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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

REG-100841-97

RIN 1545-AU97

Agreements for Payment of Tax Liabilities in Installments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking published in the **Federal Register** on December 31, 1997 (62 FR 68241) and contains proposed regulations relating to the payment of tax liabilities in installments. The proposed regulations reflect changes to the law made by the Taxpayer Bill of Rights II, the Internal Revenue Service Restructuring and Reform Act of 1998, and the American Jobs Creation Act of 2004.

DATES: Written or electronic comments and requests for a public hearing must be received by June 4, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-100841-97), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-100841-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may

submit comments electronically directly to the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-100841-97).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, G. William Beard, (202) 622-3620; concerning submissions of comments or requests for a hearing, Kelly Banks, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1997, a notice of proposed rulemaking (REG-100841-97; 62 FR 68241) reflecting changes made to section 6159 of the Internal Revenue Code (Code) by section 202 of the Taxpayer Bill of Rights II, Public Law 104-168 (110 Stat. 1452, 1457) was published in the **Federal Register**. That proposed rule was not acted upon prior to the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105-206, section 3462 (112 Stat. 685, 764), which made further amendments to section 6159. Section 843 of the American Jobs Creation Act of 2004 (AJCA), Public Law 108-357 (118 Stat. 1418, 1600), also made changes to section 6159.

This document amends the prior notice of proposed rulemaking. It contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6159 reflecting the amendment of the Code by RRA 1998, the Taxpayer Bill of Rights II, and the AJCA.

Installment Agreements under Section 6159

Consistent with its mission of applying the tax laws with integrity and fairness to all, the IRS generally expects that all taxpayers will pay the total amount due, regardless of amount, at the time the Code requires that the tax be paid. See Policy Statement P-5-2, Collecting Principles (Approved February 17, 2000), reprinted at IRM 1.2.1.5.2. When attempting to resolve a tax delinquency, the IRS will work with taxpayers to achieve full payment of all tax, penalties, and interest. Where payment in full cannot immediately be achieved, the IRS may allow taxpayers to pay over time through installment agreements.

Explanation of Provisions

The proposed regulations allow the IRS to enter into agreements for the full or partial payment of any unpaid tax in installments. The regulations provide rules for the submission of proposed installment agreements, the processing, acceptance, and rejection of such agreements by the IRS, the termination or modification of existing agreements, and the appeal of rejections, modifications, and terminations to the IRS Office of Appeals (Appeals). The majority of these provisions are unchanged from what was contained in the prior regulations or reflect longstanding IRS administrative practice. The rules regarding when a proposed installment agreement becomes pending, restrictions on collection activity while an agreement is pending or in effect, and the suspension of the statute of limitations for collection are nearly identical to the provisions in existing § 301.6331-4. The only change was a clarification that the IRS will not be precluded from filing suit or a proof of claim in bankruptcy for the full amount of the liabilities owed, regardless of whether the installment agreement provides for full or partial payment of the liabilities at issue.

Taxpayers may request administrative review of IRS decisions to modify or

terminate installment agreements pursuant to section 6159(e), added to the Code by section 202 of the Taxpayer Bill of Rights II. Taxpayers may appeal rejections of proposed installment agreements under section 7122(d), added to the Code by section 3462 of RRA 1998. The proposed regulations allow taxpayers to appeal a termination, modification, or rejection of an installment agreement to Appeals provided they request the appeal in the manner specified by the IRS.

The previous notice of proposed rulemaking contained a more detailed procedure for seeking review of decisions to terminate or modify agreements. That proposed regulation has not been adopted. These regulations contain a less detailed procedure because procedures for appealing differ depending on the IRS operating division handling the case, the size of the tax liability, or the type of tax at issue. For example, some taxpayers may be able to request an appeal by telephone while others will be required to submit a formal written request. See Publication 1660, Collection Appeal Rights.

The proposed regulations incorporate the provisions of section 6159(c), added to the Code by section 3467 of RRA 1998. That section requires the IRS to accept a proposed installment agreement for income taxes under certain circumstances. The regulations also incorporate section 3506 of RRA 1998, which requires the IRS to send each taxpayer with an installment agreement an annual statement showing the balance due at the beginning of the year, the payments made during the year, and the remaining balance due at the end of the year.

