

Interim Guidance Under Section 6404(g)

Notice 2007-93

PURPOSE

This notice describes how the amendment to section 6404(g) made by the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-028, § 8242, 121 Stat. 190, 200 (May 25, 2007), applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007.

SCOPE

This notice applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007, with respect to individual Federal income tax returns that were timely filed before that date. This notice provides interim guidance and will remain in effect until further guidance or regulations are issued.

BACKGROUND

Effective for taxable years ended after July 22, 1998, if an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the Service does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the Service shall generally suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. Prior to amendment by the Small Business and Work Opportunity Tax Act of 2007 (the Act), a notice is timely if provided before the close of the eighteen-month period beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period and ends twenty-one days after the Service provides the notice. This suspension rule applies separately with respect to each item or adjustment.

The Act amended section 6404(g) by striking "18-month period" in paragraphs

(1)(A) and (3)(A) and inserting "36-month period." The Act states that the amendment "shall apply to notices provided by the Secretary of the Treasury or his delegate after the date that is six months after the date of enactment" of the Act — that is, on or after November 26, 2007. In a recent Notice of Proposed Rulemaking and Notice of Public Hearing on the Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions, the Treasury Department and the Service acknowledged that questions have been raised regarding the effective date of the changes made by the Act, specifically how the amendment is intended to apply to notices provided on or after November 26, 2007, and stated that further guidance was under consideration. See Prop. Treas. Reg. § 301.6404-4, 72 Fed. Reg. 34199, 34200 (June 21, 2007). This notice provides that guidance.

DISCUSSION

The Act extends to thirty-six months the period within which the Service may issue a notice to an individual taxpayer specifically stating the taxpayer's liability and the basis for that liability before the accrual of interest and certain penalties are suspended under section 6404(g). The Service will apply the following rules to notices issued on or after November 26, 2007, that relate to a return that was timely filed before that date.

1. If, as of November 25, 2007, the eighteen-month period has closed and the Service has not provided notice to the taxpayer, interest and applicable penalties will be suspended beginning on the day after the close of the eighteen-month period and ending on the date that is twenty-one days after the notice is provided.

2. In all other cases, interest and applicable penalties will be suspended beginning on the day after the close of the thirty-six month period and ending on the date that is twenty-one days after the notice is provided.

The following examples illustrate these rules. The examples assume that none of the exceptions in section 6404(g)(2) to the general rule for suspension applies. The dates in the examples are used to illustrate the effective date changes made by the Act and do not provide guidance as to the computation of interest generally.

Example 1: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). On January 2, 2009 (less than thirty-six months after the due date of the return), the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will not be suspended with respect to the taxpayer's return.

Example 2: An individual files a federal income tax return for 2005 by April 17, 2006 (the last day to timely file pursuant to section 7503). On December 26, 2007, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has closed as of November 25, 2007, interest and applicable penalties will be suspended with respect to the taxpayer's return beginning on October 17, 2007 (the day after the close of the eighteen-month period), and ending on January 16, 2008 (the date that is twenty-one days after the notice is provided).

Example 3: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). The individual consents to extend the time within which the Service may assess any tax due on the return until June 30, 2011. On December 20, 2010, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will be suspended beginning on April 17, 2010 (the day after the close of the thirty-six month period), and ending on January 10, 2011 (the date that is twenty-one days after the notice is provided).

DRAFTING INFORMATION

The principal author of this notice is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Stuart Spielman at (202) 622-3620 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 446, 481.)

Rev. Proc. 2007-67

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, which provides the general procedures for obtaining the advance consent of the Commissioner of Internal Revenue

to change a method of accounting. This revenue procedure allows taxpayers, under certain conditions, to request to revise the year of change for a Form 3115, *Application for Change in Accounting Method*, that is pending in the national office, and modifies the period for taking into account a net positive adjustment under § 481(a) of the Internal Revenue Code when the Commissioner approves the taxpayer's request to revise the year of change.

