

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

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

■ **Par. 2.** Section 20.2053-1 is amended by revising the third sentence of paragraph (d)(7) *Example 3* to read as follows:

§ 20.2053-1 Deduction for expenses, indebtedness, and taxes; in general.

* * * * *

(d) * * *

(7) * * *

Example 3. * * * Instead, pursuant to the protective claim for refund filed by E, the marital deduction will be reduced by the claim once a final judgment is entered in the case. * * *

* * * * *

■ **Par. 3.** Section 20.2053-4 is amended by revising the last sentence of paragraph (d)(3) to read as follows.

§ 20.2053-4 Deduction for claims against the estate.

* * * * *

(d) * * *

(3) * * * See further § 20.2053-1(d)(3).

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LaNita VanDyke,

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9473]

RIN 1545-AU97

Agreements for Payment of Tax Liabilities in Installments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the payment of tax liabilities in installments. The regulations reflect changes to the law made by the Taxpayer Bill of Rights II, the Internal Revenue Service Restructuring and Reform Act of 1998, and the American Jobs Creation Act of 2004. The regulations will affect

taxpayers submitting installment agreements to the IRS.

DATES: *Effective Date:* These regulations are effective on November 25, 2009.

Applicability Date: For the date of applicability, see § 301.6159(k).

FOR FURTHER INFORMATION CONTACT: Walter Ryan, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6159 of the Internal Revenue Code (Code). Section 6159 allows the IRS to enter into agreements for the payment of any unpaid tax in installments. Taxpayers may request administrative review of IRS decisions to terminate installment agreements pursuant to section 6159(e), added to the Code by section 202 of the Taxpayer Bill of Rights II, Public Law 104-168 (110 Stat. 1452, 1457 (1996)). Taxpayers may appeal rejections of proposed installment agreements under section 7122(e), added to the Code by section 3462 of Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Public Law 105-206 (112 Stat. 685, 764 (1998)). Section 6159(c), added to the Code by section 3467 of RRA 1998, requires the IRS to accept a proposed installment agreement for income taxes under certain circumstances. Section 3506 of RRA 1998 requires the IRS to send each taxpayer with an installment agreement an annual statement showing the balance due at the beginning of the year, the payments made during the year, and the remaining balance due at the end of the year.

Section 843 of the American Jobs Creation Act of 2004 (AJCA), Public Law 108-357 (118 Stat. 1418, 1600 (2004)), amended section 6159(a) to allow the IRS to enter into installment agreements that provide for partial (as well as full) payment of a tax liability, but excludes partial payment installment agreements from the scope of installment agreements that must be accepted by the IRS. Section 843 of the AJCA also added new section 6159(d), requiring the IRS to review partial payment installment agreements every two years. The primary purpose of the review is to determine whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made. See H. Rep. No. 108-755, 108th Cong., 2d Sess., 2005 U.S.C.C.A.N. 1341 (October 7, 2004).

On March 5, 2007, a notice of proposed rulemaking (REG-100841-97; 72 FR 9712) was published in the **Federal Register**. The proposed regulations reflected the changes made to section 6159 by the Taxpayer Bill of Rights II, the RRA 98, and the AJCA. The proposed regulations reflected current IRS administrative practice. The IRS received one set of written comments with numerous recommendations. No public hearing was requested or held. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Revisions

The final regulations adopt certain recommendations contained in the comments by clarifying two provisions of the proposed regulations. As explained in this preamble, § 301.6159-1(e)(3) was amended to clarify that the taxpayer may submit a request to modify or terminate the installment agreement. Section 301.6159-1(e)(3) further clarifies that such a request will not suspend the statute of limitations on collection and the taxpayer must comply with the existing installment agreement while the request is being considered. As also explained in this preamble, § 301.6159-1(e)(1)(i) clarifies that the IRS may terminate an installment agreement if the taxpayer provides materially incomplete or inaccurate information in response to an IRS request for a financial update.

The following is a section-by-section analysis of the comments.

Section 301.6159-1(b): Procedures for Submission and Consideration of Proposed Installment Agreements

Section 301.6159-1(b) of the proposed regulations provided that an installment agreement request must be submitted according to procedures prescribed by the IRS. It did not require the IRS to accept or reject the request within a specific time frame. The commenter proposed to limit the IRS's time to consider an installment agreement to 90 days; if the IRS fails to act in that time, the agreement would be granted automatically. The commenter reasoned that the limited time frame would benefit the IRS because more installments agreements would be automatically allowed, thereby increasing revenues, and would benefit the taxpayer by allowing payments to begin quickly and efficiently. The recommendation was not adopted for two reasons. First, the IRS already grants installment agreements quickly and automatically in the vast majority of

cases. If the taxpayer owes less than \$25,000 and offers to pay the liabilities in full within 5 years, the agreement can be granted automatically under the IRS's "streamlined" installment agreement procedures. See Internal Revenue Manual 5.14.5.2 at http://www.irs.gov/irm/part5/irm_05-014-005.html. The IRS granted over 2.62 million installment agreements in fiscal year 2008, of which over 2.51 million were granted through the IRS's streamlined procedures. In cases that do not meet the streamlined criteria, the IRS has determined that a more detailed review of the taxpayer's financial situation is warranted. Second, the IRS generally responds to non-streamlined installment agreement requests in a timely manner. During the filing season, however, inventory fluctuations may cause delays. The automatic allowance of installment agreements in such cases would not be appropriate.

Proposed § 301.6159-1(b)(2) provided that an installment agreement request becomes pending when it is accepted for processing. The commenter recommended that the IRS send an automatically-generated response acknowledging the date of acceptance for processing to the taxpayer and the taxpayer's representative. This recommendation was not adopted. The vast majority of installment agreements are streamlined agreements, which the IRS accepts very quickly. The IRS will, however, consider adopting an administrative procedure for the minority of cases where it anticipates a time lag between acceptance for processing and the acceptance or rejection of the installment agreement.

Proposed § 301.6159-1(b)(2) also provided that if an installment agreement request does not contain sufficient information to permit the IRS to evaluate whether the request should be accepted, the IRS will request the needed information. The commenter recommended that all requests for additional information should be reasonably necessary. The proposed regulations already address this recommendation by directing that requests be for "needed" information.

Proposed § 301.6159-1(b)(3) allowed a taxpayer to submit a good faith revision of a rejected installment agreement request within 30 days of rejection. The commenter recommended that the time for taxpayers to submit a good faith revision should be extended to 60 days because taxpayers often have difficulty obtaining the necessary documents within 30 days. This recommendation was not adopted. The recommendation would apply to a small number of installment agreement

requests that are not accepted under the IRS's streamlined procedures. In these cases, the IRS requests the information necessary for a financial analysis before rejecting the installment agreement request. See Internal Revenue Manual 5.15.1.6 at http://www.irs.gov/irm/part5/irm_05-015-001.html. Allowing 60 days following the rejection would encourage untimely responses and delay case resolution.

Section 301.6159-1(c): Acceptance, Form, and Terms of Installment Agreements

Section 301.6159-1(c)(1) of the proposed regulations provided that an installment agreement request has not been accepted until the IRS notifies the taxpayer or the taxpayer's representative of the acceptance. Section 6159(a) requires that an installment agreement be in writing, and proposed § 301.6159-1(c)(2) provided that the writing may take the form of a document signed by the taxpayer and the IRS or the written confirmation of an agreement entered into by the taxpayer and the IRS that is mailed or personally delivered to the taxpayer. The commenter recommended that the IRS's notification of the acceptance or rejection of a proposed installment agreement also be directed to the taxpayer's representative and include the terms of the agreement and payment submission information. These recommendations were not adopted in the regulations because they are more appropriately addressed in the IRS's procedures. The IRS currently does, however, provide written notification to the taxpayer and the taxpayer's representative of the acceptance or rejection of an installment agreement and the suggested information.

The commenter was concerned that the IRS intended to change its streamlined procedures and recommended that the procedures be retained. The commenter was also concerned that proposed § 301.6159-1(c)(3)(iii)(A) may represent a departure from the IRS's current policy that limits the acceptance of extensions of the collection statute of limitations in connection with installment agreements to the narrow subset of partial payment installment agreements in which the liability will not be paid in full under the agreement before the collection statute expires. As stated in the preamble to the notice of proposed rulemaking, the regulations were intended to reflect existing practices. The regulations will have no effect on the IRS's streamlined procedures or its policy with regard to waivers of the collection statute.

The commenter stated that the proposed regulations did not explain the inclusion of § 301.6159-1(c)(3)(ii), which provided that an installment agreement may, by its terms, end upon the expiration of the period of limitations on collection, or at some prior date. As explained in the preamble to the proposed regulations, this provision clarifies that the IRS may enter into partial payment installment agreements that end upon the running of the collection statute, or that end prior to that time so that the IRS may collect the balance of the tax liability against any property belonging to the taxpayer before the collection period expires. The IRS does not currently enter into partial payment installment agreements that expire before the end of the collection statute and has no plans to do so routinely in the future.

Proposed § 301.6159-1(c)(3)(v) provided that while an installment agreement is in effect, the IRS may request a financial condition update from the taxpayer at any time. The commenter recommended that the IRS be permitted to request only one financial condition update per year. This recommendation was not adopted. The IRS very rarely requests updates more than once a year. In certain rare circumstances, more frequent updates may be appropriate, such as when the IRS has reason to believe that the taxpayer's financial condition has improved.

Section 301.6159-1(d): Rejection of a Proposed Installment Agreement

Section 301.6159-1(d)(2) of the proposed regulations provided that the IRS may not notify a taxpayer or the taxpayer's representative of the rejection of an installment agreement until an independent review of proposed rejection is completed. The commenter was concerned that the proposed regulations did not provide any guidance as to how the independent administrative review will be assured. The commenter recommended that the review be undertaken by an IRS office located in a different territory. The recommendation was not adopted. Managers in the IRS offices in San Jose, California, and Jacksonville, Florida, supervise employees throughout the United States who review rejected installment agreements. An independent review is assured by assigning these cases to an employee who has no prior involvement in the case and who reports to a supervisor in either of these two offices.

The commenter recommended that the determination that the taxpayer did not submit a good faith revision be

subject to independent administrative review. This recommendation was not adopted because it would delay case resolution and would, in effect, treat requests that were not made in good faith as valid requests. The commenter also recommended that the rejection of revisions that were made in good faith receive independent review. The proposed regulation already provided for this review. Proposed § 301.6159-1(b) stated that if the IRS determines that the taxpayer made a good faith revision within 30 days of the rejection, the provisions of § 301.6159-1 apply to the revised proposal.

Proposed § 301.6159-1(d)(3) provided that a taxpayer may appeal the rejection of an installment agreement request within 30 days of the rejection. The commenter recommended that the 30-day period be tolled while a revised proposal of a rejected request is being evaluated so that the taxpayer would not have to file an appeal while the revision is under consideration. This recommendation was not adopted. The IRS's procedures are designed to allow a quick resolution of the taxpayer's request; tolling the appeal period would add an unneeded layer of complexity to the process and delay case resolution. The commenter also recommended that the IRS provide more definitive guidance as to what qualifies as a good faith revision. This recommendation was not adopted because this guidance is more appropriately left to the IRS procedures.

Section 301.6159-1(e): Modification or Termination of Installment Agreements by the Internal Revenue Service

Proposed § 301.6159-1(e)(2)(i) provided that the IRS may modify or terminate an installment agreement if the IRS determines that the financial condition of the taxpayer has significantly changed. Proposed § 301.6159-1(c)(3)(vi) provided that the IRS and the taxpayer may agree to modify or terminate an installment agreement or may agree to a new installment agreement that supersedes the existing agreement. The commenter recommended that the regulations explicitly allow taxpayers to request a modification or termination of an existing installment agreement, as was stated in existing § 301.6159-1(c)(3). This clarification was adopted in § 301.6159-1(e)(3).

