

Extending the Tax Assessment Period



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Background

We try to examine tax returns as soon as possible after they are filed. To protect you from untimely tax examinations, Congress set deadlines for assessing taxes, making refunds or credit of tax. These deadlines are called statutes of limitations. Without statutes of limitations, a tax return could be examined and tax assessed, refunded, or credited at any time, regardless of when the return was filed.

Statutes of limitations generally limit the time we have to examine returns and make assessments to within 3 years after a return is due or filed, whichever is later. We can't assess additional tax, and we can't make a refund or credit, (unless you filed a claim timely) after the time has expired under any statute of limitations. Even if the tax adjustment was determined before expiration. Also, if you disagree with our findings, we cannot provide you with an appeal within the Service unless sufficient time remains on the statute. Because of these restrictions, we identify tax returns under examination for which the statutory period is about to expire and give you the opportunity to extend the statutes of limitations. This additional time allows you to provide further documentation to support your position, request an appeal if you do not agree with our findings, or to claim a tax refund or credit. It also allows the Service time to finish our examination, make any additional assessment, if necessary, and provide sufficient time for processing.

Congress, recognizing that additional time may sometimes be needed to fairly resolve a tax examination, provided for extending the statutory period by written agreement between you and the Service. These agreements are called "consents" and apply to all kinds of taxes except estate tax.

To provide consistency, we have forms for the written consents and guidelines for any restrictive conditions. There are two basic kinds of consent forms, one sets a specific expiration date for the extension, and the other does not. Either type of consent may be limited by restrictive conditions, explained below.

Length of Extension

Our examiners request an extension period no longer than is necessary to complete the examination, and any action necessary to close the case. We use two kinds of consents to accomplish this, a "fixed date" and an "open-ended" consent.

Fixed date consents expire on the date specified in the consent. Once the date is extended it may be further extended by mutual agreement before the expiration date of the previous extension period. This consent is the one

used for most examination and appeal activities. The principal forms used for this purpose are Form 872, *Consent to Extend the Time to Assess Tax*, Form 872-B, *Consent to Extend the Time to Assess Miscellaneous Excise Taxes*, or Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*.

Generally, in an open-ended consent, the extension period remains open until 90 days after either the taxpayer or the Service sends written notice ending the agreement. The procedures for using this consent are given in Revenue Procedure 79-22, 1979-1 C.B. 563. A copy may be obtained by calling the Internal Revenue Service at 1-800-829-1040. This kind of consent may be used by Examination, Employee Plans, or Exempt Organizations for cases placed in suspense and for cases scheduled for regional appeals conferences. It is also used in other situations where it would be advantageous to both you and the Service. Form 872-A, *Special Consent to Extend the Time to Assess Tax* is used for this purpose. However, Form 872-A may not be used for employment and certain miscellaneous excise taxes.

Restricted Consents

In addition to extending the statutory period, consent agreements may also limit further examination or appeal activity to specific tax issues. These agreements are called restricted consents and have a fixed or open-ended date of expiration. As a general rule, we do not accept restricted consents until all of the following conditions exist:

- 1) The number of unresolved issues that must be covered by the restricted consent do not make it impractical to do so.
- 2) The scope of the restrictions must be clearly and accurately described for all the unresolved issues.
- 3) The issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency or, under certain situations, scheduling any over-assessment (refund or credit) for the agreed issues.
- 4) The use of a restricted consent at the district level is approved by the appropriate Service representative.

Available Options

When asked to sign the consent extending the statutory period, you have three options, with rights and

alternatives for each. You have the right to

- **sign an unconditional consent** (the fixed date consent or open-ended consent that does not limit the examination or appeal activities to specific issues). This provides us the same examination authority and you the same appeal opportunities as under the original statutory period.
- **negotiate consent items.** The Internal Revenue Code does not specify the length of the extension period or the extent of examination or appeal activities. This allows you and the Service to negotiate the tax issues contained in a restricted consent and/or the length of the extension period. During any negotiations, factors such as the type and difficulty of issues, whether issues not covered by the restricted consent are agreed, etc., will be considered. Both parties must agree on the terms of the consent before it becomes effective.
- **refuse to sign the consent.** When this occurs, except for employment and certain miscellaneous excise taxes, we will usually take steps to assess any tax we determine due by issuing a notice of deficiency (see Notice of Deficiency below for explanation). This notice neither requires that you make an immediate payment or that you immediately take your case to the Tax Court. The notice gives you 90 days (150 days if the notice was addressed to a person outside the United States) to either agree to the deficiency or file a petition with the United States Tax Court for a redetermination of the proposed deficiency. During this period, you may ask Appeals to reconsider your case. However, any reconsideration of your case will not suspend or extend the 90 or 150-day period you have for filing a petition with the Tax Court. If agreement cannot be reached during the 90 or 150-day period, Appeals will attempt to notify you in sufficient time for you to file a petition with the tax court before the 90 or 150-day period expires. After you have petitioned the court, you will have the opportunity for a pretrial settlement. If agreement cannot be reached, the case will be heard in court. Even if you choose not to sign the consent, you may still be considered to have cooperated with the Internal Revenue Service for purposes of determining who has the burden of proof in any court proceeding.

