

Director sends the notice and demand for immediate payment regardless of the filing of an administrative appeal or of a court petition. Regardless of filing an administrative appeal or of petitioning a court, enforced collection action may proceed after the 10-day payment period unless the taxpayer posts the bond described in section 6863. For purposes of collection procedures such as section 6331 (regarding levy), assessments under the authority of paragraph (a) of this section do not constitute situations in which the collection of such tax is in jeopardy and, therefore, do not suspend normal collection procedures.

(d) *Effective date.* This section is effective December 5, 1995.

[T.D. 8628, 60 FR 62212, Dec. 5, 1995]

#### JEPARDY ASSESSMENTS

### § 301.6861-1 Jeopardy assessments of income, estate, gift, and certain excise taxes.

(a) *Authority for making.* If a district director or director of a service center believes that the assessment or collection of a deficiency in income, estate, gift, or chapter 41, 42, 43, or 44 tax will be jeopardized by delay, then the director is required to assess such deficiency immediately, together with the interest, additional amounts, and additions to the tax provided by law. A district director will make an assessment under this section if collection is determined to be in jeopardy because at least one of the conditions described in § 1.6851-1(a)(1) (i), (ii), or (iii) (relating to termination assessments) exists. A jeopardy assessment may be made before or after the mailing of the notice of deficiency provided by section 6212. However, a jeopardy assessment for a taxable year under section 6861 cannot be made after a decision of the Tax Court with respect to such taxable year has become final (see section 7481) or after the taxpayer has filed a petition for review of the decision of the Tax Court with respect to such taxable year. In the case of a deficiency determined by a decision of the Tax Court which has become final or with respect to which the taxpayer has filed a petition for review and has not filed a bond as provided in section 7485, assessment

may be made in accordance with the provisions of section 6215, without regard to section 6861.

(b) *Amount of jeopardy assessment.* If a notice of a deficiency is mailed to the taxpayer before it is discovered that delay would jeopardize the assessment or collection of the tax, a jeopardy assessment may be made in an amount greater or less than that included in the deficiency notice. If a deficiency is assessed on account of jeopardy after the decision of the Tax Court is rendered, the jeopardy assessment may be made only with respect to the deficiency determined by the Tax Court.

(c) *Jurisdiction of Tax Court.* If the jeopardy assessment is made before the notice in respect of the tax to which the jeopardy assessment relates has been mailed pursuant to section 6212(a), the district director shall, within 60 days after the making of the assessment, send the taxpayer a notice of deficiency pursuant to such subsection. The taxpayer may file a petition with the Tax Court for a redetermination of the amount of the deficiency within the time prescribed in section 6213(a). If the petition of the taxpayer is filed with the Tax Court, either before or after the making of the jeopardy assessment, the Commissioner, through his counsel, is required to notify the Tax Court of such assessment or of any abatement thereof, and the Tax Court has jurisdiction to redetermine the amount of the deficiency, together with all other amounts assessed at the same time in connection therewith.

(d) *Payment and collection of jeopardy assessment.* After a jeopardy assessment has been made, the district director is required to send notice and demand to the taxpayer for the amount of the jeopardy assessment. Regardless of whether the taxpayer has filed a petition with the Tax Court, he is required to make payment of the amount of such assessment (to the extent that it has not been abated) within 10 days after the sending of notice and demand by the district director, unless before the expiration of such 10-day period he files with the district director a bond as provided in section 6863. Section 6331 provides that, if the district director makes a finding that the collection of

the tax is in jeopardy, he may make demand for immediate payment of the amount of the jeopardy assessment and, in such case, the taxpayer shall immediately pay such amount or shall immediately file the bond provided in section 6863. If a petition is not filed with the Tax Court within the period prescribed in section 6213(a), the district director will be so advised, and, if collection of the deficiency has been stayed by the timely filing of a bond as provided in section 6863, he should then give notice and make demand for payment of the amount assessed plus interest. After the Tax Court has rendered its decision and such decision has become final, the district director will be notified of the action taken. He will then send notice and demand for payment of the unpaid portion of the amount determined by the Tax Court, the collection of which has been stayed by the bond. If the amount of the jeopardy assessment is less than the amount determined by the Tax Court, the difference will be assessed and collected as part of the tax upon the issuance of a notice and demand therefor. If the amount of the jeopardy assessment is in excess of the amount determined by the Tax Court, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor.

(e) *Abatement of excessive assessment.* The district director or the director of the regional service center may, at any time before the decision of the Tax Court is rendered, abate a jeopardy assessment in whole or in part if the district director believes that such assessment is excessive in amount.

