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July 2, 2007

Mr. Kevin Brown
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments on Proposed Regulations Relating to the Payment of Tax Liabilities in Installments

Dear Acting Commissioner Brown:

Enclosed are comments on proposed regulations relating to the payment of tax liabilities in installments. These comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Susan P. Serota
Chair, Section of Taxation

Enclosure

cc: Donald L. Korb, Chief Counsel, Internal Revenue Service
Eric Solomon, Assistant Secretary (Tax Policy), Department of the Treasury
Michael J. Desmond, Tax Legislative Counsel, Department of the Treasury
Linda Kroening, Assistant Deputy Commissioner-Services and Enforcement (SE), Internal Revenue Service

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COMMENTS ON PROPOSED REGULATIONS RELATING TO THE PAYMENT OF TAX LIABILITIES IN INSTALLMENTS

The following comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, the Comments should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Kamran Idrees and George Willis of the Section’s Low Income Taxpayers Committee. Substantive contributions were made by Lauren Duncan, LaDonna Kienitz, Robb A. Longman, Craig A. Mirkes, Ljubomir Nacev, Joseph Barry Schimmel, and Kathryn Sedo of the Low Income Taxpayers Committee. These Comments were reviewed by Elizabeth J. Atkinson, Chair of the Low Income Taxpayers Committee, Thomas J. Callahan, Chair of the Section’s Committee on Administrative Practice, Robert E. McKenzie, of the Section’s Committee on Government Submissions, Sharon Stern Gerstman, Council Director for the Low Income Taxpayers Committee, and Charles A. Pulaski Jr., Council Director for the Committee on Administrative Practice.

Although members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the federal income tax principles addressed by these Comments, no such member or the firm or organization to which such member belongs has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: July 2, 2007

EXECUTIVE SUMMARY

These Comments address Proposed Regulations § 301.6159-1 governing agreements for the payment of tax liabilities in installments (“installment agreements”) under section 6159.¹ The Comments are in response to the solicitation for comments in a notice of proposed rulemaking published on March 5, 2007.²

The Proposed Regulations amend a prior notice of proposed rulemaking published on December 31, 1997,³ to reflect changes made to section 6159 by the Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA of 1998”) and by the American Jobs Creation Act of 2004 (“AJCA of 2004”),⁴ and modify existing Regulations adopted in 1994.⁵ These changes, which include the creation of partial pay and guaranteed installment agreements, necessitated a more comprehensive set of guidelines.

The Section commends the Internal Revenue Service (the “Service”) for its effort in clarifying the procedural requirements and the taxpayers’ rights and obligations with respect to installment agreements. However, we are concerned that some of the rules or requirements under the Proposed Regulations are too vague, are unduly burdensome, or fail to address the realities that face taxpayers seeking to enter into installment agreements with the Service.

Specifically, we recommend the following:

- All communications issued under the Proposed Regulations should be in writing and directed to both the taxpayer and the taxpayer’s representative, if any.
- What will constitute a “reasonable” amount of time should be clearly defined and should allow for as much leeway as possible in light of the difficulties involved in preparing an adequate response to the Service’s requests.
- The “good faith” standard for submitting a revised proposal should be further clarified.
- A proposed installment agreement should remain pending for a maximum of 90 days. Thereafter, unless the Service has responded in writing, the proposed installment agreement should be automatically accepted.

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”), and all references to “Proposed Regulations” or to “Prop. Reg.” are to the proposed regulations promulgated under the Code.

² 72 Fed. Reg. 9712 (2007); REG-100841-97

³ 62 Fed. Reg. 68,241 (1997); REG-100841-97

⁴ Pub. L. No. 105-206, 112 Stat. 685; Pub. L. No. 108-357, 118 Stat. 1418

⁵ T.D. 8583. Unless otherwise indicated, all references to “Regulations” or to “Reg.” are to the regulations promulgated under the Code.