Section 843 of the AJCA amended section 6159(a) to allow the IRS to enter into installment agreements that provide for partial (as well as full) payment of a tax liability. The

proposed regulations incorporate this change. Because a partial payment installment agreement could be confused with a compromise of the liability, the proposed regulations clarify that an installment agreement does not reduce the amount of taxes, interest, or penalties owed. See H. Rep. No. 108-755, 108th Cong., 2d Sess., 2005 U.S.C.C.A.N. 1341 (October 7, 2004).

The proposed regulations also clarify that the IRS may enter into an installment agreement that, by its terms, ends upon the expiration of the period of limitations on collection in section 6502 and §301.6502-1, or at some prior date. A partial payment installment agreement that ends prior to the expiration of the collection period of limitations would allow the IRS to collect the balance of the tax liability against any property belonging to the taxpayer or request the Department of Justice to institute a judicial action to reduce the liability to judgment or take other actions to enforce the federal tax lien. The proposed regulations do not limit the authority of the IRS to enter into partial payment installment agreements that run to the end of the collection period. Section 843 of the AJCA amended section 6159(c) to exclude partial payment installment agreements from the scope of installment agreements that must be accepted by the IRS. The proposed regulations provide that installment agreements guaranteed under section 6159(c) must provide for the full payment of the liabilities.

Section 843 of the AJCA added new section 6159(d), requiring the IRS to review partial payment installment agreements every two years. (Former subsections (d) and (e) were redesignated (e) and (f).) The primary purpose of the review is to determine whether the financial condition of the taxpayer has significantly changed so as to warrant an

increase in the value of the payments being made. See H. Rep. No. 108-755, 108th Cong., 2d Sess., 2005 U.S.C.C.A.N. 1341 (October 7, 2004). The proposed regulations reflect this requirement.

The proposed regulations clarify the application of payments made pursuant to installment agreements. Consistent with Revenue Procedure 2002-26 (2002-1 C.B. 746), all payments will be applied in the best interests of the Government, unless the installment agreement provides otherwise. Current regulations provide rules for when the IRS may terminate an agreement but do not expressly provide that a taxpayer and the IRS may agree to end an agreement. The proposed regulations clarify that an installment agreement may be terminated by agreement between the taxpayer and the IRS, or may be superceded by a new agreement.

Proposed Effective Date

These regulations are proposed to be effective upon publication in the **Federal Register** of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information under the Paperwork Reduction Act (44 U.S.C. section 3501), the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations. Pursuant to section 7805(f) of the Code, this notice of

proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS generally requests any comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is G. William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-100841-97) that was published in the **Federal Register** on December 31, 1997 (62 FR 68241) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6159-0 is added to read as follows:

§301.6159-0 Table of contents.

This section lists the major captions that appear in the regulations under

§301.6159-1.

§301.6159-1 Agreements for the payment of tax liabilities in installments.

- (a) Authority.
- (b) Procedures for submission and consideration of proposed installment agreements.
- (c) Acceptance, form, and terms of installment agreements.
- (d) Rejection of a proposed installment agreement.
- (e) Modification or termination of installment agreements by the Internal Revenue Service.
- (f) Effect of installment agreement or pending installment agreement on collection activity.
- (g) Suspension of the statute of limitations on collection.
- (h) Annual statement.
- (i) Biannual review of partial payment installment agreements.
- (j) Cross reference.
- (k) Effective date.

Par. 3. Section 301.6159-1 is revised to read as follows:

§301.6159-1 Agreements for payment of tax liabilities in installments.

(a) Authority. The Commissioner may enter into a written agreement with a taxpayer that allows the taxpayer to make scheduled periodic payments of any tax liability if the Commissioner determines that such agreement will facilitate full or partial collection of the tax liability.

(b) Procedures for submission and consideration of proposed installment agreements--(1) In general. A proposed installment agreement must be submitted according to the procedures, and in the form and manner, prescribed by the Commissioner.