SECTION 2. BACKGROUND

.01 Section 446(e) states that, except as otherwise provided, a taxpayer must secure the consent of the Secretary before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(i) of the Income Tax Regulations requires that, in general, in order to obtain the Commissioner's consent to a change in accounting method, a taxpayer must file a Form 3115 during the taxable year in which the taxpayer desires to make the proposed change.

.02 Rev. Proc. 97-27 provides the general procedures for obtaining the advance consent of the Commissioner to change a method of accounting. *See also* Rev. Proc. 2007-1, 2007-1 I.R.B. 1 (or successor).

.03 Section 3.05 of Rev. Proc. 97-27 defines the year of change as the taxable year for which a change in method of accounting is effective, that is, the first taxable year the new accounting method is to be used. The year of change is also the first taxable year for complying with the terms and conditions of the Commissioner's consent to change a method of accounting.

.04 Section 5.02(3)(a) of Rev. Proc. 97-27 provides, in general, that the § 481(a) adjustment period is four taxable years for a net positive adjustment for an accounting method change, and one taxable year for a net negative adjustment for an accounting method change.

.05 In some instances a taxpayer's Form 3115 filed under Rev. Proc. 97-27 may be pending in the national office when the taxpayer prepares and files its federal income tax return for the requested year of change. Therefore, the Service has determined that it is appropriate, under certain conditions, to allow a taxpayer to request to revise the year of change for a pending Form 3115.

SECTION 3. CHANGES TO REV. PROC. 97-27

.01 Section 5.02(3)(a) of Rev. Proc. 97-27 is modified to read as follows:

(a) *In general.* Except as otherwise provided in sections 5.02(3)(b), 7.03, and 12.01(3) of this revenue procedure, the § 481(a) adjustment period is four taxable years for a net positive adjustment for an accounting method change, and one taxable year for a net negative adjustment for an accounting method change.

.02 Rev. Proc. 97-27 is modified to renumber sections 12 through 15 as sections 13 through 16.

.03 Rev. Proc. 97-27 is modified by inserting new section 12 to read as follows:

SECTION 12. REQUEST TO REVISE THE YEAR OF CHANGE

.01 *In general.* The taxpayer may request, and the Service ordinarily will allow, the taxpayer to revise the year of change for a Form 3115 that is pending in the national office to a subsequent taxable year, but no later than the taxpayer's current taxable year (with no additional user fee), in lieu of submitting a new Form 3115 for the subsequent taxable year, under the following conditions:

(1) The taxpayer must submit a written request pursuant to section 12.04 of this revenue procedure to revise the year of change on or after, but not before, the first day of the fourth month following the month in which the taxpayer's federal income tax return is due (without regard to extension) for the original year of change requested on the Form 3115 (for example, a calendar year C corporation must submit a written request on or after, but not before, July 1 following the year of change requested on the Form 3115);

(2) The Form 3115 is pending in the national office on the date of the request; and

(3) Unless the Commissioner has determined that the requested change in accounting method will be made using a cut-off method or a modified cut-off method —

(a) The taxpayer must agree, in writing, to accelerate into the revised year of change the percentage of any net positive § 481(a) adjustment the taxpayer would have taken into account for each prior tax-

able year under section 5.02(3)(a) of this revenue procedure had the taxpayer not revised the year of change (for example, if the year of change is revised to the first succeeding taxable year, the taxpayer must agree to take into account one-half of any net positive § 481(a) adjustment in the revised year of change and one-fourth in each of its next two taxable years); and

(b) The taxpayer must agree to provide the § 481(a) adjustment (positive or negative) for the revised year of change within 21 calendar days (or a longer period if agreed to by the national office) after the Service first notifies the taxpayer that its request to revise the year of change is approved.

.02 *Multiple applicants on one Form 3115.* If the Form 3115 is for an identical change in accounting method for more than one applicant, the taxpayer must request to revise the year of change for all applicants to which the Form 3115 relates.

