



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

OFFICE OF
CHIEF COUNSEL

July 24, 2001

Number: **200135025**
Release Date: 8/31/2001
UILC: 6651.00-00

CC:PA:APJP:MWMendel
GL-112612-01

INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR Associate Area Counsel (SB/SE), Area 1, Boston

FROM: Assistant Chief Counsel (Administrative Provisions & Judicial Practice) CC:PA:APJP

SUBJECT: Failure to Pay Additional Tax

This memorandum is in response to your request for Significant Service Center Advice dated April 24, 2001, in connection with a question posed by the Collection Branch of the Andover Service Center. This document is not to be used or cited as precedent.

ISSUE

Whether the Service can treat an installment agreement as accepted on the date it receives the written application for an installment agreement for purposes of reducing the failure to pay addition to tax rate imposed pursuant to section 6651(h)?

CONCLUSION

The Service is not authorized to treat the receipt date of a proposed installment agreement as the acceptance date for purposes of reducing the failure to pay addition to tax rate imposed pursuant to section 6651(h).

FACTS

Pursuant to the Internal Revenue Manual 5.14.2.2, streamlined installment agreements may be accepted by Service employees without managerial approval when the unpaid balance of assessments is \$25,000.00 or less and the tax liability will be paid in full within sixty months or prior to the expiration of the collection statute expiration date, whichever comes first. The agreements may be obtained in person, by telephone or by correspondence. See I.R.M. 5.14.2.2 (6).

GL-112612-01

It is our understanding that when an agreement is secured by telephone and meets the streamline requirements authorized Service personnel may accept the agreement immediately. Thus, the Service immediately places into effect the reduced failure to pay penalty authorized under section 6651(h). When a taxpayer proposes an installment agreement by correspondence, however, the Service may not accept the agreement for several weeks. Only upon acceptance does the Service apply the reduced penalty rate. As a result, taxpayers who obtain their installment agreement approval by telephone have the reduced penalty rate sooner than taxpayers who apply for installment agreements in writing.

LAW AND ANALYSIS

Section 6651(a)(2) provides that in the case of failure "to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment) unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is not for more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate." However, Section 6651(h) provides some relief by limiting the penalty if an installment agreement is in effect. Specifically, section 6651(h) provides "[i]n the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting '0.25' for '.05' each place it appears for the purposes of determining the addition to tax for any month during which an installment agreement under Section 6159 is in effect for the payment of such tax."

Section 6159 authorizes the Secretary to enter into written installment agreements with any taxpayer to satisfy that taxpayer's tax liability. With the exception of installment agreements entered into under section 6159(c), the Service has discretion to reject or accept a proposed installment agreement. See Treas. Reg. § 301.6159-1(b)(1)(i); Kitchen Cabinets, Inc. v. United States, 2001-1 U.S.T.C. ¶50,287 (N.D. Tex 2001). Under section 6159(c), the Secretary is required to enter into an installment agreement where the taxpayer will pay his tax liability in full within three years if (a) the liability does not exceed \$10,000 and (b) the taxpayer, during the preceding five years, has not failed to file a return, failed to pay the tax due, or entered into an installment agreement. See I.R.C. § 6159(c)(2)(a)-(c). In addition, however, the Secretary must determine that the taxpayer is unable to pay the liability when due. See I.R.C. § 6159(c)(3). Thus, even an installment agreement guaranteed by section 6159(c) requires the Secretary to make an

GL-112612-01

affirmative determination. Accordingly, no installment agreement can be in effect until the Service performs an affirmative act to accept the agreement

.
Because the mere receipt of a proposed installment agreement does not involve any affirmative act by the Service, an installment agreement is not accepted, or in effect, on the date of receipt. The plain language of section 6651(h) does not permit the Service to reduce the penalty rate until an installment agreement is in effect. Thus, the Service cannot apply the reduced penalty rate under section 6651(h) as of the date a taxpayer mails, or the date the Service receives, an installment agreement proposal from a taxpayer who submits an installment agreement proposal by mail.

If you have any questions regarding this response, please contact Branch 2 of Administrative Provisions & Judicial Practice.

CURTIS G. WILSON
By: Ashton P. Trice
Senior Technician Reviewer
APJP, Branch 2