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**From:**

**Sent:** Friday, August 07, 2009 1:27:43 PM

**To:**

**Cc:**

**Subject:** RE: OIC and CSED Question

Good morning: This is our response to your request for advice dated July 16, 2009. This product has been approved by my reviewer.

According to our communications, the taxpayer, who owes income tax liabilities for [redacted] and [redacted], signed a timely Form 900 waiver in connection with an installment agreement extending the CSED to [redacted]. On July 1, 2004, the taxpayer submitted an offer-in-compromise, which the Service rejected on October 29, 2004 for failure to submit requested financial information. (We note that the October 29, 2004 date includes the 30 days after the actual rejection during which the taxpayer could have appealed the Service's determination not to accept the offer.) The taxpayer did not appeal this rejection. After the Service rejected the offer-in-compromise and the time for appeal expired, the RO recalculated the CSED pursuant to section 6331(k)(3) and (i)(5); the new CSED was [redacted]. On [redacted], the Department of Justice commenced a case in federal district court to collect the taxpayer's tax liability. The government won the case on a default judgment.

[redacted] has informed you that despite the fact that the government secured a judgment, the taxpayer's tax accounts were reduced to zero because the CSED expired before the case was referred to the Department of Justice. Relying on IRM 5.1.19.6 (1/1/2006), they reason that "two tolling events cannot both toll the CSED;" therefore, the pendency of the offer-in-compromise did not toll the already extended statute pursuant to sections 6331(k)(3) and (i)(5), and the statute expired on [redacted], before the Department of Justice filed suit.

At the time the Service referred the case to the Department of Justice, the IRM provision provided the following:

(2) If more than one case action suspends the running of the collection statute, and the suspensions overlap, the CSED is viewed as extended only once for the period the suspensions overlap.

The two "suspensions" to which [redacted] refers are the Form 900 waiver, which extended the CSED to [redacted], and the suspension/tolling of the collection period during the pendency of the offer-in-compromise and for 30 days after the rejection pursuant to section 6331(k)(3) and (i)(5). If the CSED was not suspended during the pendency of the offer-in-compromise because of the Form 900 waiver, the CSED expired on [redacted], before the Department of Justice filed suit. If the pendency of the offer did suspend the CSED despite the waiver, the statute did not expire until [redacted], after the filing of the suit.

Treas. Reg. § 301.6502-1(b)(1) provides that a taxpayer may enter into an agreement with the Secretary in connection with an installment agreement to “extend” the period of limitations on collection. The Form 900 waiver is not a suspension of the CSED; rather, it simply extends the limitations period to a date certain by mutual consent of the Service and the taxpayer. See United States v. Greenfield, 2006 WL 2472845 (S.D.Fla. 2006). In this case, the Service and the taxpayer agreed to extend the CSED to . (Pursuant to the IRS Restructuring and Reform Act of 1998, requests made prior to December 31, 1999 to extend the limitations periods generally expired on the last day of the ten year collection period or on December 31, 2002, whichever was later. However, then, as now, section 6502(a)(2) contained an exception with respect to extensions connected to installment agreements. Then, as now, in the case of extensions in connection with installments agreements, the limitations period did not expire until 90 days after the end of the agreed upon extension.)

Section 6331(k)(3) and (i)(5) on the other hand does statutorily suspend or toll the limitations period while an offer-in-compromise is pending, i.e., being considered. Id. The reason for the suspension of the limitations period is that while an offer-in-compromise is pending the Service is precluded from levying the taxpayer’s assets.

In cases in which a taxpayer submits an offer-in-compromise that the Service rejects, and the taxpayer does not appeal the rejection, suspension/tolling of the period of limitations literally stops the running of the limitations period from the date an offer is submitted until the date the Service rejects the offer and for 30 days thereafter. Again, this is the very period during which section 6331(k)(1) prohibits the Service from levying the taxpayer’s assets. When the Service rejects an offer, the suspension is lifted and the limitations period begins where it left off. The following examples illustrate the suspension of the CSED under section 6331. Each of these examples assumes, as in the case before us, that the taxpayer did not appeal the rejection of the offer.

Example 1: The taxpayer submitted an offer-in-compromise on January 2, which the Service rejects on March 1. When the taxpayer submitted the offer, there were 4 days left on the CSED. The running of the CSED is suspended from January 2 through March 31, the date thirty days after the Service’s rejection of the offer. On April 1, the CSED begins again, and the Service has 4 days in which to levy or file a suit—the same 4 days it had left on the CSED when the taxpayer submitted the offer-in-compromise.

Example 2: The taxpayer submits an offer-in-compromise on January 2, which the Service rejects on March 1. When the taxpayer submitted the offer, there were 5 years left on the CSED. The running of the CSED is suspended from January 2 through March 31, the date thirty days after the rejection. On April 1 the CSED begins again, and the Service has 5 years in which to levy or file a suit—the same 5 years it had left on the CSED when the taxpayer submitted the offer-in-compromise.

In the instant case, the taxpayer signed a Form 900 waiver. This extended the CSED to by the mutual consent of the taxpayer and the Service. It did not suspend the CSED. The submittal of the offer-in-compromise did suspend the period of limitation from July 1, 2004, the date the taxpayer submitted the offer, until October 29, 2004, the date thirty days after the Service rejected the offer. This amounts to 121 days. When the period the limitations was suspended, i.e., 121 days, was added to the CSED, the new CSED was , three days after the Department of Justice filed an action in federal district court to collect the liabilities. Therefore, the CSED did not expire before the filing of the suit, and the Service may still collect the taxpayer’s and liabilities.