following or similar reasons:

- The Relinquished Property or the Replacement Property is located in the disaster zone (§17.02(2)(b)(ii)(A))
- The principal place of business of any party to the transaction is located in the disaster zone (§17.02(2)(b)(ii)(B))
- Party to the transaction is killed, injured or missing due to the disaster (§17.02(2)(b)(ii)(C))
- Necessary document relevant to the exchange or relevant land record is destroyed, damaged or lost due to the disaster (§17.02(2)(b)(ii)(D))
- Lender won’t fund because of the disaster (§17.02(2)(b)(ii)(E))
- Title insurance policy cannot be issued due to the disaster (§17.02(2)(b)(ii)(F))

6. Generally, under Section 17, if the identification period has not expired by the date of the disaster, then the postponement may apply to both the 45-day identification period AND the 180-day exchange period. (§17.02(1)).

- If the identification period has expired by the date of the disaster, then only the exchange period deadline will be postponed. (§17.02(1)).
- UNLESS the disaster occurred after the 45th day AND the identified property was substantially damaged by the disaster, THEN the identification period is postponed. (§17.03).

Exchangers that are entitled to a postponement must advise IPX1031 that they are eligible for, and want to take advantage of, disaster relief, and what their new exchange deadline(s) are, otherwise the original 45-day and 180-day deadlines will control. Note that the disaster relief postponements may delay return of any unspent exchange funds until after the new deadlines have passed unless the exchange terminates earlier pursuant to Treasury Regulations Section 1.1031(k)-1(g)(6).

