

The Service may make an extension of time to pay contingent upon full payment of tax and interest by the extension date. *Accord United States v. Wolper*, 86 F.2d 715 (2d Cir. 1936) and Treas. Reg. 1.6161-1(c).

Two additional considerations are worth noting regarding the conditions that the Commissioner, as a business decision, may decide to place on the granting of these extensions. First, the granting of the extension of time to pay may jeopardize the collection of the failure to pay (FTP) addition to tax. This is an all-or-nothing addition, and reasonable cause is determined as of the original due date for payment. The Commissioner's agreeing to extend the due date for unemployed taxpayers may bolster a taxpayer's reasonable cause argument for not paying on the original due date, because the taxpayer reasonably expected to have the money to pay by the extended due date—a belief the commissioner implicitly accepted when conditionally granting the extension. Courts may find reasonable cause for failing to pay on the original due date and refuse to sustain the FTP addition for 2011.

Second, Congress has stated that its intent behind civil penalties is to encourage voluntary compliance. The proposed extension is contingent on full payment, including interest and penalties and other additions to tax, by the extended due date. We recommend that you also require timely filing of the 2011 return—either by the original due date or on extension. Because the filing extension date and the contingently extended payment date are the same (October 17, 2012), it should be a relatively straightforward matter to discover whether payment and filing were timely and hence whether the taxpayer actually qualified for the extension and should be relieved from paying 6 months of the FTP addition to tax. Requiring timely filing, even on extension, would enhance compliance and satisfy a Congressional goal.