- The time period in which to submit a “good faith” revision should be extended to 60 days from 30 days.
- The time period in which to request an appeal following the rejection of a proposal should be suspended while a revised proposal is being evaluated.
- The effect, if any, of the Proposed Regulations on the streamlined installment agreement procedures should be clarified.
- Extension of the statute of limitations on collections should be limited to a maximum period of 90 days from the expiration of the installment agreement.
- Requests for financial condition updates should generally be limited to once per year.
- The independent administrative review called for by Proposed Regulation section 301.6159-1(d) should be undertaken by an office within a territory of the Service that is separate from the territory of the office that initially rejected the proposed installment agreement.
- The existing right of taxpayers to request an alteration, modification, or termination of an installment agreement as provided for in Regulation section 301.6159-1(c)(3) should be retained.
- The “solely to delay collection” standard should be replaced by the “frivolous submission” standard codified in section 6702(b).
- The Service’s determination that a proposed installment agreement constituted a “frivolous submission” or was submitted “solely to delay collection” should be subject to appeal.
- The Service should provide taxpayers with a single annual statement addressing all tax liabilities governed by the installment agreement.

COMMENTS

Section 6159 authorizes the Secretary of the Treasury (the “Secretary”) to enter into written agreements under which taxpayers are permitted to make installment payments on any tax. The Proposed Regulations reflect changes made to section 6159 by recent legislation. Some of our concerns and recommendations of general applicability are stated below, while those comments relating to particular provisions of the Proposed Regulations appear under the appropriate heading of these Comments.

In general, we strongly recommend that all communications from the Service be in writing and be directed to both the taxpayer and the taxpayer’s representative, if any. Given the importance that timely notification may have on a taxpayers’ rights, written notification to both taxpayers and their representatives will reduce taxpayer confusion and will help ensure proper compliance with the Proposed Regulations. The Proposed Regulations should be revised to provide for written notification to the taxpayer and the taxpayer’s representative. Where appropriate, these comments note specific instances in the Proposed Regulations that should be revised to provide for more formal notification procedures.

We are also concerned that certain language used in the Proposed Regulations is vague, subjective, or not clearly defined. For example, the term “good faith,” used in Proposed Regulation § 301.6159-1(b)(3) as the basis for determining whether a revised proposed installment agreement will be accepted for processing, is subjective. We recommend that the Service provide more definitive guidance on what will be accepted as a revision made in good faith.

Similarly, the term “reasonable” is used in several paragraphs of the Proposed Regulations to describe a length of time.⁶ We are concerned that the ambiguity and imprecision of this term will result in differing interpretations by the Service and taxpayers; and, in the end, may have an adverse impact on many taxpayers seeking to resolve their tax liabilities.

Additionally, we are concerned that the Service has not adequately considered the financial and economic realities of many of the taxpayers seeking to submit a proposed installment agreement. Many low-income, unrepresented, or English as a second language (“ESL”) taxpayers may have difficulty obtaining the requisite financial information or filing the proper responses within the given time frame. Accordingly, we recommend extending the deadlines for certain actions required by the Proposed Regulations as much as is feasibly possible. We also recommend limiting the inquiries into the financial conditions of taxpayers so as to not create an undue burden.

We are also concerned that the Service’s failure to act may not, in certain cases, be appealed under the Proposed Regulations. For example, under Proposed Regulation § 301.6159-1(b), it is unclear whether the Service’s refusal to process an installment

⁶ See, e.g., Prop Reg. § 1.6159-1(b)(2) (“reasonable” time period for submitting additional information); Prop. Reg. § 1.6159-1(c)(3)(iii)(A) (“reasonable” extension of the period of limitations).

agreement may be appealed, since no rejection would have occurred. We therefore recommend that, after a specified time period, a proposed installment agreement be deemed accepted.

The comments below identify, in greater detail, our concerns and recommendations, and are intended to further the objective of resolving tax liabilities in a fair and just manner.

1. Prop. Reg. § 301.6159-1(b): Procedures for submission and consideration of proposed installment agreements.

A. Proposed installment agreements should remain pending for a maximum of ninety days

The Proposed Regulations' definition of the time at which a proposed installment agreement becomes pending parallels the definition used in reference to submissions of proposed offers to compromise a tax liability.⁷ In general, we approve of coordinating the definition of certain terms, where applicable. However, because of the differences in the timing of the payments and the longer period of participation of a taxpayer entering into an installment agreement, as opposed to an offer in compromise, we recommend a more precise definition of the pending period.

Under the Proposed Regulations, a proposed installment agreement becomes pending upon its acceptance for processing. We recommend that the Service send to the taxpayer and the taxpayer's representative an automatically-generated response acknowledging the date of acceptance for processing of a proposed installment agreement. We propose that a proposed installment agreement should remain pending for a maximum of 90 days after the later to occur of the following:

- (i) The Service's acceptance for processing of the proposed installment agreement,
- (ii) The taxpayer's most recent response to any requests for additional information, or
- (iii) The taxpayer's submission of a revised proposal.

We recommend that if the Service does not respond to a proposed installment agreement within 90 days after the later to occur of any of the events listed in (i)-(iii), above, then such installment agreement should be deemed accepted by the Service and processed in accordance with the acceptance procedures of Proposed Regulation § 301.6159-1(c).

This 90-day limit will benefit both the Service and the individual taxpayer. For the Service, deemed acceptance of a proposed installment agreement may result in increased revenues from the taxpayer obligated under the installment agreement to make payments. The modification and termination provisions of Proposed Regulation § 301.6159-1(e)

⁷ See Reg. § 301.7122-1(d)(2).

would still apply. Thus, the Service could still modify the installment agreement if the financial condition of the taxpayer warranted a change, and could terminate the installment agreement if the taxpayer provided inaccurate information.⁸ For the taxpayer, deemed acceptance of a proposed installment agreement after 90 days provides an opportunity to quickly and efficiently begin making payments towards unpaid tax liabilities.

Lastly, Proposed Regulation § 301.6159-1(b)(2) allows the Service to request additional information while an installment agreement is pending in order to evaluate the proposal. We recommend that, in order to avoid unduly burdening the taxpayer, all requests for additional information should be reasonably necessary for the purpose of evaluating the proposal.

B. The time for taxpayers to submit a good faith revision or to appeal a rejection should be extended

Proposed Regulation § 301.6159-1(b)(3) allows a taxpayer to submit a “good faith” revision of a rejected proposal if made within 30 days of the original rejection. However, if the Service determines that a revision was not made in good faith, the 30-day appeal period continues to run from the date of the original rejection.⁹ We have two major concerns with this procedure.

First, 30 days is not sufficient for many taxpayers to submit revised proposals that meet the “good faith” standard. We recommend that the Proposed Regulations provide 60 days, instead of 30 days, from the date of rejection to submit a revised proposal. Allowing 60 days, instead of 30 days, would enable taxpayers to prepare a revision that would meet the “good faith” standard. Additionally, in the experience of many Low Income Taxpayer Clinics (“LITCs”), taxpayers often have difficulty obtaining the necessary documents within 30 days. The process of obtaining bank statements, previous bills, or loan turn-down statements can frequently take in excess of 30 days. Providing taxpayers 60 days to prepare a more satisfactory revision would also decrease the number of revised proposals that would be rejected. This should, in turn, reduce the number of requests for appeals and the accompanying administrative burdens associated with those appeals.

Second, the submission of a revised proposal does not suspend the running of the 30-day appeal period if the Service later determines that the revised proposal was not submitted in good faith. As a consequence, submitting a revised proposal may result in the loss of appeal rights. Consequently, taxpayers will simultaneously submit revised proposals and requests for appeal consideration in order to meet the appeals deadline. This practice will create a needless burden on taxpayers and the Service. We recommend that the 30-day appeal period in Proposed Regulation § 301.6159-1(d)(3) be suspended while a revised proposal is being evaluated. This would give taxpayers sufficient time to request an appeal following the rejection of a revised proposal. Effectively, this change would

⁸ Prop. Reg. § 301.6159-1(e).

⁹ See Prop. Reg. § 301.6159-1(d)(3).

provide taxpayers with 30 days to appeal following the rejection of a revised proposed installment agreement.

We further recommend that the Service provide more definitive guidance on what will be accepted as a “good faith” revision. For example, taxpayers’ responses to direct inquiries by the Service or corrections of specific deficiencies noted by the Service should be deemed to be good faith revisions. The inclusion of specific examples would help clarify the meaning of this term.

We also recommend that any rejection or request by the Service for additional information be made in writing, be directed to the taxpayer and to the taxpayer’s representative, if any, and indicate the last day for providing a revised proposal or for filing an appeal.

2. Prop. Reg. § 301.6159-1(c): Acceptance, form, and terms of installment agreements

A. Notifications of acceptance should be in writing

Proposed Regulation § 310.6159-1(c) addresses, in general, the time at which an installment agreement is considered accepted, the specific form that the agreement must take, and various terms and conditions that the Commissioner may require the taxpayer to accept with respect to a submitted installment agreement.

We recommend that the Service’s notification of acceptance of a proposed installment agreement be in writing, and directed to the taxpayer and to the taxpayer’s representative, if any. Additionally, the notification of acceptance should include a summary of the terms of the agreement and the relevant payment submission information. This information would help to eliminate any confusion in complying with the agreement’s terms.

B. Streamlined installment agreement procedure should be retained

The Internal Revenue Manual (“IRM”) addresses alternative procedures known as “streamlined installment agreements”¹⁰ and “guaranteed installment agreements”;¹¹ however, the Proposed Regulations do not make mention of streamlined installment agreements. Streamlined installment agreements do not require in-depth financial verification and may be requested when total tax, penalties, and interest do not exceed \$25,000, and when the liability will be paid off within a 60-month period.

Section 6159(c), which was added by Section 3467 of the RRA of 1998,¹² requires the Secretary to enter into and accept installment agreements meeting specific criteria. These agreements, known generally as “guaranteed installment agreements”, may be used by an individual whose tax liability under subtitle A of the Code does not exceed \$10,000

¹⁰ IRM ¶¶ 4.20.4.3-4.

¹¹ IRM ¶¶ 5.14.5.2-3.

¹² Pub. L. No. 105-206, § 3467(a).

(determined without regard to interest, penalties, additions to tax, or additional amounts), and will be paid in full within three years. They are available unless, within the previous five years, the taxpayer has failed to file an income tax return or to pay any income tax, or has entered into another installment agreement.

Generally, taxpayers qualifying for a guaranteed installment agreement would also qualify for a streamlined installment agreement. Both guaranteed and streamlined installment agreements help advance the Service's goals of efficiency and taxpayer compliance. We recommend that the Service clarify the effect, if any, of the Proposed Regulations on the streamlined installment agreement procedures.

C. Extensions of the statute of limitations on collection should be limited

Proposed Regulation § 301.6159-1(c)(3)(ii) authorizes the Commissioner to require taxpayers, as a condition to entering into an installment agreement, to agree to a "reasonable" extension of the period of limitations on collection.¹³ The Proposed Regulation represents a substantial expansion of the Service's current policy regarding extensions of the period of limitations on collection. The Internal Revenue Manual presently states, "Do not secure Collection Statute Expiration Date (CSED) waivers on non-[partial payment installment] agreements. Generally, do not secure waivers on [partial payment installment agreements]; however, a . . . waiver may be secured only in connection with partial payment installment agreements that extend beyond the CSED in certain situations."¹⁴ The IRM gives guidance and examples as to when waivers (extensions) of the statute of limitations should be obtained.¹⁵ These examples indicate that waivers should be requested only when the availability of a future asset is expected, and should not be requested solely to extend the period of the installment agreement.¹⁶ We agree with the Service's current policy limiting extensions of the statute of limitations on collections.

The RRA of 1998 prohibited any extension of the limitations period on collections by agreement between the taxpayer and the Service other than in connection with an installment agreement.¹⁷ Requests for extension of the statute of limitations made after December 31, 1999, in connection with an installment agreement are limited to the period for collection agreed upon in writing, plus an additional 90 days.¹⁸ Existing extensions made other than in connection with an installment agreement expired no later than December 31, 2002.¹⁹ Existing extensions made in connection with installment agreements were limited to the period for collection agreed upon under the original written terms of the installment agreement, plus an additional 90 days.²⁰ In other words, the Service may not solicit the taxpayer to agree to an extension of the statute of

¹³ Prop. Reg. § 301.6159-1(c)(3)(iii)(A).

¹⁴ IRM ¶ 5.14.2.1(4) (parenthetical omitted).

¹⁵ IRM ¶ 5.14.2.2.3.

¹⁶ See Examples under IRM ¶ 5.14.2.2.3(1)(a)-(b).

¹⁷ Section 6502(a)(2) as amended by the RRA of 1998, § 3461(a)(1)-(2).

¹⁸ *Id.*

¹⁹ RRA of 1998, § 3461(c)(2)(B).

²⁰ RRA of 1998, § 3461(c)(2)(C).

limitations except in conjunction with an installment agreement, and, in such a case, the limitations period may only be extended for the term of the installment agreement plus 90 days. The purpose of the 90-day period is to provide the Service with a reasonable period in which to attempt to collect tax due under a defaulted installment agreement.

At the time of enactment of the RRA of 1998, an installment agreement was required to provide for full satisfaction of the subject tax liability.²¹ The AJCA of 2004 subsequently authorized “partial payment” installment agreements, whereby a taxpayer could agree to partially pay the tax over the *remaining* period of limitations on collections.²²

In cases where the taxpayer has proposed a partial pay installment agreement (or modification to an existing installment agreement that will provide for partial payment), the Service should not, generally, request extension of the limitations period on collections. Such extensions are inconsistent with Congress’s reason for permitting partial payment installment agreements:

Prior to 1998, the Service administratively entered into partial payment installment agreements. In that year, the Service’s Chief Counsel issued a memorandum concluding that partial payment installment agreements were not permitted.

. . . The Congress believed that clarifying that the IRS is authorized to enter into installment agreements with taxpayers that do not provide for full payment of the taxpayer’s liability over the life of the agreement will improve effective tax administration. The Congress recognized that some taxpayers are unable or unwilling to enter into a realistic offer-in-compromise. The Congress believed that these taxpayers should be encouraged to make partial payments toward resolving their tax liability, and that providing for partial payment installment agreements will help facilitate this.²³

In those unusual circumstances where it may be appropriate for the Service to request extension of the limitations period on collections, the “agreed upon” extension should not exceed five years, reflecting the Service’s current policy that “the period for collection may be extended more than once per tax period in connections with a partial payment installment agreement if the total of the extensions is not longer that 5 years from the original CSED, plus the periods described in IRM ¶ 5.14.2.1.(7)-(9)” (which relate to activities that ordinarily toll the running of the collections statutes, such as the filing of a bankruptcy petition or offer in compromise).²⁴

The Preamble to the Proposed Regulations does not explain why Proposed Regulation § 301.6159-1(c)(3)(ii) was included, or whether any change to the Service’s existing

²¹ “The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments” Section 6159(a), prior to amendment by the AJCA of 2004, § 843(a)(1).

²² *Id.*

²³ Staff of the Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress*, JCS-5-05 (May 2005), available at <http://www.house.gov/jct/pubs05.html>.

²⁴ IRM ¶ 5.14.2.1(6).

procedures was intended. We recommend that the Service clarify the term “reasonable,” preferably through language that incorporates the procedures already in place under the IRM. Such language would assist the Office of Appeals in determining whether a requested extension was reasonable. We also recommend that the Service clarify that extension of the statute of limitations will generally not be requested in connection with a partial payment installment agreement.

D. Demands for financial condition updates should be limited to once per year

The Commissioner may require taxpayers to submit financial condition updates at any time.²⁵ We recommend that the Service limit its demands for updates to once per year. The Service has substantial financial information available to it, including the taxpayer’s annual income tax return. Limiting demands for updated financial information would significantly reduce the burden to the taxpayer and would still keep the Service apprised of any major changes in the taxpayer’s financial condition.

3. Prop. Reg. § 301.6159-1(d): Rejection of a proposed installment agreement

A. Independent administrative review should be undertaken within a separate territory

Prior to notifying a taxpayer of the rejection of an installment agreement, the Proposed Regulations require an independent administrative review of the proposed installment agreement.²⁶ The Regulations do not provide any guidance indicating how the independence of the administrative review will be assured. We recommend that the independent administrative review be undertaken by an office of the Service that is located in a different territory than the territory in which the office that initially rejected the proposed installment agreement is located.

B. Revisions of proposed installment agreements should also undergo independent administrative review

The Proposed Regulations provide taxpayers with the opportunity to submit revised proposed installment agreements following a rejection.²⁷ We recommend that the determination of whether a taxpayer has made a revision in good faith should also be subject to independent administrative review. Furthermore, it is unclear whether Proposed Regulation § 301.6159-1(d)(2) allows for an independent administrative review of a rejection of a revised proposal. Because there is no apparent difference between the rejection of an original submission and the rejection of a revision, we recommend that paragraph (d)(2) be rewritten to authorize independent administrative reviews in both cases.

C. Appeals procedures should be clarified

²⁵ Prop. Reg. § 301.6159-1(c)(3)(v).

²⁶ Prop. Reg. § 301.6159-1(d)(2).

²⁷ Prop. Reg. § 301.6159-1(b)(3).

The rules governing installment agreements are complex. The provisions applicable to rejections of proposed installment agreements under Proposed Regulation § 301.6159-1(d)(3), proposed modifications or terminations of installment agreements under Proposed Regulation § 301.6159-1(e)(4), the exercise of appeal rights under the Proposed Regulations, and the need to request a conference with a collections manager pursuant to the IRM, can be very confusing for an unrepresented taxpayer.

For example, consider the options facing the taxpayer if the Service proposes to terminate an existing installment agreement. Proposed Regulation § 301.6159-1(e)(3) provides the taxpayer with the opportunity to submit additional information in response to a notification of a proposed modification or termination. If the taxpayer is unable to provide information sufficient to satisfy the Service, section 6159(e) provides the taxpayer with the right to request administrative review. Section 6159(f) then cross-references section 7122(e) concerning the taxpayer's rights to administrative review and appeal. However, section 7122(e) simply states that the Secretary shall establish procedures that allow taxpayers to appeal any rejection to the Office of Appeals.

The preamble to the Proposed Regulations refers to Publication 1660, which addresses the Collection Due Process (“CDP”) and Collection Appeals Program (“CAP”) procedures. The CDP procedures (and “equivalent hearing” procedures for untimely CDP requests) are set forth in Regulations §§ 301.6320-1 and 301.6330-1. The CAP procedures are not set forth in Regulations. In order to request a CDP hearing, the taxpayer may (but need not) file Form 12153.²⁸ In order to request a CAP proceeding, the taxpayer must file Form 9423.²⁹ IRM ¶ 8.7.2.2.3 states, *inter alia*, that a taxpayer must meet with a collections manager prior to requesting a CAP appeal.

Even for some practitioners, much less an unrepresented or ESL taxpayer, the various appeal requirements and procedures can be difficult to understand. Because the timing of the appeal is critical, we are concerned that taxpayers may waste time on appeal attempts that may, ultimately, be incorrect. Therefore, we recommend that the Service clarify the appeals procedures to be used in connection with installment agreements.

The Regulations should clarify that an appeal should be made to the Office of Appeals within 30 days after the modification or termination will take effect, regardless of whether the taxpayer submits additional information under paragraph (e)(3) of the Proposed Regulations, has filled out Form 9423, or has requested a meeting with a Collections manager. We also recommend that the Publications, Forms, and IRM should be coordinated and revised consistent with the Proposed Regulations. Any notice modifying or terminating (or proposing to modify or terminate) an installment agreement should include a separate publication describing the taxpayer's various rights of review.

²⁸ Reg. § 301.6330-1(c)(2), A-C1(iv).

²⁹ Pub. 1660, p. 3.

4. Prop. Reg. § 301.6159-1(e): Modification or termination of installment agreements by the Service

A. Modification and termination procedures should be clarified

Proposed Regulation § 301.6159-1(e)(1)(i) provides that the Service may terminate an installment agreement if the taxpayer has provided inaccurate or incomplete information in connection with the granting of the installment agreement. Proposed Regulation § 301.6159-1(e)(2)(ii)(C) further provides that the Service may modify or terminate an installment agreement if the taxpayer fails to provide a financial condition update when requested. We recommend that the Proposed Regulations explicitly provide whether the Service may modify or terminate an installment agreement if the taxpayer has provided inaccurate or incomplete information *in connection with any requested update*.

B. Reg. § 301.6159-1(c)(3) should be readopted

The Proposed Regulations represent a noticeable departure from the existing Regulations with respect to the modification or termination of installment agreements. Regulation § 301.6159-1(c)(3) currently provides taxpayers with the right to request an alteration, modification, or termination of an installment agreement if the Service determines that the financial condition of the taxpayer has significantly changed. Although Regulation § 301.6159-1(c)(3)(vi) allows the Service and the taxpayer to agree to a modification or termination, it does not afford taxpayers with a right to *request* a modification or termination due a significant change in their financial condition. This omission should be corrected. Taxpayers should be permitted, on their own initiative, to request a modification or termination of an existing installment agreement. A taxpayer's financial condition can easily worsen due to unemployment, injury, or many other unforeseen circumstances. Additionally, some taxpayers may have imprudently, or mistakenly, entered into an installment agreement that they cannot honor. It has been the experience of many LITCs that unrepresented or ESL taxpayers often agree to payment provisions that they cannot afford because of a misunderstanding or out of fear. These taxpayers should be given the right to request a modification of their existing installment agreements.

Under Regulation § 301.6159-1(c)(2)(i), the Service may alter, modify or terminate an installment agreement if it determines that the taxpayer's financial condition has significantly *improved*. Proposed Regulation § 301.6159-1(e)(2)(i) allows the Service to modify or terminate an installment agreement when the taxpayer's financial condition has significantly *changed*. The substitution of the word "changed" in place of "improved" suggests that the Service may increase or decrease the payment provisions of an installment agreement. However, this provision is far less clear than the existing Regulations.

We recommend that the Service re-adopt the provisions of Regulation § 301.6159-1(c)(3), specifically authorizing the taxpayer to request a modification or termination of an existing installment agreement. Such a provision should require the taxpayer to

continue to comply with the terms of the existing installment agreement while a decision regarding the proposed modification or termination is pending. Such a provision should also clarify that a taxpayer's request to modify an existing installment agreement is exempt from additional user fees under Regulations §§ 300.1 and 300.2, and will not result in the suspension of the statute of limitations on collection under Proposed Regulation § 301.6159-1(g). Lastly, Proposed Regulation § 301.6159-1(e)(4) should specify that a taxpayer may appeal the Service's decision not to modify or terminate an installment agreement.

5. Prop. Reg. § 301.6159-1(f): Effect of installment agreement or pending installment agreement on collection activity

Under Proposed Regulation § 301.6159-1(f)(1), the Service may not levy to collect a tax liability while an installment agreement is pending, for 30 days following a rejection, while an installment agreement is in effect, or for 30 days following its termination. However, paragraph (f)(2) allows a levy if the Service determines that the proposed installment agreement was "submitted solely to delay collection."

The "solely to delay" standard relates to the taxpayer's intentions and is, therefore, inevitably imprecise. By contrast, the section 6702(b) statutorily mandates a "frivolous submission" standard for collections. Section 7122(g) applies section 6702(b) to installment agreements and offers in compromise, and section 6330(g) also applies section 6702(b) to collection due process requests under sections 6320 and 6330.

