



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR DISTRICT COUNSEL, MANHATTAN DISTRICT, NEW YORK

FROM: Joseph W. Clark
Senior Technician Reviewer, Branch 2 (General Litigation)
CC:EL:GL:Br2

SUBJECT: , Installment Agreement

This responds to your memorandum dated March 28, 2000. This document is not to be cited as precedent.

LEGEND

Date A
Date B
Date C
Date D
Date E
Date F
Date G
Date H
Date I
Date J
Date K
Year A
Year B
Year C
Year D
Year E
Year F
Month A
Month B
Amount A

ISSUES

(1) May the Internal Revenue Service ("Service") terminate the installment agreement at issue in this case on the grounds that the payments provided for

under the agreement will not fully pay the tax liability prior to the expiration of the statute of limitations?

(2) May the Service require the taxpayers to supply updated financial information even though the taxpayers remain in compliance with the installment agreement?

CONCLUSIONS

(1) No, the Service may not terminate the installment agreement at issue in this case because the payments provided for under the agreement will not pay the tax liability in full prior to the expiration of the statute of limitations.

(2) Yes, the Service may require the taxpayers to supply updated financial information even though the taxpayers remain in compliance with the installment agreement.

FACTS

Taxpayers entered into an installment agreement with the Service on Date A to pay their Year A income tax liability in Amount A monthly payments.¹ Taxpayers have remained in compliance with that agreement. The payments provided for under the installment agreement will not result in full payment of the tax liability prior to the expiration of the collection statute of limitations.

Another installment agreement providing for Amount A payments for tax years Year B, Year A, and Year C was approved on Date B.² A letter of acceptance was sent to the taxpayers on Date G, though the letter only referenced the Year A liability. The case was then reassigned to a new Revenue Officer, who noticed that the

¹ The Service has not been able to locate the installment agreement, but it is indicated in the Service's records.

² You state that the reason for the Month A "reinstatement" of the installment agreement was the misapplication of a Date C payment resulting from a Date D deficiency assessment of the taxpayers' Year B tax liability. The taxpayer paid the deficiency in two payments; one on Date E, and the balance on Date C. The Date C payment was misapplied by the Service to tax year Year D, and was not corrected until Month B. It does not appear possible that this misapplication was the cause of the Month A agreement, because the agreement was accepted prior to the misapplication. The reason for the Month A agreement is not clear, but we note that the taxpayers signed a power of attorney Form 2848 for years Year B through Year A with their present attorney on Date F.

collection statute was not protected and recommended rejection of the agreement.³ On Date I, a letter was sent to the taxpayers regarding the Year A and Year B tax liabilities scheduling a meeting on Date J. The letter stated that the Service has no record of receiving tax returns for these years. Attached to the letter were handwritten instructions by the Revenue Officer advising the taxpayers to bring specified financial information.

On Date J, the taxpayers, through their attorney, sent copies of the Month A installment agreement, and copies of the checks that paid the Year B deficiency. They also contend that the requested financial information was not available at that time, but that such information was not necessary in light of the installment agreement. On Date K, the Service sent the taxpayers a letter informing them that the request for a part payment agreement had been turned down because, (1) they did not respond to the Date I, request for information, and (2) because the Month A proposal would not full pay the outstanding liabilities before the collection statute of limitations expires. The letter notified that taxpayers of their right to an appeal of the rejection determination. Taxpayers continue to contend that the installment agreement is still effective and therefore cannot be denied.

ANALYSIS

In your memorandum, you ask whether the Service can terminate the installment agreement in this case, and whether the Service can require updated financial information from the taxpayers. You conclude that the expiration of the collection statute of limitations is not a basis for termination of an installment agreement. You also conclude that because the taxpayers did not provide the requested financial information, the installment agreement could be terminated. However, you recommend that the installment agreement not be terminated in this case because the real basis for the termination was the fact that the liability will not full pay before the expiration of the collection statute of limitations, and that it seems improper to reject the agreement for that reason when the Service did not do so in Year E or Year F. Even so, you also conclude that the taxpayers are required to provide updated information, and that if the CIS shows that the taxpayers circumstances have changed, the Service can modify or terminate the agreement.

We agree that the installment agreement in this case may not be terminated on the basis that it does not provide for the full payment of the tax liabilities before the expiration of the collection statute of limitations. Section 6159 of the Internal Revenue Code authorizes the Service to enter into written agreements with taxpayers under which taxpayers can satisfy tax liabilities in installment payments if doing so would facilitate the collection of the liabilities. I.R.C. § 6159(a). Both the statute and the corresponding regulation contemplate that an installment agreement

³ The Month A installment agreement indicates that the earliest collection statute expiration date in Date H.

shall provide for full payment of the tax liability covered by the agreement. Id., Treas. Reg. § 301.6159-1(a). However, nothing in the statute, the regulation, or the legislative history, suggests that the failure of the Service to obtain an adequate extension of the statute of limitations on collection to guarantee full payment of the tax liability under the installment agreement renders the installment agreement void, or that the Service would be permitted to terminate an installment agreement because it does not provide for full payment of the tax liability.⁴

Rather, Internal Revenue Code section 6159(b) provides that an installment agreement remains in effect for its term unless: (1) information which the taxpayer provided to the Service prior to the date the agreement was entered into was inaccurate or incomplete; (2) collection of the tax is in jeopardy; (3) the financial condition of the taxpayer has significantly changed; or (4) the taxpayer fails to pay an installment, to pay any other tax liability when due, or provide financial information requested by the Service. I.R.C. § 6159(b). See also Treas. Reg. § 301.6159-1(c), I.R.M. 5.14.8.3.

The installment agreement in this case was accepted in Year E and again in Year F.⁵ The agreement cannot be terminated on the basis that it did not provide for the full payment of the tax liability before the collection statute expired. The Service's statement in the Date K letter that the "request for a part payment agreement has been turned down" on this basis was therefore incorrect and ineffective to terminate the agreement.

We also agree with your conclusion that the Service may request updated financial information to protect its interests even if the taxpayer has not defaulted under the installment agreement. The treasury regulation under section 6159 provides:

Except as otherwise provided in the installment agreement, during the term of the agreement the director may take actions to protect the interest of the government with regard to the unpaid balance of the tax liability to which the installment agreement applies (other than actions

⁴ A Senate report accompanying a bill containing the subsequently enacted version of section 6159 states, as the sole reason for the enactment of this provision, that "the Code should provide standards relating to the termination of installment agreements executed by the IRS." S. Rep. No. 309, 100th Cong., 2d Sess. 8 (Report of the Committee on Finance to accompany S. 2223) (March 29, 1988). Similarly, the Conference Report accompanying the legislation notes that the "IRS is granted statutory authority to enter into a written installment payment agreement if the IRS determines that an agreement will facilitate collection of the tax owed." H.R. Conf. Rep. No. 100-1104, at 220, 100th Cong., 2d Sess. 8 (1988).

⁵ An installment agreement becomes effective on the date it is signed by the Service. Treas. Reg. 301-6159-1(b)(3).

pursuant to subchapter D of chapter 64 of subtitle F of the Internal Revenue Code [Seizure of Property for Collection of Taxes] against a person that is a party to the agreement), including actions enumerated in the agreement. The actions include, for example . . . requesting updated financial information from any party to the agreement[.]

Treas. Reg. § 301.6159-1(d) (emphasis added). There is no limitation that the request for financial information be made only when the taxpayer is in noncompliance with the agreement. Failure to provide an update of financial condition when requested is grounds for termination of the agreement. I.R.C. § 6159(b)(4)(C).⁶

However, we also agree with your conclusion that the best course of action in this case would not be to terminate the installment agreement based upon the failure to respond to the Date I letter. The letter is unclear and contains misstatements. The letter speaks of the non-receipt of tax returns for periods listed at the end of the letter, Year B and Year A, though failure to file tax returns is not indicated in the facts of this case. Further, the request for information in this case was made in handwritten instructions by that Revenue Officer that accompanied the letter, and did not mention the installment agreement.⁷

We therefore recommend that the installment agreement in this case not be terminated on the basis that the taxpayers failed to respond to the Date I request for undated financial information. The Service could, in its discretion, again request updated financial information, making clear that the failure to provide the requested information will result in termination of the installment agreement. If the taxpayers again fail to provide the requested information, the 30 day notice of the proposed termination should be then sent. IRM 5.14.8.4.

⁶ Such termination must nevertheless be made within statutory and regulatory guidelines. Unless collection of the tax is in jeopardy, termination or modification can only take place after 30 days notice to the taxpayer. I.R.C. § 6159(b)(5). See also IRM 5.14.8.4 and 5. The notice must in writing and briefly describe the reason for the intended alteration, modification, or termination, and upon receiving notice, the taxpayer may provide information showing that the reason for the intended alteration, modification, or termination is incorrect. Treas. Reg. § 301.6159-1(c)(4). The Service must provide for an independent administrative review of terminations of installment agreements for those taxpayers who request such a review. I.R.C. § 6159(d). See also I.R.M. 5.14.8.7.

⁷ We also note that the Date K letter, which notified the taxpayers that they have 30 days to appeal the rejection of the agreement, implies that the taxpayers only recourse is to appeal the determination to reject the offer. Service procedures provide that upon receiving a default notice, taxpayers will have 30 days to comply with the terms of the agreement before the agreement is terminated. IRM 5.14.8.4.

If you have any questions, please contact the attorney assigned to this matter at (202) 622-3620.

cc: