

26 C.F.R. 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

Rev. Proc. 2012-43

SECTION 1. PURPOSE

Section 6702(d) of the Internal Revenue Code authorizes the Internal Revenue Service (IRS) to reduce the amount of the frivolous tax submission penalty assessed under section 6702(a) or (b) if the IRS determines that a reduction would promote compliance with and administration of the Federal tax laws. This revenue procedure describes the limited circumstances in which a person may be eligible for a one-time reduction of any unpaid section 6702 penalty liabilities. This revenue procedure also prescribes how a person may request a reduction and the eligibility requirements for reduction. Generally, if a person satisfies all eligibility criteria of section 4 of this revenue procedure, including filing all tax returns and paying all outstanding taxes, penalties (other than under section 6702) and related interest, the IRS will reduce all unpaid section 6702 penalties assessed against that person to \$500. After experience with the application of this revenue procedure, the IRS and the Treasury Department plan to assess whether the revenue procedure is successfully promoting compliance

with and administration of the Federal tax laws and may revise this revenue procedure as necessary to further those goals.

SECTION 2. BACKGROUND

.01 Section 326(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248 (96 Stat. 324, 617), added section 6702 to the Code to provide for a civil penalty for frivolous income tax returns. Specifically, section 6702(a) imposed a penalty in the amount of \$500 against any individual who files what purports to be a return of income tax if (1) the purported return does not contain information on which the substantial correctness of the self-assessment may be judged or contains information that on its face indicates that the self-assessment is substantially incorrect, and (2) the filing of the purported return is due to either a position that is frivolous or a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws. Section 6702(b) provided that the penalty was in addition to any other penalty provided by law.

.02 Section 407(a) of Division A of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432 (120 Stat. 2922, 2960), amended section 6702(a) by increasing the amount of the penalty from \$500 to \$5,000, changing its application from “individual[s]” to “person[s],” expanding its scope from “purported income tax returns” to “purported returns of tax,” and substituting the term “a position which the Secretary has identified as frivolous” for “a position which is frivolous” as one of the bases for conduct subject to the penalty.

.03 The 2006 amendments also added the following provisions to section 6702:

(1) Revised section 6702(b) imposes a \$5,000 penalty on any person who submits a “specified frivolous submission.” (The prior version of 6702(b) was redesignated as section 6702(e).) A “specified frivolous submission” is defined as a “specified submission” that is based on a position that the IRS has identified as frivolous or that reflects a desire to delay or impede the administration of the Federal tax laws. A “specified submission” means a request for a collection due process hearing under section 6320 or 6330 or an application for an installment agreement under section 6159, an offer-in-compromise under section 7122, or a taxpayer assistance order under section 7811.

(2) New section 6702(c) requires the IRS to prescribe and periodically revise a list of positions that the IRS has identified as frivolous for purposes of the penalty under section 6702(a) or (b).

(3) New section 6702(d) provides discretionary authority to the IRS to reduce the amount of a penalty imposed under section 6702(a) or (b) if the IRS determines a reduction would promote compliance with and administration of the Federal tax laws. As authorized by Congress, this revenue procedure describes the limited circumstances in which a person may be eligible for a one-time reduction of any unpaid section 6702 penalty liabilities. To be eligible for the one-time penalty reduction, a person must abandon any frivolous positions regarding the Federal tax laws and must meet the specific eligibility requirements detailed in section 4 of this revenue procedure, which include filing all tax returns and paying all outstanding taxes, penalties (other than those

under section 6702) and related interest. Consistent with section 6702(d) and the IRS' published policy statement on penalties (Policy Statement 20-1), these requirements will promote voluntary compliance with and administration of the Federal tax laws.

.04 The 2006 amendments apply to submissions made and issues raised after March 16, 2007, the date the IRS issued Notice 2007-30 (2007-1 C.B. 883) prescribing a list of frivolous positions under section 6702(c). The IRS subsequently revised the list in Notice 2008-14 (2008-4 I.R.B. 310), effective January 15, 2008, and Notice 2010-33 (2010-17 I.R.B. 609), effective April 8, 2010. The IRS may make additional updates to the list in the future.

SECTION 3. SCOPE

This revenue procedure applies to any person who has not fully paid a \$5,000 penalty assessed by the IRS under section 6702 and who seeks a reduction of that penalty pursuant to section 6702(d). This revenue procedure does not apply to persons who seek to challenge the merits of a section 6702 penalty assessment. Other procedures may be available to challenge the merits, such as paying the penalty and filing a refund claim or raising the issue in a Collection Due Process hearing.

