

Reg. Section 1.6694-4(a)(4)(i)

Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

In general.

(1) The Internal Revenue Service (IRS) will investigate the preparation by a tax return preparer of a return of tax under the Internal Revenue Code (Code) or claim for refund of tax under the Code as described in § 301.7701-15(b)(4) of this chapter, and will send a report of the examination to the tax return preparer before the assessment of either-

(i) A penalty for understating tax liability due to a position for which either it was not reasonable to believe that the position would more likely than not be sustained on its merits under section 6694(a) or no substantial authority, as applicable (or not a reasonable basis for disclosed positions); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

(2) Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the IRS will also send, before assessment of either penalty, a 30-day letter to the tax return preparer notifying him of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration and a final administrative determination by the IRS concerning the assessment. If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer.

(3) If the IRS assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the tax return preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(4) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the tax return preparer, the tax return preparer must either-

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or



(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(5) If the tax return preparer pays an amount and files a claim for refund under paragraph (a)(4)(ii) of this section, the IRS may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of-

(i) A date which is more than 30 days after the earlier of-

(A) The day on which the tax return preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the tax return preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

(6) The IRS may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the IRS and the tax return preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the IRS in contravention of paragraph (a)(5) of this section may be enjoined by a proceeding in the proper court.

(b)Preparer must bring suit in district court to determine liability for penalty. The IRS may proceed with collection of the amount of the penalty not paid under paragraph (a)(4)(ii) of this section if the preparer fails to begin a proceeding for refund in the appropriate United States district court within 30 days after the earlier of-

(1) The day on which the preparer's claim for refund filed under paragraph (a)(4)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund.

(c)Suspension of running of period of limitations on collection. The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the IRS, under paragraph (a)(5) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d)Effective/applicability date. This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.