The commenter recommended that the regulations require the taxpayer to comply with the terms of an installment agreement while a request for modification is being considered and that a proposed modification will not result in a suspension of the statute of

limitations on collection. These clarifications were also adopted in § 301.6159-1(e)(3).

The commenter recommended that a taxpayer's request to modify an existing installment agreement should be exempt from user fees under regulations §§ 300.1 and 300.2. This recommendation was not adopted because user fees are outside the scope of this regulation project.

Proposed § 301.6159-1(e)(2)(ii)(C) provided that the IRS may modify or terminate an installment agreement if the taxpayer fails to provide a financial condition update requested by the IRS. The commenter recommended that the regulations provide explicitly whether the IRS may terminate an installment agreement if the taxpayer provided materially inaccurate or incomplete information. This recommendation was adopted. Section 301.6159-1(e)(1)(i) was revised to clarify that the IRS may terminate an installment agreement if the taxpayer provided materially inaccurate or incomplete information in connection with a requested financial update.

Proposed § 301.6159-1(e)(3) provided that the IRS will generally notify the taxpayer in writing at least 30 days prior to terminating an installment agreement and describe the reason for the termination, after which the taxpayer may provide information showing that the IRS's reason is incorrect. Proposed § 301.6159-1(e)(4) provided for the administrative appeal of the modification or termination of an installment agreement to the Office of Appeals if the request is properly made within 30 days after the termination or modification is to take effect. The commenter recommended that the regulations 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 § 301.6159-1(e)(3), has filled out Form 9423, "Collection Appeal Request," or has requested a meeting with a Collection Manager. This recommendation was not adopted in the regulations because it is more appropriately addressed in IRS forms and procedures.

Proposed § 301.6159-1(e)(4) provided, in part, that the taxpayer may administratively appeal the modification or termination of an installment agreement to the Office of Appeals. The commenter recommended that the taxpayer be allowed to appeal the IRS's determination not to modify an installment agreement. This recommendation was not adopted. The

IRS routinely grants taxpayer modification requests that result in agreements within the streamlined criteria. *See* Internal Revenue Manual 5.19.1.5.4.24 at http://www.irs.gov/irm/part5/irm_05-019-001.html. Taxpayers do not have a statutory right to appeal rejected modification requests, and the IRS has not determined there is a need for additional administrative review of the denial of a modification request.

Section 301.6159-1(f): Effect of Installment Agreement or Pending Installment Agreement on Collection Activity

Section 301.6159-1(f)(1) of the proposed regulations stated that the IRS may not levy during the time an installment agreement is pending. Proposed § 301.6159-1(f)(2) stated that levy is not prohibited if an installment agreement request was made solely to delay collection. The commenter recommended that the solely to delay collection standard in the proposed regulations be replaced with language that references the "frivolous submission" standard in section 6702(b) of the Code. This recommendation was not adopted. Under existing IRS procedures, an installment agreement is returned as made solely to delay collection when there is no economic reality to the request, the request fails to address changes previously requested by the IRS in response to a prior request, the request ignores direction provided by revenue officers, the request is made by a taxpayer that has defaulted prior installment agreements, or the request is made at a time that causes it to be classified as a request made to delay enforcement action. *See* Internal Revenue Manual 5.14.3.2 at http://www.irs.gov/irm/part5/irm_05-014-003.html. Section 6702(b) imposes a \$5,000 penalty for installment agreement requests that reflect a desire to delay or impede the administration of the Federal tax laws, and the IRS has not yet developed procedures defining the kinds of installment agreements that constitute frivolous submissions. The standard in section 6702(b) therefore may not be an appropriate standard for identifying those installment agreements that fail to qualify for the prohibition against levy.

In the alternative, the commenter recommended that the regulations state that a taxpayer may appeal the IRS's levy action when the IRS determines that an installment agreement request was made solely to delay collection, and that damages may be appropriate under section 7433 of the Code. These recommendations were not adopted. Taxpayers' rights to appeal proposed

levies and seek damages are provided for in the regulations under sections 6330 and 7433 of the Code, respectively.

Section 301.6159–1(g): Suspension of the Statute of Limitations on Collection

Section 301.6159–1(g) of the proposed regulations provided that the statute of limitations on collection under section 6502 of the Code is suspended for the period that a proposed installment agreement is pending, plus 30 days following a rejection, and during any appeal. The commenter recommended that the regulations clearly define when an installment agreement is pending. This recommendation is already addressed by proposed § 301.6159–1(b)(2), which provides a detailed explanation of when an installment agreement is pending.

Section 301.6159–1(h): Annual Statement

Section 301.6159–1(h) of the proposed regulations requires the IRS to provide taxpayers with an annual statement setting forth the balance owed at the beginning of the year, the payments made during the year, and the remaining balance at the end of the year. The commenter recommends that the annual statement be as clear as possible and that the IRS provide the taxpayer with a single annual statement describing all tax liabilities covered by the agreement. Currently, the IRS sends an annual statement for each separate liability covered by an installment agreement. No change was made to the final regulations because this recommendation is more appropriately addressed when the IRS updates the forms used for the annual statements.

Section 301.6159–1(i): Biennial Review of Partial Payment Installment Agreements

Section 301.6159–1(i) of the proposed regulations required the IRS to perform a review of the taxpayer's financial condition at least once every two years in cases of partial payment installment agreements. The proposed regulations also stated that the purpose of the review was to determine whether an increase in payments is warranted. The commenter recommended that § 301.6159–1(i) be rephrased to provide that the biennial review of a taxpayer's financial condition may result in a decrease, as well as an increase, in the amount of payments being made. This recommendation was not adopted.

While taxpayers may request a decrease in the amount of payments due under an installment agreement, the IRS does not have the information to unilaterally make that determination. The automatic

biennial review done by the IRS does not, in every case, result in a request for updated financial information. As explained above, taxpayers may request that their payments be lowered if their financial condition has worsened.

Section 301.6159–1(k): Effective/Applicability Date

Section 301.6159–1(k) of the proposed regulations provided that the effective date of the final regulations would be the date the final regulations are published in the **Federal Register**. The commenter was concerned about how previously proposed or accepted installment agreements will be affected by the regulations and recommended that the effective date of paragraphs (b), (c), and (d) apply prospectively. This recommendation was not adopted. As explained earlier and in the preamble to the proposed regulations, the regulations substantially reflect existing practices. The regulations will therefore have no effect on previously proposed or accepted installment agreements.

Special Analyses

It has been determined that this Treasury decision 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 regulations do 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 proposed regulations preceding these regulations were 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 Walter Ryan, Office of Associate Chief Counsel (Procedure and Administration).

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.** Section 301.6159–0 is added to read as follows:

§ 301.6159–0 Table of contents.

This section lists the major captions that appear in the regulations under § 301.6159–1.

§ 301.6159–1 Agreements for the payment of tax liabilities in installments.

- (a) Authority.
- (b) Procedures for submission and consideration of proposed installment agreements.
- (c) Acceptance, form, and terms of installment agreements.
- (d) Rejection of a proposed installment agreement.
- (e) Modification or termination of installment agreements by the Internal Revenue Service.
- (f) Effect of installment agreement or pending installment agreement on collection activity.
- (g) Suspension of the statute of limitations on collection.
- (h) Annual statement.
- (i) Biennial review of partial payment installment agreements.
- (j) Cross reference.
- (k) Effective/applicability date.

■ **Par. 3.** Section 301.6159–1 is revised to read as follows:

§ 301.6159–1 Agreements for payment of tax liabilities in installments.

(a) *Authority.* The Commissioner may enter into a written agreement with a taxpayer that allows the taxpayer to make scheduled periodic payments of any tax liability if the Commissioner determines that such agreement will facilitate full or partial collection of the tax liability.

