

[4830-01-p]

Published September 6, 2006

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9284

RIN 1545-BC72

Collection after Assessment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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

DATES: Effective Date: These regulations are effective September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn, (202) 622-7985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains 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).

On March 4, 2005, a notice of proposed rulemaking (REG-148701-03) relating to collection after assessment was published in the **Federal Register** (70 FR 10572). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed in this preamble.

### **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 (6<sup>th</sup> Cir. 1998).

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

### **Summary of Comments and Explanation of Provisions**

The final regulations incorporate the amendments made by section 3461 of RRA 1998. The 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.

One set of comments received in response to the notice of proposed rulemaking

recommended that the final regulations: 1) deem void all waivers signed prior to January 1, 2000, in conjunction with installment agreements that did not provide for payment in full of the underlying tax liability by the extended collection statute expiration date; and 2) provide that all taxpayers who have made payments since December 31, 2002, on such installment agreements are entitled to a refund of such payments. Because such provisions are beyond the scope of the underlying statute, they are not included in the final regulations.

Another set of comments received in response to the notice of proposed rulemaking concerned an inconsistency between the language of section 3461(c)(2) and a proposed alternative date of expiration for extension agreements made on or before December 31, 1999.

The notice of proposed rulemaking provided that extension agreements executed on or before December 31, 1999, other than those executed in connection with installment agreements, expire 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. The comments reflect that the language of the proposed regulations is inconsistent with the language of the statute. Few cases exist in which waivers executed on or before December 31, 1999, are still open under the statutory framework. Thus, there is no longer a need to address this provision in final regulations.

To the extent that the notice of proposed rulemaking differs from the final regulations, it is withdrawn as of the effective date of the final regulations.

### **Special Analyses**

It has been determined that this Treasury decision 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, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

#### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is 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 89<sup>th</sup> 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) 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 paragraph (b) 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.

(d) 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) 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 (d):

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. Assuming the tax is not discharged in the bankruptcy, 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.

(e) 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.



(f) Effective date. This section is applicable on September 6, 2006.

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

Approved: August 22, 2006

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

Eric Solomon