(f) *Abatement if jeopardy does not exist.* (1) The district director or the director of the regional service center may abate a jeopardy assessment in whole or in part, if it is shown to the satisfaction of the district director that jeopardy does not exist. An abatement may not be made under this paragraph after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with such court, after the expiration of the period for filing such petition.

(2) After abatement of a jeopardy assessment in whole or in part, a deficiency may be assessed and collected in the manner authorized by law as if the jeopardy assessment or part thereof so abated had not existed. If a notice of deficiency has been sent to the taxpayer before the abatement of the jeopardy assessment in whole or in part, whether such notice was sent before or after the making of the assessment, such abatement will not affect the validity of the notice or of any proceedings for redetermination based thereon. The period of limitation on the making of assessments and the beginning of levy or a proceeding in court for collection in respect of any deficiency shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the date on which such jeopardy assessment is abated in whole or in part. The provisions of this subparagraph may be illustrated by the following example:

*Example.* On March 18, 1958, 28 days before the last day of the 3-year period of limitations on assessment, a jeopardy assessment is made in respect of a proposed deficiency. On May 2, 1958, before the mailing of the notice of deficiency provided by section 6861(b), this assessment is abated. By virtue of this subparagraph, the last day of the period of limitations for the making of an assessment is June 9, 1958, that is, the 38th day after the date of the abatement. If the notice of deficiency provided for in section 6861(b) has been sent before the abatement, the running of the period of limitations on assessment would have been suspended pursuant to the provisions of the section 6503(a).

(3) See section 7429 with respect to requesting the district director to review the making of the jeopardy assessment.

(g) *Special rules for chapters 42 and 43 taxes.* For purposes of paragraph (a) of this section, the amount of a deficiency with respect to any tax imposed by section 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4951(a), 4952(a), 4955(a), 4971(a) or 4975(a) shall include the amount of additional tax imposed by section 4941(b), 4942(b), 4943(b), 4944(b), 4945(b), 4951(b), 4952(b), 4955(b), 4971(b) or 4975(b) for failure to correct the act (or failure

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to act) which gave rise to liability for the initial tax.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7575, 43 FR 58817, Dec. 18, 1978; T.D. 7838, 47 FR 44253, Oct. 7, 1982; T.D. 8084, 51 FR 16305, May 2, 1986; T.D. 8628, 60 FR 62213, Dec. 5, 1995]

### § 301.6862-1 Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes.

(a) If the district director believes that the collection of any tax (other than income, estate, gift, chapter 41, 42, 43, or 44 tax) will be jeopardized by delay, the director shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A district director will make an assessment under this section if collection is determined to be in jeopardy because at least one of the conditions described in § 1.6851-1(a)(1)(i), (ii), or (iii) (relating to termination assessments) exists. For example, assume that a taxpayer incurs on January 18, 1977, liability for tax imposed by section 4061, that the last day on which return and payment of such tax is required to be made is May 2, 1977, and that on January 18, 1977, the district director determines that collection of such tax would be jeopardized by delay. In such case, the district director shall immediately assess the tax.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the district director shall, without delay, issue a notice and demand for payment thereof in full. Upon failure or refusal to pay the amount demanded, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331 (a). However, the collection of the whole or any part of the amount of the jeopardy assessment may be stayed by timely filing with the district director a bond as provided in section 6863.

(c) See section 7429 with respect to requesting the district director to re-

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view the making of the jeopardy assessment.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7575, 43 FR 58817, Dec. 18, 1978; T.D. 7838, 47 FR 44253, Oct. 7, 1982]

### § 301.6863-1 Stay of collection of jeopardy assessments; bond to stay collection.

(a) *General rule.* (1) The collection of an assessment under section 6851, 6861, or 6862 (referred to as a “jeopardy assessment” for purposes of this section), or under section 6852 (referred to as a political assessment for purposes of this section) of any tax may be stayed by filing with the district director a bond on the form to be furnished by the district director upon request.

(2) The bond may be filed—

(i) At any time before the time collection by levy is authorized under section 6331(a), or

(ii) After collection by levy is authorized and before levy is made on any property or rights to property, or

(iii) In the discretion of the district director, after any such levy has been made and before the expiration of the period of limitations on collection.

(3) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the district director) of the jeopardy assessment or political assessment collection of which is sought to be stayed. See section 7101 and § 301.7101-1, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(4) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment or political assessment is abated by the district director, then the bond shall be at the request of