



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR PAUL J. SUDE
ASSOCIATE AREA COUNSEL/PHILADELPHIA
(CC:SB:2:PHI:2)

FROM: Joseph W. Clark
Senior Technician Reviewer, Branch 2 (CBS)

SUBJECT: Installment Agreement Default Processing

This Chief Counsel Advice responds to your memorandum dated April 19, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES:

1. May the Internal Revenue Service require that a taxpayer become current as to his estimated tax payments as a condition for reinstatement of a defaulted installment agreement?
2. May the Service require that a taxpayer enter into a direct deposit installment agreement as a condition for reinstatement of a defaulted installment agreement?
3. May the Service require that a taxpayer pay federal tax liabilities or make future tax payments by credit card as a condition for reinstatement of a defaulted installment agreement?

CONCLUSIONS:

1. Yes, the Service may require as a condition of reinstatement that the taxpayer become current with his estimated tax payments.
2. Yes, the Service may require as a condition of reinstatement that the taxpayer enter into a direct deposit installment agreement.
3. No, the Service may not require as a condition of reinstatement that the taxpayer pay by credit card.

FACTS:

The Philadelphia Service Center, in the course of a project on defaulted installment agreements, has suggested the Service consider using the foregoing conditions as mandatory prerequisites to reinstatement. In your proposed Significant Service Center Advice, you agree that the Service may require a taxpayer to become current on estimated tax payments and enter into a direct deposit arrangement as preconditions for reinstatement. You do not believe the Service may require the taxpayer to pay by credit card. So that the Service and the public are aware of these new conditions, you further recommend that these procedures be incorporated into the Internal Revenue Manual.

LAW AND ANALYSIS:

Section 6159 of the Internal Revenue Code governs installment agreements.

AUTHORIZATION OF AGREEMENTS. – The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment for any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

I.R.C. § 6159(a). Section 6159, in addition to authorizing the execution of installment agreements, includes provisions specifying the extent to which installment agreements remain in effect, the situations in which installment agreements must be entered into, the specific conditions under which an installment agreement may be terminated by the Service, and the Secretary's duty to establish procedures for independent administrative review of termination of installment agreements. See I.R.C. § 6159 (b), (c), (d).

The Service is not required to enter into an installment agreement with a taxpayer.¹ “The director has the discretion to accept or reject any proposed installment agreement.” Treas. Reg. § 301.6159-1(b)(1)(i). See, e.g., AJP Management v. United States, 87 AFTR2d ¶ 2001-312 (C.D. Cal. Nov. 21, 2000) (appeals officer

¹ There is an exception to this rule for proposed installment agreements which satisfy specific criteria, as set forth in I.R.C. § 6159(c). If a proposed installment agreement meets these criteria, the Service must accept the “guaranteed” agreement. See IRM 5.17.2.2.3 However, one of the criteria is that the taxpayer not have entered into an installment agreement with the Service during the past five years. I.R.C. § 6159(c)(2)(C). This prevents a taxpayer who has defaulted from proposing a “guaranteed” installment agreement as a means of bypassing preconditions the Service sets on reinstatement, and so the exception for “guaranteed” installment agreements is not applicable here.

did not abuse his discretion by rejecting proposed installment agreement); Kitchen Cabinets, Inc. v. United States, 2001 U.S. Dist. LEXIS 2388 (N.D. Tex. Mar. 6, 2001) (Service not obliged to accept a proposed installment agreement offered during a Collection Due Process hearing). In addition, prior to entering into an installment agreement, the Service may impose terms and conditions to protect the interests of the government. Treas. Reg. § 301.6159-1(b)(1)(B). The law does not prohibit the Service from establishing conditions, such as the use of direct deposit, before a proposed installment agreement will be accepted. In fact, the example provided under this Regulation is that the director may require that a taxpayer authorize direct debit bank transfers as a method of making installment payments under the agreement. As the Service may require a taxpayer to enter into a direct deposit agreement as a precondition to an initial installment agreement, the Service likewise may require a taxpayer to enter into a direct deposit agreement as a precondition to reinstatement of a defaulted agreement.

