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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9027]

RIN 1545-AX89

Levy Restrictions During Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to restrictions on levy during the period that an installment agreement is proposed or in effect. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

EFFECTIVE DATE: These regulations are effective December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6331 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6331 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105-206 (112 Stat. 685, 764). New section 6331(k) codifies the IRS practice of

withholding collection during consideration of a taxpayer's offer to compromise and extends that practice to proposed installment agreements. These regulations deal principally with the effect of subsection 6331(k) when an installment agreement has been proposed and is pending, is in effect, or has been rejected or terminated. On April 17, 2002, a notice of proposed rulemaking (REG-104762-00; 67 FR 18839) reflecting these changes was published in the **Federal Register**. No written comments on the proposed regulations were received. No public hearing was scheduled or held.

### **Explanation of Provisions**

The regulations provide that, subject to certain exceptions, the IRS may not levy to collect a liability while a taxpayer's proposal to enter into an installment agreement for payment of that liability is pending, for thirty days after rejection of such a proposal, while an installment agreement is in effect, for thirty days after termination of an installment agreement by the IRS, and during a timely filed appeal of a rejection or termination by the IRS. A proposed installment agreement is considered pending when it is accepted for processing by the IRS and remains pending until the IRS accepts or rejects it or the taxpayer withdraws the proposal. The final regulations clarify that the IRS may not accept a proposed installment agreement for processing if jurisdiction over the tax liability at issue has been transferred to the Department of Justice for prosecution or defense. If a proposed installment agreement does not contain sufficient information for the IRS to determine whether the proposal should be accepted, the IRS will request the additional necessary information from the taxpayer and provide a reasonable time period for the taxpayer to respond. The IRS may reject the proposed installment agreement if the

requested information is not provided.

Collection by levy is not prohibited if the taxpayer waives the restriction on levy in writing, if the IRS determines that collection of the tax liability is in jeopardy, or if the IRS determines that the proposed installment agreement was submitted solely to delay collection. The exception for proposals submitted solely to delay collection is based on the legislative history accompanying RRA 1998, which explained that Congress did not intend that levy would be prohibited if the IRS determined that an offer to compromise was submitted solely to delay collection. H.R. Conf. Rep. No. 509, 105th Cong., 2d Sess. 288 (1998). Because the legislative history indicates that Congress intended the same restrictions on levy with respect to offers in compromise be applicable to installment agreements, these regulations adopt the same rule with respect to proposed installment agreements.

The regulations provide that the IRS may take actions other than levy to protect the interests of the United States with respect to collection of the liability to which an installment agreement or proposed installment agreement relates. Those actions include, but are not limited to: crediting an overpayment against the liability pursuant to section 6402, filing or refiling notices of Federal tax lien, and taking action to collect from persons liable for the tax but not named in the installment agreement.

The proposed regulations provided that the IRS cannot institute a court proceeding against the taxpayer named in the installment agreement to collect the tax covered by the installment agreement. In the final regulations, this provision has been clarified. It now states that the IRS may not refer a case to the Department of Justice to collect an unpaid

tax through a judicial proceeding while levy is prohibited by these regulations. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed. Such proceedings may involve taxes for which more than one person may be jointly and severally liable for the same tax, or may involve persons liable for related liabilities, such as a trust fund recovery penalty under section 6672 or a personal liability for excise tax under section 4103.

While an installment agreement allows the IRS to accept the payment of tax in installments, the agreement does not conclusively establish the taxpayer's liability. A taxpayer therefore is not prohibited from seeking a refund of taxes paid pursuant to an installment agreement. Allowing the IRS to join the taxpayer in a proceeding where the liability for the tax may be established or disputed will protect the Government from having to litigate the same tax in multiple forums only to face the argument in each separate case (including, potentially, from the taxpayer named in an installment agreement) that the person or persons not party to that suit were solely or principally liable for non-payment of the taxes at issue. The notice of proposed rulemaking stated that if a judgment was obtained against a taxpayer named in an installment agreement, collection would continue to occur pursuant to the terms of the installment agreement. The final regulations clarify that this statement applies only when the Department of Justice refers the case back to the IRS for collection after the judgment is obtained. Section 6331(k) does not limit the collection options of the Department of Justice once a case has been referred to the

Department by the IRS.

The regulations provide that the statute of limitations for collection under section 6502 is suspended while a proposed installment agreement is pending, for thirty days after rejection or termination of an installment agreement, and during a timely filed appeal of the rejection or termination decision. The running of the collection statute resumes after an installment agreement takes effect. The statute of limitations for collection shall continue to run if an exception under this section applies and levy is not prohibited with respect to the taxpayer.

These regulations apply to installment agreements proposed or entered into on or after the date final regulations are published in the **Federal Register**. However, the rules set forth in these regulations mirror practices the IRS has been following administratively since the enactment of RRA 1998.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Frederick W. Schindler, Office of the Associate Chief Counsel (Procedure & Administration), Collection, Bankruptcy & Summonses Division.

## List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

### PART 301- - PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Sections 301.6331-3 and 301.6331-4 are added to read as follows:

§301.6331-3 Restrictions on levy while offers to compromise are pending.

Cross-reference. For provisions relating to the making of levies while an offer to compromise is pending, see §301.7122-1.

§301.6331-4 Restrictions on levy while installment agreements are pending or in effect.

(a) Prohibition on levy--(1) In general. No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the

termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) When a proposed installment agreement becomes pending. A proposed installment agreement becomes pending when it is accepted for processing. The IRS may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

(3) Revised proposals of installment agreements submitted following rejection. If, following the rejection of a proposed installment agreement, the taxpayer makes a good faith revision of the proposal and submits the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal.

(4) Exceptions. Paragraph (a)(1) of this section shall not prohibit levy if the taxpayer

files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy.

(b) Other actions by the IRS while levy is prohibited--(1) In general. The IRS may take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example--

(i) Crediting an overpayment against the liability pursuant to section 6402;

(ii) Filing or refiling notices of Federal tax lien; and

(iii) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(2) Proceedings in court. Except as otherwise provided in this paragraph (b)(2), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph (a)(1) of this section. Without regard to whether a person is named in an installment agreement or proposed installment agreement, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the installment agreement or proposed installment agreement may be established or disputed,

including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person. If a person named in an installment agreement is joined in a proceeding, the United States obtains a judgment against that person, and the case is referred back to the IRS for collection, collection will continue to occur pursuant to the terms of the installment agreement.

(c) Statute of limitations--(1) Suspension of the statute of limitations on collection.

The statute of limitations under section 6502 for collection of any liability shall be suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, the statute of limitations for collection shall be suspended while the rejection or termination is being considered by Appeals. The statute of limitations for collection shall continue to run if an exception under paragraph (a)(4) of this section applies and levy is not prohibited with respect to the taxpayer.

(2) Waivers of the statute of limitations on collection. The IRS may continue to request, to the extent permissible under section 6502 and §301.6159-1, that the taxpayer agree to a reasonable extension of the statute of limitations for collection.

(d) Effective date. This section is applicable on December 18, 2002.

David A. Mader

Assistant Deputy Commissioner of Internal Revenue

Approved: December 11, 2002

Pamela F. Olson

Assistant Secretary of the Treasury (Tax Policy)