.03 *Compelling circumstances.*

(1) *In general.* In the case of a taxpayer that does not meet the condition in section 12.01(1) of this revenue procedure, a taxpayer with compelling circumstances may request to revise the year of change for the Form 3115, in lieu of submitting a new Form 3115 for the proposed revised year of change. The taxpayer must demonstrate those compelling circumstances. An example of compelling circumstances would include the following.

(2) *Example.* A calendar year partnership with 50 individual partners timely files a Form 3115 under Rev. Proc. 97-27 for a change in method of accounting for its 2007 taxable year. The partnership's Form 1065, *U.S. Return of Partnership Income*, and Schedules K-1, *Partner's Share of Income, Deductions, Credits, etc.*, and the partners' Forms 1040, *U.S. Individual Income Tax Return*, for the requested year of change are all due April 15, 2008. On March 17, 2008, the partnership submits a request to revise the year of change for its pending Form 3115 to its 2008 taxable year because the partnership's Form 3115 is pending in the national office. Because the Form 3115 is pending in the national office 30 days prior to the due date of the partners' Forms 1040, the partnership will be unable to provide timely Schedules K-1 that take into account the proposed accounting method change before the partners prepare and file their 2007 Forms 1040. Therefore, to avoid the potential for the 50 partners to be required to file amended 2007 Forms 1040 to take into account the partnership's requested change in method of accounting for the 2007 taxable year, once approved, the Service will ordinarily allow the partnership to revise the year of change for its Form 3115 to its 2008 taxable year. If the accounting method change is approved for the partnership's 2008 taxable year, in lieu of tak-

ing into account any net positive § 481(a) adjustment over four taxable years, the partnership must take into account one-half of any net positive § 481(a) adjustment in its 2008 taxable year and one-fourth in each of its next two taxable years.

.04 Submitting a request for a revised year of change. A request to revise the year of change for a Form 3115 pending in the national office should include the name of the filer (and each applicant, if applicable) on the Form 3115, the national office reference number (for example, CAM-123456-07), the name of the national office contact person for the Form 3115 (if known), the due date (without extension) for the filer's federal income tax return for the year of change, and a statement agreeing to the applicable requirements in section 12.01(3) of this revenue procedure. The request must be accompanied by the penalties of perjury statement in section 9.08(3) of Rev. Proc. 2007-1 (or successor) and should be submitted to the applicable address in section 9.08(6) of Rev. Proc. 2007-1 (or successor). Alternatively, the request may be faxed to a fax number provided by the national office contact person for the Form 3115. If faxed, a copy of the request and an original signed penalties of perjury statement must also be mailed or delivered to the applica-

ble address in section 9.08(6) of Rev. Proc. 2007-1 (or successor).

.05 Notification of approval or denial. The national office will notify the taxpayer, orally and later in writing, of the approval or denial of the taxpayer's request to revise the year of change for a pending Form 3115.

.06 Service's discretion to deny a request. The Service reserves the right to deny a taxpayer's request for a revised year of change for a pending Form 3115 in any situation in which the Service determines it would not be in the best interest of sound tax administration to allow the taxpayer to revise the year of change. A taxpayer is not entitled to a conference with the Service if the request to revise the year of change for a pending Form 3115 is denied.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-27 is modified.

SECTION 5. EFFECTIVE DATE

.01 In general. This revenue procedure is effective for Forms 3115 filed on or after, or pending in the national office on, November 6, 2007.

.02 Transition rule for pending consent agreements. If on or before November 26, 2007, a taxpayer has received a letter ruling approving a change in accounting method for which the taxpayer has not signed and returned the consent agreement and the period of time for signing and returning the consent agreement (see section 8.11 of Rev. Proc. 97-27) has not expired, the taxpayer may request to revise the year of change for the change in accounting method under the provisions of this revenue procedure. The taxpayer must submit any such request to revise the year of change prior to, and within the period of time for, signing and returning the consent agreement.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Brenda D. Wilson of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Wilson at (202) 622-4800 (not a toll-free call).