SECTION 4. ELIGIBILITY

.01 A request for reduction must comply with the requirements of this section. A person whose request does not comply with these requirements will not be eligible for a reduction of a section 6702 penalty.

(1) Form of request. A person must make a written request for reduction on IRS Form 14402, "IRC 6702(d) Frivolous Tax Submissions Penalty Reduction," (or

successor form) or as prescribed by the Form's instructions. The person must also sign the form or written statement under penalties of perjury, and file it with the IRS in accordance with instructions to the form or other guidance. A person may file a single Form 14402 or written statement to request reduction of more than one section 6702 penalty.

(2) Partial payment. The IRS will reduce an eligible person's total outstanding section 6702 liabilities to \$500, regardless of the number of section 6702 penalties assessed. A person must pay this \$500 balance in one of two ways:

(a) Payment submitted with request for reduction. Except as provided in section 4.01(2)(b), a person must submit a payment of at least \$250 with the request for reduction even if that person has, prior to filing a request for reduction, paid either voluntarily or by an overpayment offset, a portion of the section 6702 penalty liabilities that are the subject of the request. This payment will be applied to the person's assessed section 6702 penalty liabilities without regard to whether the IRS grants the reduction request. A person who chooses to pay \$250 or more but less than \$500 and who is granted the penalty reduction will remain liable for the remaining balance of the reduced penalties (i.e., the difference between the amount of the payment and \$500) until the balance is satisfied, but this remaining liability will not preclude the requested reduction of the assessed and unpaid section 6702 penalties. If the person pays \$250 or more but less than \$500, interest will continue to accrue on the remaining balance of the reduced penalties from the date the IRS assessed the earliest unpaid section 6702 penalty falling under these procedures. The person granted the penalty reduction must

pay the remaining balance of the reduced penalties (plus interest); if the person granted the penalty reduction fails to pay the remaining balance, the IRS may use any available remedy to collect the balance (plus interest). If a person chooses to submit the full \$500 with the request for reduction and the IRS grants the request, any interest that has accrued on the outstanding section 6702 liabilities will be abated.

(b) Installment agreement. If a person has entered into and is in compliance with an approved full payment installment agreement with the IRS under section 6159 for all assessed Federal tax liabilities not fully paid and for which the period for collection under section 6502 remains open, then the person may pay the reduced section 6702 penalty of \$500 as part of the installment agreement. If, at the time the IRS receives a request for reduction, the person has already paid more than \$500 towards the section 6702 penalty under the installment agreement, that person will not be required to pay any additional amount towards the section 6702 penalty in order to become eligible. If the person pays the \$500 penalty as part of an installment agreement, any interest that has accrued on the outstanding section 6702 liabilities will be abated.

.02 Time limits. A person must file a request for a reduction before the United States files suit against the person either for collection of the penalty or to reduce any assessment of the penalty to judgment.

The IRS will deny any request for reduction of a section 6702 penalty that does not meet these time limits. If a request seeks reduction of multiple penalties but the request falls within the time limits with respect to only some of the penalties, the IRS will

treat the request as timely only for those penalties. Any person who has voluntarily paid a portion of any section 6702 penalty liabilities will be eligible for reduction of the remaining amount of those liabilities. Similarly, any person who has had an overpayment offset against any section 6702 penalty liabilities will be eligible for a reduction of the remaining amount of those liabilities, if any.

.03 Full compliance with all Federal tax filing and payment requirements.

(1) In general. Prior to requesting a reduction, a person must have filed all tax returns due and paid (or arranged to pay, as described in paragraph (3) of this subsection) all taxes due, other than the section 6702 penalty or penalties for which reduction is requested. Unless these filing and payment requirements have been met, reduction of a section 6702 penalty would not promote compliance with and administration of the Federal tax laws and the request for reduction will be denied.

(2) Filing compliance. A person requesting reduction must file with the IRS valid tax returns required to be filed under the Code for any type of tax and for all taxable periods for six years before the date of the request. This requirement means a person must file all individual returns and all returns for any entity in which the person has a controlling interest. This includes, for example, any returns of a partnership or limited liability company for which the person is a general partner or managing member, any returns of a subchapter C or subchapter S corporation in which the person holds a greater than 50 percent interest, and any returns of a trust for which the person serves as trustee. A document other than a return that permits assessment of Federal income tax will not satisfy the requirements of this section.