Although the Service has wide discretion whether or not to accept a proposed installment agreement, the Service's ability to terminate an existing installment agreement is limited by statute. The Service may propose termination of, or place in default, an installment agreement if the taxpayer:

- a. fails to pay an installment payment when due under the terms of the agreement;
- b. fails to pay another tax liability at the time such liability is due;
- c. fails to provide a financial condition update upon request;
- d. provides information prior to the date such agreement was entered into that was inaccurate or incomplete; or
- e. if the director determines the collection of any tax liability to which the installment agreement applies is in jeopardy.

I.R.C. § 6159(b)(4); Treas. Reg. § 301.6159-1(c). An installment agreement may not be defaulted or terminated for the taxpayer's failure to make estimated tax payments, failure to make federal tax deposits or failure to file another return at the time such return is due. IRM 5.14.8.3(1).

However, just because the Service is limited in how it may terminate an agreement does not mean that the Service is also limited in its ability to reinstate (or refuse reinstatement) to a taxpayer who has defaulted. The bases on which the Service may terminate or default an installment agreement are set out by statute. The bases for reinstatement are not. Though Congress intends the Service to be flexible in working with taxpayers to resolve their tax liabilities via installment agreements,² the law does not require the Service to automatically reinstate a

² See Internal Revenue Service Restructuring and Reform Act of 1998 (H.R. 2676) § 3467 (codified at I.R.C. § 6159(c)), reprinted in Joint Committee on Taxation,

defaulted taxpayer. See Lilley v. United States, 1991 U.S. Dist. LEXIS 913 (N.D. Ohio Jan. 7, 1991) (acceptance of payments does not require IRS to reinstate installment agreement). When Congress amended section 6159 in the Restructuring and Reform Act of 1998, it did not limit the Service's ability to impose terms and conditions prior to entering into (or reinstating) installment agreements. Instead, the Service retains the discretion to refuse to accept a new installment agreement proposed by a taxpayer who previously defaulted. See MRCA Info. Servs. v. United States, 2000 U.S. Dist. LEXIS 12550 (D. Conn. Aug. 1, 2000) (Court upholds Service's rejection, in Collection Due Process hearing, of proposed installment agreement by taxpayer who previously defaulted on two agreements).

As the Service may impose reasonable terms and conditions before accepting a proposed installment agreement, the first two conditions suggested above (payment of estimated taxes and direct deposit) may be set by the Service as preconditions to the reinstatement of a terminated or defaulted installment agreement. In your proposed memorandum, you disagree that the Service may require payment by credit card as a condition of reinstatement. You note that the Internal Revenue Manual presently recommends that the Service consider compliance with estimated tax requirements and payment by direct deposit before considering reinstatement. IRM 5.14.8.6(1)f&g. Although payment by credit card is authorized by law,³ the use of a credit card requires the taxpayer to incur a fee. The instructions for Form 1040, for example, state that for the use of a credit card, a convenience fee will be charged by the service provider based on the amount the taxpayer is paying. See also Temp. Treas. Reg. § 301.6311-2T(e). This "convenience" fee is not a tax debt, but is an amount imposed by virtue of the method of payment selected by the taxpayer. It is one thing if a taxpayer voluntarily chooses to pay the credit card fee, but we do not believe the Service can require the taxpayer to incur such a fee as a condition of reinstatement.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

We agree with your recommendation that, should the Service decide to adopt any or all of these proposed conditions to reinstatement, such procedures should be incorporated into the Internal Revenue Manual. This will insure uniformity of application and notify taxpayers of the new conditions. We also share your concerns that some taxpayers may not have the ability to pay by direct deposit and that this may be perceived as unfair. However, a taxpayer who is denied reinstatement of a defaulted installment agreement due to the conditions suggested above (or for any other reason) has a right to appeal such denial. See I.R.C.

106th Congress, General Explanation of Tax Legislation Enacted in 1998 at 113 (1998).

³ See I.R.C. § 6311(d), Temp. Treas. Reg. § 301.6311-2T.

§ 6159(e) (cross-referencing I.R.C. § 7122(d)); IRM 5.14.6.3.⁴ We believe the appeal process affords sufficient safeguards to insure a taxpayer is not treated unfairly.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please contact Richard Charles Grosenick at 202/622-3620.

⁴ See also IRM 5.14.8.7 (appeal of defaulted/terminated installment agreements).