

INTERNAL REVENUE SERVICE

Number: **200127003**
Release Date: 7/6/2001

U.I.L. # 52.01.04-00
9999.98-00

CC:PA:CBS:Br2
GL-126940-00

March 12, 2001

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
(SMALL BUSINESS / SELF-EMPLOYED)
Attention: Stephen J. Neubeck

FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: : CSED Extension and Installment Agreement
in Contravention of Service Policy

This constitutes our response to your December 11, 2000, request for advice on several issues pertaining to the validity of an extension of the statute of limitations for collection and a related installment agreement. As is discussed below, our opinion is that both the extension and the related installment agreement are legally valid. This document is not to be cited as precedent.

ISSUES:

- 1) Whether an extension of the statute of limitations for collection until is valid, given that:
 - a) the extension is for more than five years for one of the tax periods at issue; and
 - b) the extension was signed by the Service on March 24, 1998.
- 2) If the extension of the statute of limitations is valid, whether a related installment agreement, approved by the Service on March 31, 1998, is also valid.

CONCLUSIONS:

- 1) The extension of the limitations period is valid both as a matter of policy and legally.
- 2) The installment agreement is also valid.

BACKGROUND: Your request for advice arises from outstanding tax liabilities on the part of (the taxpayer) for tax years and . 1/ The

1/ According to a memorandum from the Appeals Team Manager, Cincinnati Office, attached to your memorandum requesting advice, the taxpayer initially also owed taxes for but satisfied the liability in full on .

liability was assessed on _____, and the _____ liability was assessed on _____; the original collection statute expiration dates (CSEDs) were, respectively, _____, and _____. On _____, prior to the CSED for either liability, _____ signed a Tax Collection Waiver, Form 900, to extend the CSED for both liabilities until _____. On the same day, he also signed an Installment Agreement, Form 433-D, covering both liabilities.

Less than a month later, on March 24, 1998, the Deputy Commissioner issued a memorandum, entitled "Installment Agreement Procedures," which set forth rules for dealing with both new and existing installment agreements. A copy of this document was attached to your request for advice. The Deputy Commissioner's memorandum provided, in pertinent part:

No IRS function may enter into any new installment agreement unless the agreement provides a payment schedule that will fully satisfy the tax liability (including interest and penalties) either (a) within the original CSED, or (b) within 5 years after that date, if a waiver of the original CSED is obtained at the time the installment agreement is entered into.

* * *

If an installment agreement would be appropriate, but the liability will not be satisfied within 5 years beyond the original CSED, negotiate but do not finalize the agreement until further instructions are provided.

Memorandum of March 24, 1998 (emphasis in original).

The Form 900 previously signed by the taxpayer was signed on behalf of the Service on the same day the Deputy Commissioner's memorandum was issued, March 24, 1998. A week later, on March 31, 1998, the installment agreement was signed by the authorized Service official. The Service Center extended the CSED for the _____ liability but failed to input the extension with respect to the _____ liability.

The taxpayer has now requested a Collection Due Process hearing, and the Appeals Team Manager has asked you whether the Form 900 and/or the installment agreement to which it is related are invalid because they were executed in contravention of IRS policy as set forth in the March 24, 1998, memorandum from the Deputy Commissioner. **LAW AND ANALYSIS:** Section 6159 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, although the ten-year period can be extended under certain circumstances. I.R.C. § 6502(a).

In this case, the Service sought the taxpayer's consent to extend the CSED to ensure full payment of his liabilities under an installment agreement. The taxpayer and the Service purported to extend the statute of limitations on collection by executing a Form 900. As is discussed infra, no statutory limitations on the length of such extensions

existed until the Internal Revenue Restructuring and Reform Act (RRA) was enacted in July of 1998. Moreover, at the time the taxpayer signed the Form 900 on _____, the Service did not have a policy limiting extensions of the CSED which could be executed via Form 900 to five years beyond the original CSED. It was not until the March 24, 1998, issuance of the Deputy Commissioner's memorandum that any such limit was imposed on Service personnel.

