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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-104762-00]

RIN 1545-AX89

Levy Restrictions During Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to restrictions on levy during the period that an installment agreement is proposed or in effect. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

DATE: Written or electronically generated comments and requests for a public hearing must be received by July 16, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-104762-00), room 5226, 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 5 p.m. to: CC:ITA:RU (REG-104762-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C.. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Frederick W. Schindler, (202) 622-3620; concerning submissions of comments or requests for a

hearing Treena Garret, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6331 of the Internal Revenue Code (Code). The proposed regulations reflect the amendment of section 6331 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 Public Law, 105-206, (112 Stat. 685, 764) (RRA 1998). New subsection 6331(k) codifies the IRS practice of withholding collection during consideration of a taxpayer's offer to compromise and extends that practice to proposed installment agreements. The proposed regulations deal principally with the effect of subsection 6331(k) when an installment agreement has been proposed and is pending, is in effect, or has been rejected or terminated.

Prior to the enactment of RRA 1998, the IRS had a long-standing practice of staying action to collect a liability while an offer to compromise that liability was being evaluated and considered, unless the interests of the United States would be jeopardized by doing so. See Policy Statement P-5-97 (Approved July 10, 1959), reprinted at IRM 1.5.17. To insure that the interests of the United States would not be jeopardized while collection was withheld, the IRS required that taxpayers execute a waiver of the statute of limitations for collection of the liabilities the taxpayer was attempting to compromise.

Section 3462 of RRA 1998 added subsection 6331(k) to the Code. Paragraph

(1) of the new subsection codifies the IRS policy of withholding collection during the pendency of an offer to compromise by prohibiting levy while an offer to compromise is pending, for thirty days after a rejection, and during any appeal of that rejection.

Temporary regulations published in the **Federal Register** on July 21, 1999, contained provisions governing the effects of subsection 6331(k) when taxpayers submit offers to compromise. See §301.7122-1T.

Prior to RRA 1998, the IRS did not stay collection when a taxpayer submitted an offer of an installment agreement. Because installment agreements provide for the full payment of the tax liabilities at issue, the processing of requests for installment agreements is less formal and most requests were accepted or rejected within several days of receipt. Once an installment agreement took effect, regulations prohibited levy, as well as certain other enforced collection measures, unless the installment agreement provided otherwise. See §301.6159-1(d).

Paragraph 6331(k)(2) prohibits levy while a taxpayer's proposal of an installment agreement is pending with the IRS, for thirty days after rejection of such a proposal, while an installment agreement is in effect, for thirty days after termination of an installment agreement by the IRS, and during a timely filed appeal by the taxpayer to the IRS Office of Appeals of a rejection or termination decision.

Paragraph 6331(k)(3) provides that "rules similar to" those contained in paragraphs (3), (4), and (5) of subsection 6331(i) shall apply generally for the purposes of subsection 6331(k). Subsection 6331(i) governs the prohibition on levy during the pendency of a proceeding for refund of a divisible tax. The cross-referenced provisions

provide exceptions to the prohibitions on levy, prohibit the initiation by the IRS of court proceedings to collect while the refund proceeding is pending, and provide that the statute of limitations for collection is suspended while levy is prohibited.

The proposed regulations implement the provisions of subsection 6331(k) as they relate to installment agreements. In addition to setting forth the periods during which levy is prohibited, they adapt the rules of paragraphs (3), (4), and (5) of subsection 6331(i) in a manner tailored to the installment agreement process. The legislative history accompanying RRA 1998 explains that Congress did not intend that levy would be prohibited if the IRS determined that an offer to compromise was submitted solely to delay collection. H.R. Conf. Rep. No. 509, 105th Cong., 2d Sess. 288 (1998). Because the legislative history indicates that Congress intended the same restrictions on levy with respect to offers in compromise be applicable to installment agreements, these proposed regulations adopt the same rule with respect to proposed installment agreements that are submitted solely to delay collection.

Explanation of Provisions

The proposed regulations provide that, subject to certain exceptions, the IRS may not levy to collect a liability while a proposal to enter into an installment agreement for payment of that liability is pending, for thirty days after rejection of such a proposal, while an installment agreement is in effect, for thirty days after termination of an installment agreement by the IRS, and during a timely filed appeal of a rejection or termination by the IRS. A proposed installment agreement is considered pending when it is accepted for processing by the IRS, and remains pending until the IRS accepts or

rejects it or the taxpayer withdraws the proposal. If a proposed installment agreement does not contain sufficient information for the IRS to determine whether the proposal should be accepted, the IRS will request the additional necessary information from the taxpayer and provide a reasonable time period for the taxpayer to respond. The IRS may reject the proposed installment agreement if the requested information is not provided.

Collection by levy is not prohibited if the taxpayer waives the restriction on levy in writing, if the IRS determines that the proposed installment agreement was submitted solely to delay collection, or if the IRS determines that collection of the tax liability is in jeopardy.

The proposed regulations provide that the IRS may take actions other than levy to protect the interests of the United States with respect to collection of the liability to which an installment agreement or proposed installment agreement relates. Those actions include, but are not limited to: crediting an overpayment against the liability pursuant to section 6402, filing or refiling notices of Federal tax lien, and taking action to collect from persons liable for the tax but not named in the installment agreement.

Under the proposed regulations, the IRS cannot institute a court proceeding against the taxpayer named in the installment agreement to collect the tax covered by the installment agreement. The IRS, however, may file a claim in any bankruptcy proceeding, insolvency action, or interpleader case commenced by other creditors of the taxpayer. The IRS also may join the taxpayer in any suit instituted by or against another person liable for payment of the same liability--i.e., in situations where the

liability for the tax may be established or disputed. Such proceedings may involve taxes for which more than one person may be jointly and severally liable for the same tax, or may involve persons liable for related liabilities, such as a trust fund recovery penalty under section 6672 or a personal liability for excise tax under section 4103.

While an installment agreement allows the IRS to accept the payment of tax in installments, the agreement does not conclusively establish the taxpayer's liability. A taxpayer therefore is not prohibited from seeking a refund of taxes paid pursuant to an installment agreement. Allowing the IRS to join the taxpayer in a proceeding where the liability for the tax may be established or disputed will protect the Government from having to litigate the same tax in multiple forums only to face the argument in each separate case (including, potentially, from the taxpayer named in an installment agreement) that the person or persons not party to that suit were solely or principally liable for non-payment of the taxes at issue. The proposed regulations provide, however, that if a taxpayer named in an installment agreement is joined in a proceeding and the IRS obtains a judgment against that person, then collection will continue to occur pursuant to the terms of the installment agreement.

The regulations provide that the statute of limitations for collection under section 6502 is suspended while a proposed installment agreement is pending, for thirty days after rejection or termination of an installment agreement, and during a timely filed appeal of the rejection or termination decision. The running of the collection statute resumes, however, after an installment agreement takes effect. The statute of limitations for collection shall continue to run if an exception under this section applies

and levy is not prohibited with respect to the taxpayer.

These regulations apply to installment agreements proposed or entered into on or after the date final regulations are published in the **Federal Register**. However, the rules set forth in these regulations mirror practices the IRS has been following administratively since the enactment of RRA 1998.

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 the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 electronically generated 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 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 Frederick W. Schindler, Office of the Associate Chief Counsel (Procedure & 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.

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. Sections 301.6331-3 and 301.6331-4 are added to read as follows:

§301.6331-3 Restrictions on levy while offers to compromise are pending.

Cross-reference. For provisions relating to the making of levies while an offer to compromise is pending, see §301.7122-1T.

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

(a) Prohibition on levy--(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 Internal Revenue Service (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, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals.

(2) When a proposed installment agreement becomes pending. A proposed installment agreement becomes pending when it is accepted for processing. 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 taxpayer makes a good faith revision of the proposal and submits the revision within 30 days of the date of rejection, no levy may be made while the IRS considers the revised proposal of an

installment agreement.

(4) Exceptions. Paragraph (a)(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. This section will not prohibit levy to collect from any person other than the person named on the installment agreement.

(b) Other actions by the IRS while levy is prohibited--(1) In general. The IRS may take actions other than levy to protect the interests of the Government with regard to the liability named in an installment agreement or proposed installment agreement. Those actions include, for example--

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

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

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

(2) Proceedings in court. The IRS will not begin a proceeding in court for the collection of any liability to which an installment agreement or proposed installment agreement relates against a person named in that installment agreement while levy is prohibited by paragraph (a)(1) of this section. In any refund action, however, the IRS may file a counterclaim or third-party complaint against a person without regard to

whether that person is named in an installment agreement or proposed installment agreement. In addition, the IRS may join a person named in an installment agreement in any other proceeding in which liability for the tax that is the subject of the installment agreement may be established or disputed, and may file a claim in any bankruptcy proceeding, insolvency action, or interpleader case commenced by other creditors of the taxpayer. If a person named in an installment agreement is joined in a proceeding and the IRS obtains a judgment against that person, collection will continue to occur pursuant to the terms of the installment agreement.

(c) Statute of limitations--(1) 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 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 the IRS Office of 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 (a)(4) of this section applies and levy is not prohibited with respect to the taxpayer.

(2) Waivers of the statute of limitations on collection. The IRS may continue to request, to the extent permissible under section 6502 and §301.6159-1, that the taxpayer agree to a reasonable extension of the statute of limitations for collection.

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

Robert E. Wenzel

Deputy Commissioner of Internal Revenue