(2) When a proposed installment agreement becomes pending. A proposed installment agreement becomes pending when it is accepted for processing. The Internal Revenue Service (IRS) may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

(3) Revised proposals of installment agreements submitted following rejection. If, following the rejection of a proposed installment agreement, the IRS determines that the taxpayer made a good faith revision of the proposal and submitted the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal. If, however, the IRS determines that a revision was not made in good faith, the

provisions of this section do not apply to the revision and the appeal period in paragraph (d)(3) of this section continues to run from the date of the original rejection.

(c) Acceptance, form, and terms of installment agreements--(1) Acceptance of an installment agreement--(i) In general. A proposed installment agreement has not been accepted until the IRS notifies the taxpayer or the taxpayer's representative of the acceptance. Except as provided in paragraph (c)(1)(iii) of this section, the Commissioner has the discretion to accept or reject any proposed installment agreement.

(ii) Acceptance does not reduce liabilities. The acceptance of an installment agreement by the IRS does not reduce the amount of taxes, interest, or penalties owed. (However, penalties may continue to accrue at a reduced rate pursuant to section 6651(h).)

(iii) Guaranteed installment agreements. In the case of a liability of an individual for income tax, the Commissioner shall accept a proposed installment agreement if, as of the date the individual proposes the installment agreement--

(A) The aggregate amount of the liability (not including interest, penalties, additions to tax, and additional amounts) does not exceed \$10,000;

(B) The taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding five taxable years--

(1) Failed to file any income tax return;

(2) Failed to pay any required income tax; or

(3) Entered into an installment agreement for the payment of any income tax;

(C) The Commissioner determines that the taxpayer is financially unable to pay the

liability in full when due (and the taxpayer submits any information the Commissioner requires to make that determination);

(D) The installment agreement requires full payment of the liability within three years; and

(E) The taxpayer agrees to comply with the provisions of the Internal Revenue Code for the period the agreement is in effect.

(2) Form of installment agreements. An installment agreement must be in writing. A written installment agreement may take the form of a document signed by the taxpayer and the Commissioner or a written confirmation of an agreement entered into by the taxpayer and the Commissioner that is mailed or personally delivered to the taxpayer.

(3) Terms of installment agreements. (i) Except as otherwise provided in this section, an installment agreement is effective from the date the IRS notifies the taxpayer or the taxpayer's representative of its acceptance until the date the agreement ends by its terms or until it is superceded by a new installment agreement.

(ii) By its terms, an installment agreement may end upon the expiration of the period of limitations on collection in section 6502 and §301.6502-1, or at some prior date.

(iii) As a condition to entering into an installment agreement with a taxpayer, the Commissioner may require that--

(A) The taxpayer agree to a reasonable extension of the period of limitations on collection; and

(B) The agreement contain terms that protect the interests of the Government.

(iv) Except as otherwise provided in an installment agreement, all payments made

under the installment agreement will be applied in the best interests of the Government.

(v) While an installment agreement is in effect, the Commissioner may request, and the taxpayer must provide, a financial condition update at any time.

(vi) At any time after entering into an installment agreement, the Commissioner and the taxpayer may agree to modify or terminate an installment agreement or may agree to a new installment agreement that supercedes the existing agreement.

(d) Rejection of a proposed installment agreement--(1) When a proposed installment agreement becomes rejected. A proposed installment agreement has not been rejected until the IRS notifies the taxpayer or the taxpayer's representative of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) Independent administrative review. The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an installment agreement until an independent administrative review of the proposed rejection is completed.

(3) Appeal of rejection of a proposed installment agreement. The taxpayer may administratively appeal a rejection of a proposed installment agreement to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the taxpayer is notified of the rejection, the taxpayer requests an appeal in the manner provided by the Commissioner.

(e) Modification or termination of installment agreements by the Internal Revenue Service--(1) Inadequate information or jeopardy. The Commissioner may terminate an installment agreement if the Commissioner determines that--

(i) Information which was provided to the IRS by the taxpayer or the taxpayer's

representative in connection with the granting of the installment agreement was inaccurate or incomplete in any material respect; or

(ii) Collection of any liability to which the installment agreement applies is in jeopardy.