Procedures of the Service, such as those embodied in the Internal Revenue Manual 2/, are merely directory and not mandatory. Thus, the Service's failure to comply with an internal procedural requirement does not invalidate the consent contained in this case. See, e.g., Bridges v. Commissioner, 47 T.C.M. (CCH) 716 (1983); Cary v. Commissioner, 48 T.C. 754 (1967). In Cary, a Service employee altered a consent to extend the statute of limitations on assessment to reflect what he believed was a correction of the stated tax year at issue, after the taxpayer had signed the consent form. The Tax Court held that the consent was invalid essentially because it did not reflect that an agreement existed between the parties. In contrast, in this case the parties clearly agreed to extend the CSEDs to specific dates, and "it would be unconscionable to allow the taxpayer to afterwards repudiate a consent upon which the [Service] has acted and relied." See Liberty Baking Co. v. Heiner, 37 F.2d 703, 704 (3d Cir. 1930). Thus, the Form 900 at issue in this case is valid.

We note that the extensions of the CSEDs encompassed by the Form 900 are also valid in light of the changes to section 6502 of the Code effected by the RRA, which was signed into law on July 22, 1998, after all the events relevant to installment agreement occurred. The current version of section 6502(a)(2) addresses extensions of the collection period obtained in conjunction with installment agreements, providing that collection action may be taken

if—

(A) 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 this provision, December 31, 1999, must be obtained "at the time the installment agreement was entered into." The installment agreement at issue was entered into before the RRA was even enacted, and the current version of section 6502(a)(2) thus does not apply

2/ The policy against obtaining an extension of the CSED exceeding five years from the original CSED has been added to the Manual. See IRM 5.14.1.7(1). It was not, however, in the Manual at the time the Service executed the Form 900 and the installment agreement at issue in this case.

here. However, germane to this situation is section 3461(c)(2) of the RRA, which states:

PRIOR REQUEST. --If, in 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), 112 Stat. 685, 764 (1998).

The impact of this provision on the current case is that, if the Form 900 at issue here was not executed “in connection with” an installment agreement, the CSEDs in this case must be deemed to be the later of the original CSEDs or December 31, 2002. Since the original CSEDs were _____ and _____ this means that the CSED for both periods would be December 31, 2002, rather than the _____ date contained in the Form 900.

The phrase “in connection with” is not defined in I.R.C. § 6502. However, this phrase is synonymous with the phrase “at the time the installment agreement was entered into,” which is used in section 6502(a)(2)(A) and which is applicable to extensions of the CSED which are obtained after December 31, 1999. Thus, under current law, the extensions of the CSEDs would be valid if they were obtained contemporaneously with the installment agreement. We believe the extensions obtained here are valid under this standard. Initially, the taxpayer signed both the CSED and the installment agreement at the same time, reflecting an apparent intent on his part to relate the two documents. Moreover, although the installment agreement was signed by the Service at a different time than the Form 900, the two times were only seven days apart, suggesting that execution of the installment agreement was predicated on execution of the Form 900. Accordingly, for purposes of compliance with section 3461(c)(2) of the RRA, the CSED at issue here was obtained “in connection with” an installment agreement.

The installment agreement itself is also valid since it was executed in conjunction with extensions of the CSEDs which, as discussed above, were legally valid. We recognize that the Appeals Team Manager raises a concern with respect to whether the agreement provides for satisfaction of the outstanding liabilities prior to the CSEDs. However, the failure of an installment agreement to provide for complete satisfaction of the subject liability is not grounds for invalidating or terminating the agreement. See

generally I.R.C. § 6159; Treas. Reg. § 301.6159-1(a) (not addressing whether the failure of the Service to obtain an extension of the CSED sufficient to guarantee full payment of the tax liability under the installment agreement renders the installment agreement void or provides grounds for termination of the installment agreement). 3/

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

3/ Nonetheless, the Internal Revenue Manual states that only installment agreements providing for full payment of liabilities may be granted. IRM 5.14.1.1(1).