(3) Payment compliance. A person requesting reduction must either:

(a) have fully paid all assessed tax liabilities, including interest, penalties (other than the section 6702 penalty or penalties that are the subject of the request), and additions to tax for all types of tax and for all taxable periods for which the period for collection under section 6502 remains open (for purposes of this subsection, the granting of relief under the provisions of section 6015 or section 66(c) will be considered payment of an assessed tax liability to the extent of the granted relief); or

(b) have entered into and be in compliance with an approved full payment installment agreement with the IRS under section 6159 for all assessed Federal tax liabilities not fully paid and for which the period for collection under section 6502 remains open.

.04 Deposit requirements. If the person requesting reduction is an employer, that person must, at the time of filing the request, have made all required deposits of Federal employment taxes under subtitle C of the Code for the current quarter and the prior two quarters.

.05 Disqualifying events.

(1) Prior reduction. Any person who previously received a reduction of a section 6702 penalty is ineligible for another reduction of a section 6702 penalty.

(2) Offer-in-compromise. Any person who has submitted an offer-in-compromise to the IRS under section 7122 that includes any section 6702 penalty is ineligible for a reduction of the penalty unless the person has withdrawn the offer in writing, the IRS has returned the offer to the taxpayer without accepting it, or the offer

was rejected by the IRS and the taxpayer is not pursuing an administrative appeal of the rejection. All of a person's outstanding Federal tax liabilities, including any outstanding section 6702 penalties, will be considered as part of the offer-in-compromise determination.

(3) Partial payment installment agreements. Any person who has entered into a partial payment installment agreement with the IRS under section 6159 is ineligible for a reduction of any section 6702 penalty included in the partial payment installment agreement because the person will be paying less than the full amount of Federal tax liabilities.

(4) Closing agreement. Any person who has entered into a closing agreement with the IRS under section 7121 is ineligible for a reduction of any section 6702 penalty included in the closing agreement.

(5) New frivolous filing. Any person who files a frivolous return or makes a frivolous submission after filing a request for reduction but before the IRS grants the reduction is ineligible for reduction of a section 6702 penalty whether or not the person withdraws the frivolous return or submission.

(6) Bankruptcy. A person is ineligible for a reduction of any section 6702 penalty under this revenue procedure if the penalty is dischargeable under an open bankruptcy case. Furthermore, a person is ineligible to apply for any penalty reduction while a bankruptcy case is open, regardless of whether the person is seeking discharge of the penalty for which reduction is sought.

SECTION 5. CONSIDERATION OF REDUCTION REQUEST

.01 Generally, if a person satisfies all eligibility criteria of section 4 of this revenue procedure, the IRS will reduce all section 6702 penalties assessed against that person to \$500. If the person submitted \$500 with the request for reduction, the IRS will abate any remaining unpaid amount of those penalty liabilities, including interest. If the person has submitted at least \$250, but less than \$500, with the request for reduction, the IRS will apply the amount submitted against the section 6702 penalty or penalties that the person seeks to reduce and will abate all but the difference between the payment submitted and \$500 (i.e., the remaining unpaid amount of those penalty liabilities). If the person granted the reduction fails to pay the remaining balance of the \$500 reduced penalty (plus interest as described above), the IRS may use any available remedy to collect the balance. The IRS will not refund any portion of the section 6702 penalty or penalties paid prior to the date the IRS received the request for reduction. In the case of a person who has entered into a full payment installment agreement, the section 6702 penalty or penalties will be reduced only upon completion of all payments required to satisfy all outstanding tax liabilities other than the section 6702 penalties that are the subject of the request for reduction. If the person defaults on the installment agreement, the section 6702 penalty or penalties will not be reduced.

.02 If a person fails to satisfy any of the eligibility criteria of section 4 of this revenue procedure, the IRS will deny the request for reduction. The IRS will apply any payment received with the request for reduction against unpaid section 6702 penalties before applying any remaining portion of the payment to any other outstanding tax

liabilities of the person. A person may not designate the manner in which the IRS will apply the payment.

.03 The IRS will give a person written notice of whether the person's request has been granted or denied. The IRS's denial of a request for any reason will not be subject to an administrative appeal.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective November 5, 2012, the date this revenue procedure was released to the public.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Skyler K. Bradbury of the Office of the Associate Chief Counsel, Procedure and Administration. For further information regarding this revenue procedure, contact Elizabeth Cowan at (202) 622-4940 (not a toll-free call).