

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:05:MShurtliff
PRENO-147691-10

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to: Judith M. Wall
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(Office of the Chief Counsel)

from: Joseph E. Conley
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subject: CSED Extensions and Reinstated Installment Agreements

This constitutes our response to your November 29, 2010, request for advice on the validity of collection statute expiration date (CSED) waivers executed in connection with reinstated installment agreements. This memorandum is not to be cited as precedent.

ISSUE

Whether extensions of the CSED obtained in connection with reinstated installment agreements are valid.

CONCLUSION

Extensions of the CSED obtained in connection with reinstated installment agreements are not valid.

BACKGROUND

Your request for advice stems from a specific taxpayer case that the National Taxpayer Advocate (NTA) is currently working to resolve. The taxpayer in the case at issue apparently defaulted on an installment agreement. Approximately nine months later the taxpayer signed a Form 900 CSED waiver. Approximately one month after that there was either a reinstatement of the installment agreement or the taxpayer and the Service entered into a new installment agreement. In light the issue you posed, we address here whether the waiver was valid assuming that it was executed in connection with a reinstated installment agreement and not a new installment agreement.

LAW & ANALYSIS

Section 6159 of the Code authorizes the Secretary to enter into a written agreement with a taxpayer to satisfy a tax liability by making installment payments "if the Secretary determines that such agreement will facilitate collection of such liability." I.R.C. § 6159(a). Pursuant to Section 6502(a) of the Code, the Service generally has ten years from the date of a valid assessment to collect a given tax, but the ten-year period may be extended under certain circumstances. I.R.C. § 6502(a).

Section 6502(a)(2) addresses extensions of the collection period obtained in conjunction with installment agreements, providing that collection action may be taken if

there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer **at the time the installment agreement was entered into**

I.R.C. § 6502(a)(2)(A)(2000).

Thus, extensions of the CSED obtained after the effective date of section 6502, December 31, 1999, must be obtained "at the time the installment agreement was entered into." As for extensions of the CSED obtained prior to December 31, 1999, section 3461(c)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA) states:

PRIOR REQUEST. --If, any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of --

- (A) the last day of such 10-year period,
- (B) December 31, 2002, or
- (C) In the case of an **extension in connection with an installment agreement**, the 90th day after the end of the period of such extension.

Internal Revenue Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3461(c)(2), 11 Stat. 685, 764 (1998) (emphasis added).

The phrase "in connection with" is not defined in section 6502 or RRA section 3461(c), but we do not believe that it can be interpreted so broadly as to include extensions of the CSED obtained in connection with reinstatements of installment agreements. Rather, we believe it should generally be interpreted like the phrase "at the time the installment agreement was entered into," as used in section 6502(a)(2)(A) and Treas. Reg. § 301.6502-1(b)(1). Under this language, an extension could be obtained at the time a new installment agreement is entered into but not at the time that an installment

agreement is reinstated. This interpretation corresponds with the Service's application of section 6502(a)(2)(A) in IRM 5.14.2.2(6) and IRM 5.14.2.2(15), which relates to waivers in connection with partial payment installment agreements. The IRM states that

CSEDs may *not* be extended *during* installment agreements. CSEDs *may* be extended only in connection with *new* partial payment installment agreements after mailing CP 523 or Letter 2975, during the default period, or after agreements are terminated.

IRM 5.14.2.2(6) (emphasis in original).

This interpretation also corresponds with the Service's application of Section 6502(a)(2)(A) in IRM 5.14.2.2(6), which specifies that reinstatements are not *new* installment agreements. The IRM states that

Taxpayers whose agreements were previously terminated, with all appeal timeframes exhausted regarding the termination, (see IRM 5.14.11.4) may be granted *new* installment agreements (not reinstatements). CSED waivers may only be secured along with new partial payment installment agreements and only in certain situations (See IRM 5.14.2.1.3), even if there were prior extensions of CSEDs.

IRM 5.14.2.2(15) (emphasis in original).

To further clarify, if a taxpayer defaults on an installment agreement, then cures the default and has his/her agreement reinstated, he/she does not enter into a new installment agreement.¹ Rather, the taxpayer remains in the original installment agreement and is required to make payments according to its terms. The taxpayer will remain in the original installment agreement until the terms of the agreement are satisfied, the agreement is terminated, or a new installment agreement is negotiated and accepted by the Service and the taxpayer. Because reinstating an existing installment agreement is not equivalent to entering into an installment agreement, a CSED waiver may not be obtained in connection with a reinstatement.

Here, we are assuming that the extension was obtained in connection with a reinstatement, not a new installment agreement. Moreover, it was obtained approximately nine months after the installment agreement, which is not remotely at the time the installment agreement was entered into. Such an extension is not valid.

Thank you for soliciting our advice on this matter. If you have further questions, please call (202) 622-3620.

¹ When a taxpayer does not meet the terms of an installment agreement, she or he will be notified in writing and given 30 days to comply with the terms of the agreement before the agreement is terminated. IRM 5.14.11.4.