(b) *Procedures for submission and consideration of proposed installment agreements—(1) In general.* A proposed installment agreement must be submitted according to the procedures, and in the form and manner, prescribed by the Commissioner.

(2) *When a proposed installment agreement becomes pending.* A proposed installment agreement becomes pending when it is accepted for processing. The Internal Revenue Service (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 IRS determines that the taxpayer made a good faith revision of the proposal and submitted the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal. If, however, the IRS determines that a revision was not made in good faith, the provisions of this section do not apply to the revision and the appeal period in paragraph (d)(3) of this section continues to run from the date of the original rejection.

(c) *Acceptance, form, and terms of installment agreements—*(1) *Acceptance of an installment agreement—*(i) *In general.* A proposed installment agreement has not been accepted until the IRS notifies the taxpayer or the taxpayer's representative of the acceptance. Except as provided in paragraph (c)(1)(iii) of this section, the Commissioner has the discretion to accept or reject any proposed installment agreement.

(ii) *Acceptance does not reduce liabilities.* The acceptance of an installment agreement by the IRS does not reduce the amount of taxes, interest, or penalties owed. (However, penalties may continue to accrue at a reduced rate pursuant to section 6651(h).)

(iii) *Guaranteed installment agreements.* In the case of a liability of an individual for income tax, the Commissioner shall accept a proposed installment agreement if, as of the date the individual proposes the installment agreement—

(A) The aggregate amount of the liability (not including interest, penalties, additions to tax, and additional amounts) does not exceed \$10,000;

(B) The taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding five taxable years—

(1) Failed to file any income tax return;

(2) Failed to pay any required income tax; or

(3) Entered into an installment agreement for the payment of any income tax;

(C) The Commissioner determines that the taxpayer is financially unable to pay the liability in full when due (and the taxpayer submits any information the Commissioner requires to make that determination);

(D) The installment agreement requires full payment of the liability within three years; and

(E) The taxpayer agrees to comply with the provisions of the Internal Revenue Code for the period the agreement is in effect.

(2) *Form of installment agreements.* An installment agreement must be in writing. A written installment agreement may take the form of a document signed by the taxpayer and the Commissioner or a written confirmation of an agreement entered into by the taxpayer and the Commissioner that is mailed or personally delivered to the taxpayer.

(3) *Terms of installment agreements.* (i) Except as otherwise provided in this section, an installment agreement is effective from the date the IRS notifies the taxpayer or the taxpayer's representative of its acceptance until the date the agreement ends by its terms or until it is superseded by a new installment agreement.

(ii) By its terms, an installment agreement may end upon the expiration of the period of limitations on collection in section 6502 and § 301.6502-1, or at some prior date.

(iii) As a condition to entering into an installment agreement with a taxpayer, the Commissioner may require that—

(A) The taxpayer agree to a reasonable extension of the period of limitations on collection; and

(B) The agreement contain terms that protect the interests of the Government.

(iv) Except as otherwise provided in an installment agreement, all payments made under the installment agreement will be applied in the best interests of the Government.

(v) While an installment agreement is in effect, the Commissioner may request, and the taxpayer must provide, a financial condition update at any time.

(vi) At any time after entering into an installment agreement, the Commissioner and the taxpayer may agree to modify or terminate an installment agreement or may agree to a new installment agreement that supersedes the existing agreement.

(d) *Rejection of a proposed installment agreement—*(1) *When a proposed installment agreement becomes rejected.* A proposed installment agreement has not been rejected until the IRS notifies the taxpayer or the taxpayer's representative of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) *Independent administrative review.* The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an installment agreement until an independent administrative review of the proposed rejection is completed.

(3) *Appeal of rejection of a proposed installment agreement.* The taxpayer may administratively appeal a rejection of a proposed installment agreement to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the taxpayer is notified of the rejection, the taxpayer requests an appeal in the manner provided by the Commissioner.

