BURR FORMAN LLP
results matter

IRS Revises Streamlined Installment Agreement Program

Published March 22, 2012

There are five general methods of resolving an assessed federal tax liability: (1) full payment, (2) payment through installments under a written agreement, (3) placing an account into currently uncollectible status, (4) an offer in compromise, and (5) bankruptcy. Installment agreements are contractual arrangements by which the Internal Revenue Service allows taxpayers to pay the tax due (including any applicable penalties and interest) over a period of time. An installment agreement thus allows a taxpayer the alternative to full payment of the liability in a lump sum, and gives the taxpayer financial flexibility to make smaller, incremental payments over time.

The IRS may not levy against a taxpayer's bank account or other financial accounts (1) while an installment agreement request is pending; (2) while an installment agreement is in effect; (3) for 30 days after an installment agreement request is rejected; (4) for 30 days after an installment agreement request is terminated; and (5) while an appeal of a default, termination or rejection is pending or unresolved. Lastly, for certain taxpayers who enter into installment agreements on timely filed returns, Section 6651(h) of the Code requires the Service to reduce the failure to pay penalty from a half (0.50%) to a quarter (0.25%) percent per month for any month in which an installment agreement is in effect. In order to qualify for this penalty reduction, the following conditions must be satisfied:

1. The installment agreement must be entered into after January 1, 2000;
2. The tax liability must be due from an individual;
3. The tax returns must have been timely filed, including the time period for extension; and
4. The taxpayer has not received any correspondence from the Service indicating the IRS has increased the failure to pay penalty from one-half (0.5) to one (1) percent on the liability.

To be eligible for an installment agreement, taxpayers must file all required tax returns, and business taxpayers must also be current with federal tax deposits. For all installment agreements, the amount of a taxpayer's installment payment will be based on the amount owed, and the taxpayer's ability to pay the tax debt within the time period remaining for the IRS to collect the debt. The IRS has four installment agreement plans: (1) guaranteed, (2) streamlined, (3) partial payment, and (4) non-guaranteed installment agreements.

Guaranteed Installment Agreement. Internal Revenue Code Section 6159(c) requires the IRS to accept proposals of installment agreements under certain circumstances. The IRS is required to agree to an installment plan if the tax liability due is $10,000 or less, and the taxpayer meets all of the following criteria:

1. For the previous five years, the taxpayer has not failed to file any income tax returns, to pay any tax shown on such returns, or entered into a prior installment agreement;
2. The taxpayer is unable to pay the liability in full;
3. The installment agreement will fully pay the liability within thirty-six (36) months or less;
4. The taxpayer agrees to file all future income tax returns and full pay the tax liability on time in future tax years.

The minimum monthly payment the IRS will accept is the grand total of the balance due (including penalties and interest) divided by 36. Unlike the criteria for streamlined agreements, the dollar limit for guaranteed agreements of $10,000 only applies to tax. The taxpayer may owe additional amounts in penalty and interest (both assessed and accrued) and qualify for a guaranteed agreement, so long as the tax liability alone is not greater than $10,000. The taxpayer will not be required to provide the IRS with documentation showing the taxpayer's current financial situation. More importantly, the IRS is not required to file a notice of federal tax lien against the taxpayer involving these types of agreements.

Streamlined Installment Agreement. Prior to 2012, the IRS accepted an installment agreement plan if (1) the aggregate unpaid balance of assessments was $25,000 or less, and (2) the taxpayer agreed to pay the balance in sixty (60) months or less or within the remaining collections statute of limitations. The minimum payment the IRS would accept was the total of the assessed liability including penalties and interest divided by 60.

Now, in 2012, the IRS revised the rules for a streamlined installment agreement. The IRS will accept a streamlined installment agreement plan if (1) the unpaid tax balance is $50,000 or less, and the taxpayer agrees to pay the balance in seventy-two (72) months or less. The minimum payment the IRS will accept is the total of your assessed liability including penalties and interest divided by 72. If a taxpayer's tax liability is greater than $25,000 but less than $50,000, the IRS will require the taxpayer to allow it to withdraw the monthly installment payments directly from the taxpayer's bank account. As with guaranteed agreements, the taxpayer must have filed all tax returns and agree to file all future tax returns on time and pay your taxes on time.

Partial Payment Installment Agreement. With the passage of the American Jobs Creation Act of 2004, the IRS began offering the partial payment option for taxpayers who have outstanding federal tax liabilities. All taxpayers are expected to immediately pay delinquent tax liabilities. When a taxpayer is unable to full pay the liability, however, he or she may be allowed to pay their liabilities over a prescribed period of time. When full payment will not be achieved by the Collection Statute Expiration Date (CSED), but taxpayers have some ability to pay, the Service will enter into Partial Payment Installment Agreement. The Service will require the taxpayer to provide it with IRS Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals or IRS Form 433-B, Collection Information Statement for Businesses. The IRS will require the taxpayer to provide approximately three (3) months of financial documentation supporting all income and expenses.

The Service will calculate a monthly payment amount based upon the available equity in the taxpayer's assets as well as disposable income (the Reasonable Collection Potential) over the remaining statutory period of collection in order to satisfy the tax liability. In calculating the taxpayer's monthly payment amount, the IRS will allow taxpayers credit only for necessary expenses. In addition, taxpayers granted a partial payment installment agreement will be subject to a subsequent financial review every two years. As a result of this review, the amount of the installment payments could increase or the agreement could be terminated, if the taxpayer's financial condition improves. Finally, the Service will file a Notice of Federal Tax Lien against the taxpayer's assets to protect the government's interests.

Non-Guaranteed Installment Agreement. Taxpayers whose liability is over $50,000 or will need more than 72 months to pay the tax liability must negotiate an installment agreement directly with an IRS Revenue Officer. All non-guaranteed installment agreements must be sent for review and approval by an IRS Collections Manager.

The IRS will require taxpayers to provide the Service with IRS Form 433-F, Collection Information Statement in order to determine what a taxpayer can reasonably afford to pay each month in order to satisfy the tax liability. Typically, the IRS will require the taxpayer to attempt to sell assets, take out a bank loan, or apply for a home equity loan to pay the tax liability without the need for entering into an installment agreement. Once a monthly payment is agreed upon, the IRS will file a Notice of Federal Tax Lien to protect the government's interests.

Taxpayer Impact

The installment agreement program is an option for taxpayers who wish to make monthly payments because they are not financially able to pay the tax liability in full. During an installment agreement plan, the taxpayer will accrue penalties and interest on the unpaid tax liability. Also, the Service will charge taxpayers a user fee of $105 for new installment agreements and a fee of $52 for agreements in which the taxpayer allows the Service to direct debit the monthly payment from the taxpayer's bank account. When a taxpayer enters into an installment agreement and abides by its terms, the IRS will refrain from any further collection efforts related to the tax, and the rate of penalty accrual may be reduced in certain instances.

An installment agreement is a viable alternative for taxpayers who are unable to have their accounts declared currently uncollectible by the IRS, who are unable to enter into an offer in compromise with the IRS, or who cannot or do not wish to file for bankruptcy.

Author

Erik P. Doerring

Partner

Columbia, SC