DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

May 17, 2012

Control Number: SBSE-05-0512-050
Expiration: November 1, 2012
Impacted: IRM 5.1.12
IRM 4.25.2

MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, CAMPUS COMPLIANCE SERVICES
DIRECTOR, SPECIALTY TAX PROGRAMS

FROM: Scott D. Reisher **/s/ Scott D.Reisher**
Director, Collection Policy

SUBJECT: Reissuance of Procedures for Processing Form 1127 Applications for Extension of Time for Payment of Tax Due to Undue Hardship

The purpose of this memorandum is to reissue the interim guidance memorandum dated July 19, 2011, with control number SBSE-05-0711-062, entitled Reissuance of Procedures for Processing Form 1127 Applications for Extension of Time for Payment of Tax Due to Undue Hardship. This interim guidance memorandum provides guidance for processing Form 1127 Applications submitted by taxpayers. These procedures will be incorporated in IRM 5.1.12, Cases Requiring Special Handling, and IRM 4.25.2, Estate and Gift Tax, Campus Procedures. Please ensure that this information is distributed to all affected employees within your organization.

Background

Internal Revenue Code (IRC) section 6161(a)(1) provides generally that the IRS may extend the time for payment of the amount of the tax shown, or required to be shown, on any return for a reasonable period not to exceed six months from the date payment is due. Such extension may exceed six months in the case of a taxpayer who is abroad. IRC § 6161(b) provides generally that the IRS may extend the time for the payment of an amount determined as a deficiency of a tax for a period not to exceed 18 months from the date payment of the deficiency is due. In exceptional cases, this time period may be extended for a further period not to exceed 12 months. Pursuant to IRC § 6161(b)(3), no extension shall be granted if the deficiency is due to negligence, intentional disregard of rules and regulations, or to fraud with intent to evade tax.

Form 1127 may be used to request extensions of time to pay the amount due on a return or a deficiency for a number of different types of taxes, such as income tax, gift tax, and certain excise taxes. The types of taxes for which an extension to pay may be requested on Form 1127 are listed in the instructions to the form. While IRC § 6161 also provides for extensions of time to pay estate tax, such extensions must be requested on Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation Skipping Transfer) Taxes. See IRM 5.5.5, Processing Estate Tax Extensions. With the exception of gift taxes, all Form 1127 applications must be filed with the Advisory Group Manager for the area where the taxpayer maintains his or her legal residence or principal place of business. Requests for an extension of time to pay a gift tax must be filed with the Estate and Gift Tax (E&G) unit in the Cincinnati campus.

Treasury Regulation (Treas. Reg.) § 1.6161-1(c) provides that applications will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. The revised Form 1127 includes check boxes for indicating whether the application is being approved, denied, or returned. The reason(s) for this determination should be included on the form and more specifically explained in a cover letter sent to the taxpayer. The attached sample cover letters may be revised as needed to explain the particular reason(s) why the application is being returned as nonprocessible.

Returning Form 1127 as Nonprocessible

The Form 1127 must clearly be a request under IRC § 6161 for an extension of time to pay due to undue hardship. Taxpayers and their representatives often use Form 1127 incorrectly. For example, if the taxpayer is using Form 1127 to request an extension of time to file a return, then the Form 1127 must be returned as nonprocessible. The Determination Chart in the instructions to the form lists various types of relief that taxpayers may incorrectly seek using Form 1127 and the appropriate forms to use or actions to take in those situations.

If the taxpayer is requesting an extension of time to pay a tax due on an upcoming return, Form 1127, with supporting documents, must be filed on or before the due date of that return, not including extensions. If the taxpayer is requesting an extension of time to pay a deficiency, then Form 1127, with supporting documents, must be filed on or before the due date for payment indicated in the tax bill. The postmark date should be used to determine whether the form was timely filed.

Additionally, in order to be processible, the Form 1127 must include the following:

- Taxpayer's name, permanent address, and Tax Identification Number.
- The due date of the return or the due date for paying the deficiency.
- The extension date being requested by the taxpayer.
- Whether the extension is being requested for a tax shown or required to be shown on a return or for an amount determined as a deficiency.
- The form number relating to the tax for which the taxpayer is seeking an extension to pay.
- The calendar year or fiscal year of the tax.

- Evidence showing the undue hardship that would result to the taxpayer if the extension is denied.
- A statement of the taxpayer's assets and liabilities at the end of the last month prior to the date of the form (showing book and market values of assets and whether securities are listed or unlisted).
- An itemized list of the taxpayer's income and expenses for each of the three months prior to the due date of the tax.

Form 1127 must be signed by the taxpayer or the taxpayer's representative under penalties of perjury and dated. If the application is for a tax shown on a joint return, or a joint tax liability for an amount determined as a deficiency, both spouses must sign and date the form.

If the Form 1127 is nonprocessible, check the box for "Returned" and provide the reason(s) why the application is being returned. Applications that are nonprocessible may be signed by the Advisory Group Manager, and returned to the taxpayer by cover letter under the signature of the Advisory Group Manager. Record the actions taken in the ICS history. Attachments A, B, and C are sample cover letters that may be used for returning a Form 1127 as nonprocessible. These letters may be revised as needed to provide the reason(s) why the application is being returned as nonprocessible.

Approving or Denying Form 1127 Applications

Under Treas. Reg. § 1.6161-1(b), an extension of time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount for which the extension is being requested will result in an undue hardship. The regulations define "undue hardship" as follows:

> The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

See Treas. Reg. § 1.6161-1(b).

If a satisfactory showing of undue hardship is not made, check the box for "Denied" and prepare a cover letter to the taxpayer explaining why the application is being denied. The Advisory Group Manager may sign the Form 1127 and the cover letter to the taxpayer. Attachment D is a sample cover letter that may be used to inform taxpayers that their application has been denied. The sample letter may be revised as needed to explain why the application is being denied.

If a satisfactory showing of undue hardship is made by the taxpayer, a cover memorandum for the signature of the Advisory Group Manager to the Territory Manager must be prepared. The memorandum will explain why the taxpayer will suffer an undue hardship if the application for an extension to pay is not approved. If the Territory Manager agrees, he or she will sign the

Form 1127 and the cover letter to the taxpayer. Attachment E is a sample cover letter for approved applications. Note that approval of the extension does not relieve the taxpayer from liability for interest that accrues during the period of the extension, but does provide relief from the failure to pay (FTP) tax penalty to the extended due date, even if the taxpayer fails to submit full payment by that date.

If a Form 1127 application for an extension to pay for six months is approved, Advisory will prepare Form 4844, Request for Terminal Action, requesting that a TC 470, no closing code, be input to the module and an IDRS control base opened. The IDRS control base will be assigned to the 10-digit IDRS number of the advisor requesting input of the TC 470, along with a request for input of the literal activity code “F1127EXT.” In addition, the Form 4844 will include a request for input of history bases with the following information: F1127EXT PAYMTDUE MMDDYYYY. The history base(s) will document the extended due date granted in case the taxpayer fails to submit payment when due.

Ensure that the account is in status 20, 21, 54, 56 or 58 at input so that the status changes to 47 as needed to keep the account in suspense. The TC 470 will delay issuance of the TDA. Request input of a second TC 470 after 11 weeks to ensure that the account remains suspended in status 47 as required. This will delay the TDA for a total of 26 weeks. Without the control base, the TC 470 would release in only 9 weeks, and three TC 470s would be needed. If an extension for a longer period of time is approved, request input of a TC 470 as needed to delay issuance of the TDA for the period of the extension.

Additionally, to keep the FTP tax penalty from accruing, the advisor will prepare a second Form 4844 requesting input of TC 270, with $0.00 as the amount. If the taxpayer fails to submit full payment of the tax due by the Form 1127 extension date, manual computations of the FTP tax penalty will be required thereafter. The FTP tax penalty starts accruing after the extension date. IDRS command code COMPAF is used to complete manual computations of FTP tax penalties. See IRM 20.1.2, *Penalty Handbook, Failure to File/Failure to Pay Penalties*, for more information regarding the computation of the FTP tax penalty. Sample Forms 4844 showing requests for input of the TC 470 and TC 270 are also attached.

Advisory is responsible for requesting input of the appropriate case controls, and manually monitoring the case to ensure the case controls reflect the extension. Advisory will request the abatement of the FTP tax penalty if erroneously assessed for the period the extension was granted. Additionally, Advisory will document the ICS history with the actions taken, and retain a copy of the Form 1127 and supporting documents in conformance with existing document retention guidelines.

Only applications for an extension of time to pay taxes due on Form 709, United States Gift Tax Return, will be sent to the E&G unit in the Cincinnati campus. The E&G unit will determine whether the application is processible in accordance with the guidelines provided above. Applications that are determined nonprocessible may be signed by the E&G unit manager and returned to the taxpayer along with a cover letter explaining why the application is nonprocessible. If it is determined that the application is processible, the following steps will be taken within seven calendar days of receipt:

- establish an entity under MFT 51, document the TXMOD history with the date the application was received and the date it was forwarded for consideration
- forward the application and supporting documents to the Advisory Estate Tax Group at the following address:

  Internal Revenue Service
  Advisory Estate Tax Group
  55 South Market St.
  Mail Stop 5350
  San Jose, CA 95113-2324
  Attn: Group Manager

- the Advisory Estate Tax Group will determine whether the application should be approved or denied and will be responsible for sending the approval or denial letter to the taxpayer
- if the application is denied, the Advisory Estate Tax Group will send to the E&G unit a copy of the denied application and a copy of the cover letter sent to the taxpayer; upon receipt, the E&G unit will document the TXMOD history that the extension request was denied
- if the application is approved, the Advisory Estate Tax Group will send to the E&G unit a copy of the approved application and a copy of the cover letter sent to the taxpayer, along with Forms 4844, requesting the E&G unit to input the TC 470, no closing code, for the appropriate number of cycles, and the TC 270 for $0.00; the E&G unit will document the TXMOD history that the extension request was approved and the new extension date
- the E&G unit will monitor the account, reverse the TC 470 when necessary, and abate the failure to pay penalty if assessed for the period the extension was granted
- the E&G unit will associate a copy of the application and the cover letter sent to the taxpayer with the related Form 709 tax return

If you have any questions concerning these procedures, please feel free to contact me, or a member of your staff may contact Teresa Miliote, Program Manager, or Cindy Ocmand, the Collection Policy Point of Contact for Estate and Gift. Field employees should raise any concerns through the appropriate management chain.

Attachments: (5)

cc: www.irs.gov