(e) *Modification or termination of installment agreements by the Internal Revenue Service—*(1) *Inadequate information or jeopardy.* The Commissioner may terminate an installment agreement if the Commissioner determines that—

(i) Information which was provided to the IRS by the taxpayer or the taxpayer's representative in connection with either the granting of the installment agreement or a request for a financial update was inaccurate or incomplete in any material respect; or

(ii) Collection of any liability to which the installment agreement applies is in jeopardy.

(2) *Change in financial condition, failure to timely pay an installment or another Federal tax liability, or failure to provide requested financial information.* The Commissioner may modify or terminate an installment agreement if—

(i) The Commissioner determines that the financial condition of a taxpayer that is party to the agreement has significantly changed; or

(ii) A taxpayer that is party to the installment agreement fails to—

(A) Timely pay an installment in accordance with the terms of the installment agreement;

(B) Pay any other Federal tax liability when the liability becomes due; or

(C) Provide a financial condition update requested by the Commissioner.

(3) *Request by taxpayer.* Upon request by a taxpayer that is a party to the installment agreement, the Commissioner may terminate or modify the terms of an installment agreement if the Commissioner determines that the

financial condition of the taxpayer has significantly changed. The taxpayer's request will not suspend the statute of limitations under section 6502 for collection of any liability. While the Commissioner is considering the request, the taxpayer shall comply with the terms of the existing installment agreement.

(4) *Notice.* Unless the Commissioner determines that collection of the tax is in jeopardy, the Commissioner will notify the taxpayer in writing at least 30 days prior to modifying or terminating an installment agreement pursuant to paragraph (e)(1) or (2) of this section. The notice provided pursuant to this section must briefly describe the reason for the intended modification or termination. Upon receiving notice, the taxpayer may provide information showing that the reason for the proposed modification or termination is incorrect.

(5) *Appeal of modification or termination of an installment agreement.* The taxpayer may administratively appeal the modification or termination of an installment agreement to Appeals if, following issuance of the notice required by paragraph (e)(4) of this section and prior to the expiration of the 30-day period commencing the day after the modification or termination is to take effect, the taxpayer requests an appeal in the manner provided by the Commissioner.

(f) *Effect of installment agreement or pending installment agreement on collection activity.*—(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 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, prior to the expiration of the 30-day period following the rejection or termination of an installment agreement, the taxpayer appeals the rejection or termination decision, 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) *Exceptions.* Paragraph (f)(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.

(3) *Other actions by the IRS while levy is prohibited.*—(i) *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—

(A) Crediting an overpayment against the liability pursuant to section 6402; (B) Filing or refiling notices of Federal tax lien; and

(C) 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.

(ii) *Proceedings in court.* Except as otherwise provided in this paragraph (f)(3)(ii), 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 (f)(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. Notwithstanding the installment agreement, any claim or suit permitted will be for the full amount of the liabilities owed.

(g) *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 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 (f)(2) of this section applies and levy is not prohibited with respect to the taxpayer.

(h) *Annual statement.* The Commissioner shall provide each taxpayer who is party to an installment agreement under this section with an annual statement setting forth the initial balance owed at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

(i) *Biennial review of partial payment installment agreements.* The Commissioner shall perform a review of the taxpayer's financial condition in the case of a partial payment installment agreement at least once every two years. The purpose of this review is to determine whether the taxpayer's financial condition has significantly changed so as to warrant an increase in the value of the payments being made or termination of the agreement.

(j) *Cross reference.* Pursuant to section 6601(b)(1), the last day prescribed for payment is determined without regard to any installment agreement, including for purposes of computing penalties and interest provided by the Internal Revenue Code. For special rules regarding the computation of the failure to pay penalty while certain installment agreements are in effect, see section 6651(h) and § 301.6651-1(a)(4).

(k) *Effective/applicability date.* This section is applicable on November 25, 2009.

■ **Par. 4.** Section 301.6331-4, paragraph (d) is revised and paragraph (e) is added to read as follows:

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

* * * * *

(d) *Cross-reference.* For provisions relating to the making of levies while an installment agreement is pending or in effect, see § 301.6159-1.

(e) *Effective/applicability date.* Paragraphs (a), (b), and (c) are applicable beginning December 18, 2002. Paragraph (d) is applicable beginning November 25, 2009.

Approved: November 11, 2009.

Steven T. Miller,

Deputy Commissioner of Services and Enforcement.

Approved: November 11, 2009.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 75

RIN 1219-AB58

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: This rule informs the mining community that MSHA rescinds the Agency's intent stated in the preamble to the final rule on Refuge Alternatives for Underground Coal Mines, concerning preemption of private tort litigation with respect to the Agency's approval of specifications for a refuge alternative.

DATES: *Effective Date:* November 25, 2009.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Silvey can be reached at 202-693-9440 (voice), 202-693-9441 (facsimile), or silvey.patricia@dol.gov (Internet e-mail).

SUPPLEMENTARY INFORMATION: On December 31, 2008, MSHA published a final rule on Refuge Alternatives for Underground Coal Mines. (73 FR 80656). The preamble includes a discussion on preemption, and states that "it is MSHA's intent that its approval of specifications for a refuge alternative preempts private tort litigation questioning the propriety of those specifications." (73 FR 80658).

On May 20, 2009, the President issued a Memorandum for the Heads of Executive Departments and Agencies on Preemption. The purpose of the Memorandum is to state the general policy of the Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the

States and with a sufficient legal basis for preemption. The Memorandum directs executive departments and agencies to "review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption." In addition, the memorandum states that "where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation."

Section 506(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act), concerning "Effect on State Laws," specifically addresses preemption of state law as follows:

The provisions of any State law or regulation in effect upon the operative date of this Act, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal or other mines than do the provisions of this Act or any order issued or any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this Act. 30 U.S.C. 955.

In addition, the House Report to the Mine Act, states that "Federal law would supersede any State law in conflict with it," but that "State laws providing more stringent standards than exist under the Federal law, however, would not be held in conflict with the [Mine] act." H. Rep. No. 95-312, 95th Cong., 1st Sess., at 55 (1977).

In accordance with the Presidential Memorandum on Preemption, MSHA has reviewed the Agency's standards and regulations issued within the past 10 years. MSHA's review found that a statement in the preamble to the Refuge Alternatives final rule is the only rule issued in the past 10 years to contain a preemption statement.

MSHA has determined that the Mine Act does not show any basis, or Congressional intent, for inferring any attempt to preempt state tort law regarding MSHA's approval specifications for refuge alternatives. As stated earlier, the Mine Act provides, for example, that State laws or regulations that provide more stringent requirements than those imposed under the Mine Act, are not construed or held to be in conflict with the Mine Act. MSHA's determination to rescind the preemption statement in the preamble to the Refuge Alternatives rule is

consistent with the intent of the Mine Act and is consistent with the Presidential Memorandum. The preemption statement in the preamble was, at best, interpretive guidance purporting to interpret statutory language in the Mine Act, which was included in the preamble of the final rule without seeking prior public comment. It did not create any new law or substantive rule, but simply stated what the agency thought the statute meant. Further, this interpretation was published only recently, making it unlikely that any member of MSHA's regulated community has relied to their detriment on the interpretation. Under these circumstances, notice and comment also are not required in withdrawing this interpretation. See *Warshauer v. Solis*, 577 F.3d 1330 (11th Cir. 2009); *MetWest, Inc. v. Sec'y of Labor*, 560 F.3d 506, 509-511 (DC Cir. 2009).

Accordingly, MSHA rescinds the last paragraph of the section-by-section discussion of "Section 7.501 Purpose and Scope," starting on line 51 of the center column and ending on line 24 of the third column, 73 FR 80658, for the reason that this statement is not justified under the Mine Act principles governing preemption, and there was no intent by Congress, under the Mine Act, to supersede state action in this regard.

Dated: November 19, 2009.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010-2 and CP2010-2; Order No. 324]

New Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 20 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 25, 2009 and is applicable beginning October 28, 2009.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel,