

Notice of Proposed Rulemaking

Collection After Assessment

REG-148701-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the collection of tax liabilities after assessment. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These regulations would affect persons determining how long the Internal Revenue Service has to collect taxes that have been properly assessed.

DATE: Written or electronically generated comments and requests for a public hearing must be received by June 2, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-148701-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-148701-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-148701-03).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A. Kohn, (202) 622-7985; concerning submissions of comments or requests for a hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part

301) under section 6502 of the Internal Revenue Code (Code). The regulations reflect the amendment of the Code by section 3461 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998) (Public Law 105-206, 112 Stat. 685, 764).

Collection of Tax Liabilities after Assessment under Section 6502

Pursuant to section 6502 of the Code, the IRS generally has 10 years from the date of assessment to collect a timely assessed tax liability. Prior to January 1, 2000, the effective date of section 3461 of RRA 1998, section 6502 permitted the IRS to enter into agreements with the taxpayer to extend the period of limitations on collection at any time prior to the expiration of the period provided in section 6502. Prior to the enactment of RRA 1998, the IRS used these collection extension agreements, or waivers, in various circumstances to protect its ability to collect a tax liability beyond the original 10-year period of limitations on collection. For example, the IRS historically conditioned consideration of an offer in compromise upon the execution of a collection extension agreement or waiver.

In addition, the Code contains several provisions that operate to toll the period of limitations on collection upon the occurrence of certain events. For example, section 6331(k) operates in part to suspend the period of limitations on collection for the period of time during which an offer in compromise is pending, for 30 days after rejection, and while a timely filed appeal is pending. Similarly, section 6503(h) operates to suspend the period of limitations on collection for the period of time during which the IRS is prohibited from collecting a tax due to a bankruptcy proceeding, and for 6 months thereafter. These statutory suspension provisions toll the period of limitations on collection even if the period of limitations on collection previously has been extended pursuant to an executed collection extension agreement. See *Klingshirn v. United States (In re Klingshirn)*, 147 F.3d 526 (6th Cir. 1998).

Section 3461 of RRA 1998 amended section 6502 of the Code to limit the ability of the IRS to enter into agreements extend-

ing the period of limitations on collection. Section 3461 of RRA 1998 also included an off-Code provision governing the continued effect of collection extension agreements executed on or before December 31, 1999.

Explanation of Provisions

The proposed regulations incorporate the amendments made by section 3461 of RRA 1998. The proposed regulations provide that the IRS may enter into an agreement to extend the period of limitations on collection if an extension agreement is executed: (1) at the time an installment agreement is entered into; or (2) prior to release of a levy pursuant to section 6343, if the release occurs after the expiration of the original period of limitations on collection.

The proposed regulations also incorporate the off-Code provision in section 3461(c) of RRA 1998 governing the continued effectiveness of extension agreements executed on or before December 31, 1999. The proposed regulations provide that if the extension agreement was executed in connection with an installment agreement on or before December 31, 1999, the extension agreement expires on the 90th day after the date agreed upon in the extension agreement. The proposed regulations provide that any other extension agreement executed on or before December 31, 1999, expires on the later of: (1) December 31, 2002, or if earlier, the date on which the extension agreement expired by its terms; or (2) the end of the original 10-year statutory period.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice

of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Aaron D. Gregory of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summons Division.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6502–1 is revised to read as follows:

§301.6502–1 Collection after assessment.

(a) *General rule.* In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, within 10 years after the date of assessment.

(b) *Agreement to extend the period of limitations on collection.* The Secretary may enter into an agreement with a taxpayer to extend the period of limitations on collection in the following circumstances:

(1) *Extension agreement entered into in connection with an installment agreement.*

If the Secretary and the taxpayer enter into an installment agreement for the tax liability prior to the expiration of the period of limitations on collection, the Secretary and the taxpayer, at the time the installment agreement is entered into, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the 89th day after the date agreed upon in the written agreement.

(2) *Extension agreement entered into in connection with the release of a levy under section 6343.* If the Secretary has levied on any part of the taxpayer's property prior to the expiration of the period of limitations on collection and the levy is subsequently released pursuant to section 6343 after the expiration of the period of limitations on collection, the Secretary and the taxpayer, prior to the release of the levy, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the date agreed upon in the extension agreement.

(c) *Continued effectiveness of agreements to extend the period of limitations on collection entered into on or before December 31, 1999—(1) In general.* Except as provided in paragraph (c)(2) of this section, if, on or before December 31, 1999, the Secretary and the taxpayer entered into a written agreement to extend the period of limitations on collection for a tax liability to a date after December 31, 2002, then, unless the written agreement expires by its terms prior to December 31, 2002, the period of limitations on collection expires on the later of—

(i) The last day of the original 10-year statutory period; or

(ii) December 31, 2002.

(2) *Written agreements entered into in connection with installment agreements.* If, on or before December 31, 1999, the Secretary and the taxpayer, in connection

with an installment agreement, entered into a written agreement to extend the period of limitations on collection for a tax liability, the written agreement extends the period of limitations on collection until the 90th day after the date agreed upon in the written agreement.

(d) *Proceeding in court for the collection of the tax.* If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a) of this section (or within any extended period as provided in paragraphs (b) and (c) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

(e) *Effect of statutory suspensions of the period of limitations on collection if executed collection extension agreement is in effect—(1)* Any statutory suspension of the period of limitations on collection tolls the running of the period of limitations on collection, as extended pursuant to an executed extension agreement under paragraph (b) or (c) of this section, for the amount of time set forth in the relevant statute.

(2) The following example illustrates the principle set forth in this paragraph (e):

Example. In June of 2003, the Internal Revenue Service (IRS) enters into an installment agreement with the taxpayer to provide for periodic payments of the taxpayer's timely assessed tax liabilities. At the time the installment agreement is entered into, the taxpayer and the IRS execute a written agreement to extend the period of limitations on collection. The extension agreement executed in connection with the installment agreement operates to extend the period of limitations on collection to the date agreed upon in the extension agreement, plus 89 days. Subsequently, and prior to the expiration of the extended period of limitations on collection, the taxpayer files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge from bankruptcy a few months later. Section 6503(h) of the Internal Revenue Code operates to suspend the running of the previously extended period of limitations on collection for the period of time the IRS is prohibited from collecting due to the bankruptcy proceeding, and for 6 months thereafter. The new expiration date for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(f) *Date when levy is considered made.* The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

(g) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on March 3, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 4, 2005, 70 F.R. 10572)