



OFFICE OF
CHIEF COUNSEL

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

CC:DOM:IT&A:4:RBTaylor
SPR-122321-98

DATE: JAN 22 1999

MEMORANDUM FOR DIRECTOR (OFFICE OF PENALTY ADMINISTRATION)
OP:EX:ST:P

FROM: Acting Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Reduction of Failure to Pay Penalty During Installment Agreement

This is in response to your request for an advisory opinion, dated December 15, 1998. Your question falls under section 3303 of the IRS Restructuring and Reform Act of 1998 (RRA 98), regarding the reduction of the failure to pay penalty under § 6651 of the Internal Revenue Code during the period of an installment agreement.

Issue

Whether the reduction of the failure to pay penalty for individuals during the period of an installment agreement under § 6651(h) of the Code applies to an individual's liability under subtitle C (BMF returns on Form 941, Employer's Quarterly Federal Tax Return, and Form 940, Employer's Annual Federal Unemployment Tax Return).

Conclusion

The reduction of the failure to pay penalty for individuals during the period of an installment agreement under § 6651(h) of the Code, applies to all of an individual's tax liabilities. The reduction is not limited to an individual's liability under subtitle A, relating to income tax, but applies to all of an individual's tax liabilities that arise under the different subtitles, including subtitle C relating to employment tax, and trust fund tax liabilities under § 6672.

Analysis

Section 6651(a)(2) of the Code imposes a penalty for failure to pay the amount shown as tax on the return on or before the due date prescribed for payment of such tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of such tax if the failure is for not

PMTA : 00253

SPR-122321-98

more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 6651(a)(3) of the Code imposes for a penalty for failure to pay any amount in respect of any tax required by be shown on a return, which is not so shown, within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 3303 of RRA 98 added § 6651(h) to the Code to provide that the penalty for failure to pay taxes under § 6651(a)(2) and (a)(3) is reduced with respect to the tax liability of an individual for any month in which an installment payment agreement under § 6159 is in effect, provided the individual filed the tax return that generated the liability in a timely manner (including extensions), and the individual has not received a notice as provided by § 6331(d). The reduction in the amount of the penalty during the installment agreement period is from 0.5 percent to 0.25 percent per month.

Since there are no regulations for § 6651(h) of the Code and because § 6651(h) does not directly state that the reduction of the failure to pay penalty applies to an individual's business liability, it is necessary to look at the congressional intent behind the enactment of § 6651(h). The direct legislative history for § 6651(h) does not reveal any insight into whether an individual's business liability is included under § 6651(h). However, section 3467(b) of RRA 98 added § 6159(c) to the Code to provide that in the case of an individual's liability for tax under subtitle A, the Service must, at the option of the taxpayer, enter into an agreement to accept the payment of such tax in installments, when certain requirements are met.

We conclude that based on the plain language of the statute, § 6651(h) applies to any tax, including taxes under subtitle C. This argument is supported by the fact that § 6159(c) specifically states that it is limited to an individual's liability under subtitle A. If Congress wanted § 6651(h) to be limited in the same manner as § 6159(c), it would have provided the same language in § 6651(h).

It could be argued that since both § 6651(h) and § 6159(c) of the Code were added by RRA 98 to encourage the use of installment agreements for individuals, by easing the burden on taxpayers who cannot afford to pay their entire tax bill at one time, they should both be limited to taxes under subtitle A. The omission of language referring to subtitle A in § 6651(h) was merely an oversight by Congress.

SPR-122321-98

In addition, employment taxes include trust fund taxes. Thus it is unlikely that Congress intended for employment taxes, which are collected from employee wages and paid on behalf of employees, to be included under § 6651(h).

However, we believe the argument that § 6651(h) of the Code does apply to all of an individual's tax liabilities, including an individual's business liabilities and trust fund liabilities under subtitle C, reaches the better conclusion. The decision of Congress not to provide a limitation to an individual's liability under § 6651(h) is evident by the fact that Congress specifically limited § 6159(c) to only an individual's liability under subtitle A, relating to income tax. Thus, taken in context of other provisions enacted by RRA 98, such as § 6159(c), § 6651(h) is not limited to an individual's liability under subtitle A.

If you have any questions or concerns regarding this response, please contact Brad Taylor at (202)622-4940.

HEATHER C. MALOY

By: 

ROCHELLE L. HODES

Senior Technician Reviewer

Branch 4