

Part III - Administrative, Procedural, and Miscellaneous

Interim Guidance under Section 6404(g)

Notice 2007-93

PURPOSE

This Notice describes how the amendment to section 6404(g) made by the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-028, § 8242, 121 Stat. 190, 200 (May 25, 2007), applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007.

SCOPE

This Notice applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007, with respect to individual Federal income tax returns that were timely filed before that date. This Notice provides interim guidance and will remain in effect until further guidance or regulations are issued.

BACKGROUND

Effective for taxable years ended after July 22, 1998, if an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the Service does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the Service shall generally suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by

reference to the period of time the failure continues and that is properly allocable to the suspension period. Prior to amendment by the Small Business and Work Opportunity Tax Act of 2007 (the Act), a notice is timely if provided before the close of the eighteen-month period beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period and ends twenty-one days after the Service provides the notice. This suspension rule applies separately with respect to each item or adjustment.

The Act amended section 6404(g) by striking “18-month period” in paragraphs (1)(A) and (3)(A) and inserting “36-month period.” The Act states that the amendment “shall apply to notices provided by the Secretary of the Treasury or his delegate after the date that is six months after the date of enactment” of the Act – that is, on or after November 26, 2007. In a recent Notice of Proposed Rulemaking and Notice of Public Hearing on the Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions, the Treasury Department and the Service acknowledged that questions have been raised regarding the effective date of the changes made by the Act, specifically how the amendment is intended to apply to notices provided on or after November 26, 2007, and stated that further guidance was under consideration. See Prop. Treas. Reg. § 301.6404-4, 72 Fed. Reg. 34199, 34200 (June 21, 2007). This Notice provides that guidance.

DISCUSSION

The Act extends to thirty-six months the period within which the Service may

issue a notice to an individual taxpayer specifically stating the taxpayer's liability and the basis for that liability before the accrual of interest and certain penalties are suspended under section 6404(g). The Service will apply the following rules to notices issued on or after November 26, 2007, that relate to a return that was timely filed before that date.

1. If, as of November 25, 2007, the eighteen-month period has closed and the Service has not provided notice to the taxpayer, interest and applicable penalties will be suspended beginning on the day after the close of the eighteen-month period and ending on the date that is twenty-one days after the notice is provided.

2. In all other cases, interest and applicable penalties will be suspended beginning on the day after the close of the thirty-six month period and ending on the date that is twenty-one days after the notice is provided.

The following examples illustrate these rules. The examples assume that none of the exceptions in section 6404(g)(2) to the general rule for suspension applies. The dates in the examples are used to illustrate the effective date changes made by the Act and do not provide guidance as to the computation of interest generally.

Example 1: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). On January 2, 2009 (less than thirty-six months after the due date of the return), the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will not be suspended with respect to the taxpayer's return.

Example 2: An individual files a federal income tax return for 2005 by April 17,

2006 (the last day to timely file pursuant to section 7503). On December 26, 2007, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has closed as of November 25, 2007, interest and applicable penalties will be suspended with respect to the taxpayer's return beginning on October 17, 2007 (the day after the close of the eighteen-month period), and ending on January 16, 2008 (the date that is twenty-one days after the notice is provided).

Example 3: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). The individual consents to extend the time within which the Service may assess any tax due on the return until June 30, 2011. On December 20, 2010, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will be suspended beginning on April 17, 2010 (the day after the close of the thirty-six month period), and ending on January 10, 2011 (the date that is twenty-one days after the notice is provided).

DRAFTING INFORMATION

The principal author of this notice is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Stuart Spielman at (202) 622-3620 (not a toll-free call).