

CC-2001-044
UIL 7436.01-05

October 4, 2001

Upon Incorporation

Subject: Change in Litigating Position Cancellation Date: into CCDM

Purpose

The purpose of this Notice is to update CCDM Notice CC-2001-004 regarding the change in the Tax Court's jurisdiction as a result of the statutory amendment to I.R.C. § 7436 (unless otherwise stated, all citations herein preceded by "§" or "section" are citations to the Internal Revenue Code). Section 7436(a) was amended to provide the Tax Court with jurisdiction to determine the proper amount of employment tax under worker status and section 530¹ treatment determinations, effective retroactively to August 5, 1997. Section 314(f) of the Community Renewal Tax Relief Act of 2000 (H.R. 5662, incorporated in H.R. 4577, the Consolidated Appropriations Act, 2001), Pub. L. No. 106-554, 114 Stat. 2763, 2763A-643 (2000).

General

In Notice CC-2001-004, we stated our position that in addition to the two determinations addressed in § 7436(a)(1) (worker status) and § 7436(a)(2) (section 530 treatment), the Tax Court also has jurisdiction to determine the proper amount of employment tax that relates to those determinations.² This Notice provides additional information regarding our interpretation of "the proper amount of employment tax," in particular, whether it includes additions to tax and penalties.

¹ Section 530 of the Revenue Act of 1978, as amended, which is not codified in the Internal Revenue Code, can be found as a note to § 3401(a) in the CCH and RIA versions of the Code.

² Neither the new statutory language nor the legislative history suggests that the Court's jurisdiction is expanded to employment tax issues other than worker classification.

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In light of the amendment providing the Tax Court with jurisdiction to determine the proper amount of the related employment tax, the position of the Chief Counsel is that this amendment also provides the Tax Court with jurisdiction to determine the proper amount of additions to tax and penalties related to worker classification or section 530 treatment determinations.

Section 7436(e) provides that the term “employment tax” means any tax imposed by subtitle C. The taxes imposed by subtitle C are Federal Insurance Contributions Act (FICA) taxes, under §§ 3101-3128, the Railroad Retirement Tax Act (RRTA) taxes, under §§ 3201-3233, the Federal Unemployment Tax Act (FUTA) taxes, under §§ 3301-3311, the Railroad Unemployment Repayment Tax (RURT) taxes, under §§ 3321-3322, and the collection of income tax at source on wages, under §§ 3401-3406.

Additions to tax and penalties are governed by §§ 6651-6751. Typically, the additions to tax and penalties applicable in a § 7436 case are found in subtitle F, chapter 68A, §§ 6651-6665, and do not include the assessable penalties in chapter 68B, §§ 6671-6724. Examples of applicable additions to tax and penalties include § 6651(a)(1) (failure to file return), § 6651(a)(2) (failure to pay), § 6656(a) (failure to deposit timely and in a correct manner), § 6662(a) (accuracy-related), and § 6663(a) (fraud).

Section 6665(a)(1) provides that the additions to tax, additional amounts, and penalties provided in chapter 68 (§§ 6651-6751) are to be assessed and collected in the same manner as taxes. Section 6665(a)(2) provides that, except as otherwise provided, any reference in title 26 to tax imposed by title 26 shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by chapter 68 (§§ 6651-6751). Section 6665(b) contains exceptions to the general rules of § 6665(a) that are not generally applicable in a § 7436 case.

Thus, unless otherwise provided (or excluded pursuant to § 6665(b)), tax imposed by title 26 is deemed to include additions to tax, additional amounts, and penalties. Under § 7436(e), the term “employment tax” is defined as any tax imposed by subtitle C. Section 7436(e) does not specifically exclude additions to tax and penalties from employment tax. There is also no specific exclusion under § 6665(b). Accordingly, the amount of employment tax generally includes additions to tax and penalties related to the tax imposed by subtitle C with respect to worker classification and section 530 treatment determinations.

For the reasons specified, it is the position of the Chief Counsel that the Tax Court’s jurisdiction under § 7436 includes related additions to the tax, additional amounts, and penalties in chapter 68A of subtitle F (§§ 6651-6665).