(2) Change in financial condition, failure to timely pay an installment or another Federal tax liability, or failure to provide requested financial information. The Commissioner may modify or terminate an installment agreement if--

(i) The Commissioner determines that the financial condition of a taxpayer that is party to the agreement has significantly changed; or

(ii) A taxpayer that is party to the installment agreement fails to--

(A) Timely pay an installment in accordance with the terms of the installment agreement;

(B) Pay any other Federal tax liability when the liability becomes due; or

(C) Provide a financial condition update requested by the Commissioner.

(3) Notice. Unless the Commissioner determines that collection of the tax is in jeopardy, the Commissioner will notify the taxpayer in writing at least 30 days prior to modifying or terminating an installment agreement pursuant to paragraph (e)(1) or (2) of this section. The notice provided pursuant to this section must briefly describe the reason for the intended modification or termination. Upon receiving notice, the taxpayer may provide information showing that the reason for the proposed modification or termination is incorrect.

(4) Appeal of modification or termination of an installment agreement. The taxpayer

may administratively appeal the modification or termination of an installment agreement to Appeals if, following issuance of the notice required by paragraph (e)(3) of this section and prior to the expiration of the 30-day period commencing the day after the modification or termination is to take effect, the taxpayer requests an appeal in the manner provided by the Commissioner.

(f) Effect of installment agreement or pending installment agreement on collection activity--(1) In general. No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, prior to the expiration of the 30-day period following the rejection or termination of an installment agreement, the taxpayer appeals the rejection or termination decision, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) Exceptions. Paragraph (f)(1) of this section shall not prohibit levy if the taxpayer files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy.

(3) Other actions by the IRS while levy is prohibited--(i) In general. The IRS may

take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example--

(A) Crediting an overpayment against the liability pursuant to section 6402;

(B) Filing or refiling notices of Federal tax lien; and

(C) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(ii) Proceedings in court. Except as otherwise provided in this paragraph (f)(3)(ii), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph (f)(1) of this section. Without regard to whether a person is named in an installment agreement or proposed installment agreement, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the installment agreement or proposed installment agreement may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person. If a person named in an installment agreement is joined in a proceeding, the United States obtains a judgment against that person, and the case is referred back to the IRS for collection, collection will continue to occur pursuant to the terms

of the installment agreement. Notwithstanding the installment agreement, any claim or suit permitted will be for the full amount of the liabilities owed.

(g) Suspension of the statute of limitations on collection. The statute of limitations under section 6502 for collection of any liability shall be suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with Appeals, the statute of limitations for collection shall be suspended while the rejection or termination is being considered by Appeals. The statute of limitations for collection shall continue to run if an exception under paragraph (f)(2) of this section applies and levy is not prohibited with respect to the taxpayer.

(h) Annual statement. The Commissioner shall provide each taxpayer who is party to an installment agreement under this section with an annual statement setting forth the initial balance owed at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

(i) Biannual review of partial payment installment agreements. The Commissioner shall perform a review of the taxpayer's financial condition in the case of a partial payment installment agreement at least once every two years. The purpose of this review is to determine whether the taxpayer's financial condition has significantly changed so as to warrant an increase in the value of the payments being made or termination of the

agreement.

(j) Cross reference. Pursuant to section 6601(b)(1), the last day prescribed for payment is determined without regard to any installment agreement, including for purposes of computing penalties and interest provided by the Internal Revenue Code. For special rules regarding the computation of the failure to pay penalty while certain installment agreements are in effect, see section 6651(h) and §301.6651-1(a)(4).

(k) Effective date. This section is applicable on the date final regulations are published in the **Federal Register**.

Par. 4. Section 301.6331-4 is revised to read as follows:

§301.6331-4 Restrictions on levy while installment agreements are pending or in effect.

Cross-reference. For provisions relating to the making of levies while an installment agreement is pending or in effect, see §301.6159-1.

Mark E. Matthews

Deputy Commissioner of Services and Enforcement.