



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

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OFFICE OF
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MEMORANDUM FOR AREA COUNSEL, AREA 5 (SMALL BUSINESS/SELF-EMPLOYED), DENVER GROUP 2

FROM: Lawrence Schattner
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Waiver of Notice of Termination of Installment Agreement

This responds to your request for advice dated April 9, 2001. This document is not to be cited as precedent.

ISSUE: Whether the Service can obtain a waiver of a taxpayer's right to receive the notice of termination of an installment agreement required by I.R.C. § 6159(b)(5)?

CONCLUSION: Section 6159 does not authorize a waiver of the taxpayer's right to receive notice of termination of an installment agreement.

BACKGROUND: You have brought to our attention two cases where, as part of Collection Appeals Proceedings before Appeals Settlement Officers, installment agreements were entered into with the taxpayer in which the taxpayer waived the right to notice of termination if any term or condition in the installment agreements were not met, thus permitting the Service to commence immediate collection action upon default. One of those cases involved a prior default in an installment agreement. You have been asked by the revenue officer to whom the accounts are assigned whether the waivers are valid, thus permitting the Service to levy on the taxpayers' assets without notice of termination should the taxpayers default on the agreements. You conclude that a waiver of the right to notice of termination is legally valid, but that as a matter of policy such waivers should only be solicited in egregious cases such as where the taxpayer has had prior defaulted installment agreements.

LAW AND ANALYSIS: For the following reasons, we conclude that waivers of the right to receive notice of termination of installment agreements are invalid. A notice of proposed termination should be sent after default even if such a waiver was executed.

Section 6159 authorizes the Service to enter into agreements for the payment of taxes in installments. I.R.C. § 6159. Section 6159(b) provides: "Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement." Section 6159(b)

further enumerates the grounds for which the Service may alter, modify and terminate installment agreements: providing inaccurate or incomplete information before the agreement was executed; collection of the tax is in jeopardy; the financial condition of the taxpayer has significantly changed; the taxpayer fails to pay an installment, or any other tax liability, when due; and the taxpayer fails to provide financial information requested by the Secretary. Section 6159(b)(5) specifies that unless collection of the tax is in jeopardy, the Secretary may not alter, modify or terminate an installment agreement for the enumerated reasons unless the taxpayer is given 30 days notice of such termination with an explanation of why the Secretary intends to take the action. Treas. Reg. § 301.6159-1(c)(4) further provides that upon receiving the notice of termination, the taxpayer may provide information showing that the reason for the intended alteration, modification or termination is incorrect.

Levies with respect to the tax which is the subject of an installment agreement are prohibited during the period that an installment agreement is in effect, and in the case of a default, during the 30 day period (plus the period of any appeals) after notice of termination is sent. I.R.C. § 6331(k)(2)(C),(D). The taxpayer can, however, waive the restriction on levy. I.R.C. § 6331(i)(3)(A), (k)(3).

We conclude that a waiver of the right to receive a notice of termination is not permitted under the current statutory scheme. The purpose of the notice of termination is to give the taxpayer the right and opportunity to contest a proposed termination, and there is no statutory basis for forcing the taxpayer to relinquish that right as a condition of entering an installment agreement. The receipt of the notice of termination is a fundamental right which cannot be withdrawn absent specific statutory authorization.

The Secretary has the discretion to require terms that protect the interests of the Government as a condition to entering into an installment agreement, such as a requirement that the taxpayer authorize direct debit bank transfers. Treas. Reg. § 301.6159-1(b). However the Secretary cannot impose conditions inconsistent with section 6159. Because the statute and regulations contain restrictions on the ability of the Service to terminate agreements, the Service can only insert additional terms in installment agreements which are consistent with these restrictions. A waiver of the notice of termination entered into as a condition of acceptance of the installment agreement is invalid because it is inconsistent with section 6159(b). ^{1/}

^{1/} One of the installment agreements at issue requires the taxpayer to timely file returns and make federal tax deposits. We note in this regard that an installment agreement can only be terminated for the reasons stated in section 6159(b). Failure to make federal tax deposits, failure to file returns, and failure to do any other act not specified in section 6159(b), are not valid grounds for terminating an installment agreement. See IRM 5.14.8.3 (10/18/99).

We finally note that it would be legally permissible under the statute to require the taxpayer to waive the restriction on levy for the 30 day period (and during any appeal period) after the notice of termination, as a condition for entering into the installment agreement. However, the published procedures involving installment agreements do not contemplate such waivers. See IRM 5.14.1.5 (10/18/99). While it might be appropriate to require such waivers in cases involving past defaults, this is a matter of policy which should be approved within the National Office of the SB/SE Division.

Please contact the attorney assigned to the case at (202) 622-3620 if you have any questions or comments concerning this memorandum.