If you don't agree and don't file a petition during the 90 or 150-day period, the amount shown in the notice of deficiency will be assessed and arrangements for payment must be made. Under no circumstances will a penalty be charged for not signing the consent.

As an alternative, you can pay the disputed amount of tax and file a claim for refund. The claim must be filed within the period of limitations for filing claims; however a

timely filed claim can be examined, reviewed, and appealed after the period for filing claims has expired. Of course, if you wish, you can take your case to the United States District Court or the United States Court of Federal Claims within the period specified by Internal Revenue Code Section 6532. That section requires you to wait at least six months after filing your claim before you may file suit, and requires you to file the suit within two years of receiving a notice that your claim has been disallowed.

If you choose not to sign the consent extending the period of limitations for employment taxes or certain miscellaneous excise taxes, we will normally assess the additional tax. Generally, your only recourse is to pay the additional tax when assessed. You may then file a claim for refund within the applicable statutory period of limitations, and upon our disallowance of the claim or six months from the date the claim is filed, file suit in the United States District Court or the United States Court of Federal Claims. We will consider a claim for abatement of the assessment of employment taxes or certain miscellaneous excise taxes if a jeopardy assessment (see jeopardy assessment below) is involved or you establish a meritorious reason for our considering the claim for abatement.

Additional information concerning your appeal rights is contained in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*. Appeal procedures for adverse determinations in Employee Plans and Exempt Organization cases are explained in Notice 402, and Publication 892, respectively. Copies are available free from the Internal Revenue Service by calling 1-800-829-1040.

Notice of Deficiency

If the Commissioner determines there is a deficiency of income, estate, gift, or certain miscellaneous excise taxes, the law authorizes the Commissioner to send notice of such deficiency to the taxpayer by certified or registered mail. District directors and other designated officers are authorized to issue these notices for the Commissioner. The notice is not an assessment of tax. It is a proposed deficiency and gives you 90 days (150 days if the notice is mailed to an address outside the United States) to either agree to the deficiency or file a petition with the United States Tax Court for a redetermination of the deficiency. But once the notice of deficiency is issued, the 90 or 150-day period cannot be suspended or extended.

Jeopardy Assessment

Jeopardy assessments are made when we believe before assessment that collection of a proposed deficiency will be endangered if we follow our regular

procedures, see Internal Revenue Code Section 6861. Jeopardy assessments are used sparingly. They are to be reasonable, appropriate, and limited to amounts that can be expected to protect the government's interest. Each jeopardy assessment must receive the approval of the district director, or the Director, International District Operations. In addition written approval from the Chief Counsel (or such delegate) is required.

Jeopardy assessments will be made only if one or more of the following conditions exist.

- 1) The taxpayer is or appears to be planning to depart the United States quickly or to conceal himself/herself.
- 2) The taxpayer is or appears to be quickly planning to place their property (including retirement plans) beyond the reach of the Government by removing it from the United States, concealing it, dissipating it, and/or transferring it to other persons: or
- 3) The taxpayer's financial solvency is or appears to be imperiled. (This does not include investigations where the taxpayer becomes insolvent by the accrual of the proposed assessment of tax, penalty, and interest.)

The Service will promptly consider a taxpayer's written request for administrative review of the decision that collection of the tax was in jeopardy, or that the amount of the assessment was excessive.

Note: Jeopardy assessments are not made because the period of limitations for assessing the tax is about to expire or a taxpayer does not consent to extend the statutory period.

Interest

Generally, interest continues to accrue on any balance due until full payment is made, including the time for appeal within the Service or the courts. A cash bond may be posted to stop the accrual of interest. For information on cash bonds, please contact the person requesting the consent.

Summary

This publication gives general information about the consent process and options available to you if we ask you to extend the statutory period of limitations. Specific questions should be referred to the person requesting the consent.