

Consent to extend the statute of limitation¹

Sec. 6501(c) allows the IRS and a taxpayer to consent in writing to extend the statute of limitation to assess tax. Usually the Service makes the request to extend the limitation period because it cannot complete an examination within the normal three-year period for making an assessment against the taxpayer. There is a six-year limitation in cases where the gross income shown on the return or the gross receipts of a trade or business (excluding the cost of sales or services) are understated by 25% or more. The statute may be extended on all types of taxes except estate tax (Sec. 6501(c) (4)). The internal procedures of the IRS can be found in the Internal Revenue Manual (IRM), available to the public at www.irs.gov.

IRM Section 4.10.2.2.1 states that a group manager must give approval before an examiner may request consent from the taxpayer. The Service's policy is that an examiner should secure consent only in unusual circumstances (Rev. Proc. 57-6). The extension period should be only for the time necessary to complete the examination and administrative actions. A list of some situations in which an examiner should request consent is found in IRM Section 25.6.22.2.1. The most common circumstances are if (1) the limitation period will expire within 180 days and the taxpayer is asking that the matter be referred to Appeals or (2) there is not enough time in which to process an agreed case. Other possible reasons include (a) compliance with local or national policies; (b) delays by the revenue agent; (c) delays by the taxpayer or the representative; (d) expansion of the audit to include other issues, either civil or criminal; and (e) other compelling reasons agreed to by the taxpayer or representative and the IRS. Typically, the Service considers 120 days as the time frame needed to process an agreed case.

Form 872, Consent to Extend the Time to Assess Tax, is the document usually signed to extend the statute of limitation. The Service may ask a taxpayer to sign Form 872-A, Special Consent to Extend the Time to Assess Tax, which is somewhat of an open-ended consent in that the statute does not expire until 90 days after the IRS or the taxpayer mails Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, or the Service issues a statutory notice of deficiency. Versions of the Form 872 series are used in other instances, such as cases involving TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) entities, partnerships, and return preparer penalties.

Besides signing the form, what options are available to a taxpayer when presented with an extension request for an income tax case? The taxpayer can ask for a fixed statute date as opposed to an open ended one.

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An open-ended statute of limitation tends to result in an examination being in process for a long time because there may be no urgency for the examiner to complete the audit. It also can expose a taxpayer to an unexpected assessment if the Form 872-T is not submitted. A taxpayer can extend a fixed extension date, if necessary, by signing a second consent. The taxpayer could ask for a shorter extension period than requested by the IRS so that the examination could be concluded quickly. The taxpayer can also request a consent that is restricted to specific issues. The procedures for restricted consents are found in Rev. Proc. 68-31, as modified by Rev. Proc. 77-6. Examiners tend to not like restricted consents because the restrictive language must be approved by certain Service officials, necessitating procedures that result in delays. Such consents may not be obtained until examinations have been completed and the examination reports have been prepared. Restricted consents are normally limited to two issues. Declining to sign the consent can result in a deficiency notice being issued, as mentioned above, but that may not be to the taxpayer's disadvantage. Before issuance, a notice is reviewed for accuracy by the appropriate IRS officials; once it is issued, it gives the taxpayer a clear picture of proposed adjustments.

The taxpayer may file a petition with the U.S. Tax Court but may also request Appeals consideration, which Appeals may grant at its discretion. Thus, an Appeals hearing may still be available without the taxpayer having to go to Tax Court. Appeals are generally precluded from raising new issues or adjustments that the examiner did not propose. A practitioner may be authorized by a power of attorney from the taxpayer to extend the statutory period; however, the practitioner should have the taxpayer sign the consent to avoid a situation in which the client maintains that no such authority was given to the practitioner or that the form was signed without the taxpayer's knowledge.

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