



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Dretha Barham */s/ Dretha Barham*
Director, Collection Policy

SUBJECT: Interim Guidance on Establishing Installment Agreements on
Restitution-Based Assessments and Related Civil Assessments

The purpose of this memorandum is to provide interim guidance on establishing Installment Agreements (IA) on restitution-based assessments (RBA) and related civil assessments. Please distribute this information to all affected employees within your organization.

Per this interim guidance memorandum, IRM 5.14.4, Installment Agreements - Financial Reviews, Below Deferral Level Accounts, Joint and Several Liability Relief Under IRC Section 6015, Withdrawals and Multiple Entities is revised to provide direction on establishing Installment Agreements on RBAs and any related civil assessments.

Effective on the date of this memorandum, IAs may be established for RBAs and/or related civil assessments using the following procedures:

Background

The Firearms Excise Tax Improvement Act of 2010 ("the FETI Act") amended IRC 6201(a) (4) to provide for the assessment and collection of the amount of restitution ordered in a criminal case. The law applies to restitution orders entered after August 16, 2010. Prior to enactment, the IRS could not assess or take administrative action to collect an assessed or assessable amount of restitution. Assessed criminal restitution can be collected as if it were a tax; however, the restitution order itself does not cease to exist, and the Department of Justice (DOJ) retains its authority to collect under Title 18. The legislation provides non-exclusive, parallel means by which the amount of restitution may be satisfied: the DOJ's ability to enforce the restitution order and the IRS's administrative ability to collect the

assessment based upon the amount ordered as restitution. The IRS may not enter into an IA that would ultimately result in the taxpayer paying less than the ordered restitution amount because this would violate the mandatory assessment of restitution under IRC 6201(a)(4)(A). An IA including RBA is legally sufficient if: (1) the entire amount of restitution ordered and subsequently assessed under IRC 6201(a)(4) is satisfied at the conclusion of the IA, and (2) the minimum periodic payment under the IA meets the minimum periodic payment amount and minimum payment period of a restitution payment plan – if any – ordered by the court. Once the restitution is assessed, the ten-year collection statute of limitations applies.

Overview

1. Revenue Officers (RO) may receive an Other Investigation (OI) from an Advisory Probation Liaison (APL) or a balance due module assignment to conduct a field investigation on a RBA.
2. Civil assessments with associated RBAs may be received in any Collection work stream (Field, Campus, Automated Collection System) but may only be worked by a revenue officer.
3. IAs for RBAs can only be considered if the proposed IA will result in the full payment of the RBA within the terms of the IA and by the Collection Statute Expiration Date (CSED). Any open civil assessments should be included in the IA, even if the payment agreement won't result in full payment of those (civil) assessments. CCP will determine if the IA is a PPIA once the RBAs are paid in full.
4. IAs that include RBAs should only be established by ROs. If there is an open Conditions of Probation case, the RO should coordinate the establishment of the IA with the APL.
5. In the event the taxpayer's ability to pay will not result in the full payment of the RBA, Manually Monitored Installment Agreements (MMIAs) for civil assessments (including PPIAs) can be established exclusive of RBA assessments (that is, the RBA is not included as part of the IA) in cases where the taxpayer's income/expense analysis shows an ability to pay above allowable expenses (which will include the court ordered payment). The RBA modules should be reported as Currently Not Collectible using closing code 32.

Procedures

1. Assessment - RBA assessments will appear on MFT 31 with a Transaction Code (TC) 290 and/ or 298. The module will contain a TC 971 with Action Code (AC) 102 and a TC 971 with AC 180-189. Examination will issue Notice and Demand, Letter 4885.
2. Assignment - RBA modules will generally not be issued systemically to the Field. Examination will notify Advisory when an assessment has been made. As part of monitoring Conditions of Probation (COP) cases, APLs will issue an Other Investigation (OI) to the Field Area to request a field investigation when there are assessed liabilities including RBAs. When the Field Area group receives an OI the group will accelerate the

case, including related modules, to status 26 by requesting a STAUP 2200. Once assigned, the Field will close the Advisory OI and work the balance due modules(s) and related modules, if any.

3. When to identify as a pending IA – IA proposals for RBA(s) that do not provide for the full payment of the RBA(s) by the CSED date cannot be considered as a pending IA for the RBA modules. If there are associated civil assessments for which the IA proposal can be considered, exclusive of the RBA, those modules should have a TC 971 AC 043 input when the IA proposal cannot be approved immediately.
4. Computing payment amount – Standard financial analysis will be conducted to determine the appropriate monthly payment amount. Taxpayers will continue to make any court ordered restitution payments directly to the courts, and compliance with the court ordered payments will be listed as an additional condition of the IA and this payment will be an allowable expense if it is being made (See IRM 5.15.1.10(3), *Other Expenses*).
5. Rejection issues – History entries should clearly indicate the basis for the rejection and clearly identify cases that are rejected based on the fact that the proposed payment will not satisfy the RBA by the CSED date.
6. If accepted, IAs that include RBAs will be sent to CCP as a MMIA.
7. Payment posting - Payments on IAs that include both RBA(s) and civil assessments should be posted to the RBA(s) until fully paid and then in the best interest of the Government for the civil assessments. Payments on MMIA's that exclude RBA assessments will be posted to the civil assessments in the best interest of the government.

Coordination with Advisory

The APL will be familiar with the court order and COP. The APL will be able to advise the RO regarding appropriate actions to take and will facilitate coordination with the DOJ Financial Litigation Units when necessary. RBA cases will not be worked by the Campus. APLs receiving contacts from Field or Campus Collection employees about RBA modules or related assessments should issue an OI to the appropriate Field Area group for investigation if not already assigned.

Payments

Payments received by Field Collection will be posted using established designated payment codes (DPC). Payments received as a result of administrative collection action may be applied in the government's best interest. Court ordered restitution payments made to the clerk of the court will continue to be sent by the court to Kansas City Submission Processing where they will be posted using a DPC 26. SB/SE Campus Compliances Services will cross-reference any balance payments to ensure the full amount of the restitution is only collected once and is not overpaid.

If you have any questions, please contact me, or a member of your staff may contact David Beach, Senior Program Analyst.

cc: www.irs.gov
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