

Rev. Proc. 2002-26

SECTION 1. PURPOSE

The purpose of this revenue procedure is to update and restate the Internal Revenue Service's position regarding the application, by the Service, of a partial payment of tax, penalty, and interest for one or more taxable periods. This revenue procedure supersedes Rev. Rul. 73-304 (1973-2 C.B. 42); Rev. Rul. 73-305 (1973-2 C.B. 43); and Rev. Rul. 79-284 (1979-2 C.B. 83).

SECTION 2. SCOPE

This revenue procedure applies to all taxes under the Internal Revenue Code, except alcohol, tobacco, and firearms taxes and the harbor maintenance tax. For purposes of this revenue procedure, the

term "penalty" includes any additional amount, addition to tax, or assessable penalty.

SECTION 3. PROCEDURE

.01 If additional taxes, penalty, and interest for one or more taxable periods have been assessed against a taxpayer (or have been mutually agreed to as to the amount and liability but are unassessed) at the time the taxpayer voluntarily tenders a partial payment that is accepted by the Service and the taxpayer provides specific written directions as to the application of the payment, the Service will apply the payment in accordance with those directions.

.02 If additional taxes, penalty, and interest for one or more taxable periods have been assessed against a taxpayer (or have been mutually agreed to as to the amount and liability but are unassessed) at the time the taxpayer voluntarily tenders a partial payment that is accepted by the Service and the taxpayer does not provide specific written directions as to the application of payment, the Service will apply the payment to periods in the order of priority that the Service determines will serve its best interest. The payment will be applied to satisfy the liability for successive periods in descending order of priority until the payment is absorbed. If the amount applied to a period is less than the liability for the period, the amount will be applied to tax, penalty, and interest, in that order, until the amount is absorbed.

.03 Payments made pursuant to the terms of offers in compromise (or offers in compromise and collateral agreements) that have been accepted by the Government in compromise of outstanding tax liabilities, in accordance with § 7122 of the Internal Revenue Code, will be applied as follows:

(1) If an offer in compromise and collateral agreement have been accepted by the Government in compromise of an outstanding liability and the offer in compromise and collateral agreement provide for the allocation of payments made pursuant

thereto, payments made pursuant to the agreements will be applied by the Service in accordance with the terms of the agreements.

(2) In all other cases, the Service will apply payments, whether paid in installments or in a lump sum and whether paid pursuant to the offer or a collateral agreement, to periods in the order of priority that the Service determines will serve its best interest. The payment will be applied to satisfy the liability for successive periods in descending order of priority until the payment is absorbed. If the amount applied to a period is less than the liability for the period, the amount will be applied to tax, penalty, and interest, in that order, until the amount is absorbed.

.04 If any part of a payment is applied to interest under the rules set forth in this revenue procedure, the amount applied to interest is treated for purposes of § 163 of the Code as interest paid in the year in which the payment is made. Under § 163, interest paid or accrued in a taxable year may be deducted in calculating taxable income for the year except to the extent such interest is personal interest as defined in § 163(h) and § 1.163-9T(b)(2) of the Income Tax Regulations or is otherwise disallowed under applicable provisions of the Internal Revenue Code and Income Tax Regulations.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 73-304, Rev. Rul. 73-305, and Rev. Rul. 79-284 are hereby superseded.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Inga Plucinski of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice. For further information regarding this revenue procedure, contact Emly Berndt at (202) 622-4940 (not a toll-free call).