Based upon the foregoing, we recommend that the "submitted solely to delay collection" standard in the Proposed Regulations be replaced by language that references the existing "frivolous submission" standard in the Code. If this recommendation is not adopted, we recommend the Proposed Regulations explicitly state that a taxpayer may appeal the Service's levy action, whenever the Service determines that a proposed installment agreement was submitted solely to delay collection, under the provisions of Proposed Regulation § 301.6159-1 (d)(3) (relating to the appeal of a rejected proposal).³⁰ The Proposed Regulations should indicate that, if the Office of Appeals determines that the proposed installment agreement was not submitted solely to delay collection, the taxpayer may pursue a claim for civil damages under section 7433.

6. Prop. Reg. § 301.6159-1(g): Suspension of the statute of limitations on collection

In discussing a taxpayer's right to appeal upon the rejection of a proposed installment agreement or upon termination, the Proposed Regulations provide for a suspension of the statute of limitation on collection during the review of the proposed installment agreement and for 30 days subsequent to any rejection.

³⁰ The taxpayer would also have those rights of appeal generally applicable to the Service's collection activities, *e.g.*, the right to a collection due process hearing under section 6330.

The Proposed Regulations do not clearly define when the suspension of the statute of limitations first occurs, what constitutes a pending installment agreement, or when the running of the statute of limitations will resume. Therefore, we recommend that the Regulations provide that the suspension of the statute of limitations commence when a proposed installment agreement is received, and will terminate either 30 days after rejection (if no revision or appeal is submitted) or on the date of acceptance.

7. Prop. Reg. § 301.6159-1(h): Annual statement

Section 3506 of the RRA of 1998 states that the Secretary shall provide to each taxpayer who has entered into an installment agreement an annual statement setting forth the initial balance at the beginning of the year, payments made during the year, and the remaining balance at the end of the year.³¹ However, taxpayers often find the annual statements generated by the Service to be confusing. This is especially true for unrepresented and ESL taxpayers. In order to comply with Congressional intent that taxpayers “be kept informed” of amounts applied towards the outstanding tax liability and amounts remaining due,³² we recommend that the annual statement be formatted to be as clear and concise as possible.

We also recommend that the Service provide the taxpayer with a single annual statement describing all tax liabilities covered by the installment agreement. Separate statements for each individual liability can be confusing. A single annual statement, preferably in a simple tabular format, would better indicate the taxpayer’s remaining obligations under the installment agreement. When applicable, the annual statement should also be sent to the taxpayer’s representative.

8. Prop. Reg. § 301.6159-1(i): Biannual review of partial payment installment agreements.

This paragraph generally tracks the requirements under section 6159(d). Consistent with our comments regarding Proposed Regulation § 301.6159-1(e),³³ we recommend that Proposed Regulation § 301.6159-1(i) be rephrased to provide that the biannual review of the taxpayer’s financial condition may result in a decrease, as well as an increase, in the amount of payments being made. We also recommend that this paragraph refer to paragraphs (e)(2) and (e)(3) of the Proposed Regulations, if those provisions are intended to apply.

9. Prop. Reg. § 301.6159-1(k): Effective Date

This paragraph provides that the Proposed Regulations will be effective upon publication of the final regulations in the Federal Register. The Proposed Regulations do not address how previously proposed or accepted installment agreements will be affected by the Proposed Regulations. We recommend that paragraphs (b), (c), and (d) of the Proposed

³¹ Pub. L. No. 105-206, § 3506.

³² 105 S. Rpt. 174 (April 2, 1998).

³³ See Part 4, *supra*.

Regulations apply prospectively to installment agreements submitted after the date the final regulations are published. All other paragraphs of the Proposed Regulations should apply to existing and pending installment agreements. In any case, we recommend that the Proposed Regulations address the applicability of the Proposed Regulations to pending and accepted installment agreements in order to avoid the inconsistent application of rules or the foreclosure of any procedural opportunities during the submission, revision, or modification process.