

Internal Revenue Service
memorandum

CC:EL:GL:Br2:BJUze
GL-121602-97

Acknowledged 3/23/98
SCA 1998-003

date: FEB 17 1998

to: Assistant Regional Counsel (GL) Western Region CC:WR

from: Senior Technician Reviewer, Branch 2 (General Litigation)
CC:EL:GL:Br2

subject: Termination of Installment Agreements by Service Centers

This responds to your request for advice, dated November 25, 1997, regarding the above-captioned matter. You state that the Taxpayer Advocate, Pacific-Northwest, has concerns regarding the Ogden Service Center's practice of terminating or defaulting installment payment agreements in situations where the taxpayer does not agree to extend the collection statute of limitations. Letters used by the service center to solicit statute extensions from taxpayers who have signed installment agreements state that enforcement action may be taken with no further notice if the enclosed waivers are not signed. The Taxpayer Advocate believes this practice is illegal and suggests that this practice be terminated. You state that you agree with the Taxpayer Advocate's analysis, but are unsure whether other service centers follow this practice. You ask for our advice whether this practice of terminating installment payment agreements, when the taxpayer refuses to extend the collection statute, is legal.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraphs III.D.4 and IV.A.5 of Notice N(35)000-143. This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working on the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issue

Whether the Service can terminate an installment payment agreement for the sole reason that the taxpayer refuses to extend the collection statute of limitations?

Conclusion

The Service may not terminate an existing installment agreement for the sole reason that the taxpayer refuses to extend the collection statute of limitations. The Service may, however, determine at the onset not to accept an installment agreement where the taxpayer refuses to sign a waiver form extending the collection statute expiration date ("CSED") for a reasonable period.

Background

Under I.R.C. § 6159, Agreements for Payment of Tax Liability in Installments, the Service is granted statutory authority to enter into a written installment payment agreement allowing the taxpayer to satisfy a tax liability by making scheduled periodic payments. I.R.C. § 6159(a). The Service generally enters into an installment payment agreement when it determines that such agreement will facilitate collection of the tax owed. Treas. Reg. § 301.6159-1(a). An installment payment agreement is effective from the date it is executed by the Service until the date set forth in the agreement, unless sooner terminated for cause by the Service. I.R.C. § 6159(b). The Service has the right to terminate an installment payment agreement if the taxpayer fails to comply with specific terms of the agreement. I.R.C. §§ 6159(b)(2) - (4). In situations in which the Service is authorized to terminate the agreement, it must, unless jeopardy exists, provide the taxpayer with a minimum of 30 days notice before taking the action. I.R.C. § 6159(b)(5). The notice must contain a description of the specific reason for terminating the installment agreement, and if the taxpayer disagrees with the Service's determination, the taxpayer may request independent administrative review. I.R.C. § 6159(c). The 30-day notice and administrative appeal provisions relating to termination of installment payment agreements were codified in the Taxpayer Bill of Rights 2 ("TBOR2") amendments to section 6159.

Prior to the enactment of I.R.C. § 6159 the Service generally entered into installment payment agreements with taxpayers who were unable to pay their delinquency in full if such taxpayers were able to make payments on the delinquent taxes and, in addition, pay current taxes as they became due. See S. Rep. No. 309, 100th Cong., 2d Sess. (Mar. 29, 1988). Because of the lack of uniformity in modifications and terminations of these agreements, Congress enacted section 6159 in order to provide standards with respect to the termination of installment agreements executed by the Service. Id. This action by Congress provided taxpayers a degree of predictability with regard to the payment of their financial obligations to the Service.

On occasion, an installment agreement may have one or more periods in which the collection statute will expire prior to the term of the agreement. In such situations, you state that it is the current practice of the Ogden Service Center to terminate the agreement of a taxpayer who refuses to sign a statute extension, even if the taxpayer is otherwise current on the installment agreement. In soliciting statute extensions for cases with a pending CSED, the letter from the service center also advises the taxpayer that enforcement action may be taken without further notice if the enclosed waivers are not signed.

DISCUSSION

Under the current regulations, the Service has the discretion to accept or reject any proposed installment payment agreement. Treas. Reg. § 301.6159-1(b). In exercising that discretion, the Service may require as a condition precedent to entering into an installment payment agreement that the taxpayer agree to a "reasonable extension" of the CSED. Id. While neither the statute nor the regulations define the term "reasonable extension," the Service generally equates that term with a single extension of the CSED for up to five years. 1/ IRM 5331.1(12)(b) (Service personnel to extend the CSED a maximum of five years beyond 12/31 of the year the current CSED will expire). Where the Service determines that a waiver form extending the CSED is appropriate, the taxpayer is advised that the installment payment agreement will not be accepted unless the waiver is signed. IRM 5544.41(10)(b)2.

The importance of protecting the CSED while a taxpayer is making monthly installment agreement payments is set forth in the General Installment Agreement Guidelines of the Service. See IRM 5331.1(12). Service personnel are instructed to consider these guidelines prior to accepting and executing an installment payment agreement. Initially, Service personnel are instructed not to grant an installment payment agreement unless it will be paid in full 12 months before the CSED. IRM Handbook No. 6830, Accounts Resolution Handbook, Sub-Subsection 942.11(8). Service personnel are further instructed not to extend the statute if the projected date for full payment is at least one year before the CSED. IRM 5331.1(12)(a). When the projected full payment date is later than this, personnel are instructed to either request a

1/ There are no IRM provisions that allow Service personnel to grant multiple, or consecutive, five-year extensions. Thus, a reasonable extension may be incorporated into the terms of the installment agreement, but such extension is limited to a maximum of five years.

financial review within five years from the date of the agreement (statute extensions will be reconsidered during the review), or extend the statute for up to five years. IRM 5331.1(12)(b).

However, if the taxpayer refuses to extend the statute, Service personnel are instructed to either consider other collection avenues, or, on rare occasions, recommend approval without CSED protection if a determination is made that an installment payment agreement is in the Government's best interest. IRM 5331.1(12)(b)(2). In those few instances when it is determined that the best interest of the Government is to accept an installment payment agreement without statute protection, Service personnel are directed to "document the file and write" the taxpayer's refusal to extend the statute on the installment payment agreement form before submitting the agreement to a manager for approval. IRM 5331.1(12)(c).

Once an installment payment agreement is formally accepted and executed, 2/ the statute constrains the ability of the Service to terminate the installment payment agreement during its term unless the specific conditions permitting termination, as set forth in subsections 6159(b)(2) - (4), are implicated. 3/ As expressed in the words of the statute, Congress intended that any installment agreement entered into by the Service "shall remain in effect for the term of the agreement" unless otherwise provided in "subsection" 6159(b). I.R.C. § 6159(b)(1). Subsection 6159(b) thus contains the exclusive list of reasons for which an installment payment agreement may be terminated by the Service. Treas. Reg. § 301.6159-1(c). Hence, an installment payment agreement may

2/ The specific terms of the installment agreement are embodied and executed on Form 433-D, Installment Agreement. The terms set forth in Form 433-D must comport with the statute and the regulations. See generally United States v. Aronson, 610 F. Supp. 217 (S.D. Fla. 1985). Accordingly, there is no language in Form 433-D allowing the Service to terminate an installment agreement on the grounds that the taxpayer refuses to extend the CSED.

3/ An installment payment agreement may be terminated if a taxpayer provides inaccurate or incomplete information, fails to timely pay an installment, accrues additional liabilities, fails to comply with a request for a current financial statement, has a significant change in financial condition, or if the Service determines that collection is in jeopardy. I.R.C. §§ 6159(b)(1) - (4); Treas. Reg. § 301.6159-1(c).

not be terminated for a reason not authorized by the statute or the underlying regulations. None of the statutory provisions in subsection 6159(b), or any other provision in the statute or the applicable regulations, authorizes an installment agreement to be terminated solely because the taxpayer refuses to extend the collection statute. 4/

An installment agreement is not a contract because the taxpayer furnishes no consideration in exchange for the Service's promise to defer its right to payment. The taxpayer's promise is gratuitous since he or she merely agrees to pay in installments that which he or she is already legally obligated to pay. Thus, for all practical purposes when the taxpayer agrees to be bound by the terms and conditions included in the installment payment agreement, his compliance with the agreement is voluntary. While it may be in the best interest of the taxpayer to fulfill the terms of the installment payment agreement, a default by the taxpayer will not permit the Service to obtain judicial enforcement of the agreement. The Service's remedy is to terminate the installment payment agreement pursuant to the conditions codified in section 6159(b) and pursue administrative collection action against the taxpayer. Therefore, inserting a statute extension provision as an "Additional Condition" on the Form 433-D would not be helpful since the waiver would only be binding on the taxpayer to the extent the installment payment agreement is in effect.

Based on the foregoing, the practice of terminating installment payment agreements solely because the taxpayer refuses to extend the CSED is not countenanced by the statute, the regulations or the applicable IRM provisions. Moreover, this unsanctioned practice may be deemed an unauthorized collection action which subjects the Service to an award of civil damages. See, I.R.C. § 7433. Hence, it is strongly recommended that the service centers discontinue such practice.

4/ Under section 6159(b)(2)(B), the district director may terminate any installment agreement if the collection of the tax is in jeopardy. Even though termination under such circumstance is not automatic, the district director may take action to terminate the installment agreement if the taxpayer refuses to extend the collection statute in jeopardy situations. I.R.C. § 6159(b)(5); Treas. Reg. § 301.6159-1(c)(4). However, the action to terminate is based on the jeopardy status rather than on the taxpayer's refusal to extend the statute. The mere refusal to extend the statute does not, by itself, create a jeopardy situation. See IRM P-4-88.

If you have any questions concerning this memorandum, please contact Barton J. Uze at (202) 622-3620.

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