



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL DISTRICT COUNSELS
ALL ASSOCIATE DISTRICT COUNSELS

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Implementation of Section 6501(c)(4)(B)

The purpose of this memorandum is to provide guidance to Counsel attorneys regarding new section 6501(c)(4)(B) of the Internal Revenue Code, as enacted by section 3461(b) of the IRS Restructuring and Reform Act of 1998 (RRA 98). This provision applies to requests to extend the period of limitations made after December 31, 1999.

Background

New section 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

As part of RRA 98 training, Service personnel were instructed that section 6501(c)(4)(B) can be satisfied by informing taxpayers, either orally or in writing, of their right to refuse to consent to an extension of the statute of limitations, or to limit such an extension to specific issues or to a specific time frame. Service personnel were advised to secure consents to extend statutes of limitations by sending Letter 907(DO)(Rev. 2-2000) or Letter 907(SC)(Rev. 12-1999). See IRM 4541.1 and IRM 121.2.22.3. Service personnel were advised they could provide the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period (Rev. 12-1999), each time a statute extension was requested, but the best practice would be to advise taxpayers of their rights by sending Letter 907(DO)(Rev. 2-2000) or Letter

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907(SC)(Rev. 12-1999). (See IRS RRA 98 National Resource Center Question 203.) Service personnel were instructed to document their actions.

It has come to the attention of this office that, notwithstanding the implementation procedures summarized above, in certain cases, consents to extend the period of limitations may have been requested after January 1, 2000, without following the requirements of section 6501(c)(4)(B). In addition, it appears that consents to extend the period of limitations may have been requested after January 1, 2000, using the prior versions of Letter 907, and Publication 1035.

It is possible that courts may not sustain the validity of extensions obtained where there was not strict compliance with the provisions of section 6501(c)(4)(B). As a purely precautionary measure, instructions were recently transmitted to the Assistant Commissioner (Examination), the National Director of Appeals, and all Service Center Directors, the Service personnel responsible for securing extensions, with respect to the requirements of section 6501(c)(4)(B).

Procedures

Service personnel have been instructed to check their inventories for cases where extensions were requested after December 31, 1999. If Service personnel did not follow section 6501(c)(4)(B), and the period of limitations would remain open on those cases absent the extension, Service personnel are to request new extensions following the proper procedures. Specifically, Service personnel have been instructed to examine the administrative file to determine whether Form 9984, Examining Officer Activity Record, or other written documentation, reflects that section 6501(c)(4)(B) was followed when the extension was requested.

It is the position of this office that section 6501(c)(4)(B) has been followed and we will defend the validity of the extension if the Form 9984, or other written documentation in the administrative file, reflects that the extensions were requested in one of the following scenarios:

- Service personnel requested the extension by using Form Letter 907(DO)(Rev. 2-2000) or Letter 907(SC)(Rev. 12-1999);
- Service personnel furnished the taxpayer or representative with a copy of any of these specific revisions of Publication 1035: Rev. 12-1999, Rev. 8-1996, or Rev. 8-1987;
- Service personnel orally advised the taxpayer or representative of all the provisions of section 6501(c)(4)(B) and documented this action contemporaneously in writing on Form 9984 or elsewhere in the administrative file;

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- The taxpayer or representative declined to sign an unrestricted extension, Form 872-A, and instead signed a restricted extension, Form 872, that either limited the extension to certain issues or certain time periods; or, if the taxpayer refused to sign a restricted extension, Form 872, as originally prepared by the Service, and instead signed one containing additional restrictions, such as a shorter time period or fewer issues. See IRM 22.8.4(1);

In all other cases, where it appears that the provisions were not followed, we recommended that Service personnel immediately contact District Counsel for expedited legal advice regarding the validity of the extension. Service personnel have been advised to provide the facts of the particular case, including the circumstances under which the extension was secured, the type of tax, the taxpayer, the tax period(s), and the potential adjustments, to District Counsel. Service personnel have also been advised to be prepared to issue timely statutory notices of deficiency for those cases where the statute, without the extension, will expire on April 15, 2000, while District Counsel considers whether the extensions are valid. District Counsel should make a recommendation on a case by case basis regarding whether the extension is valid and immediately coordinate all advice with the Procedural Branch of the Field Service Division. The Procedural Branch will determine the validity of the extensions in question on a case by case basis. If the Procedural Branch determines that the extension is invalid, and an extension cannot be secured, a statutory notice of deficiency should be issued.

In addition, any Tax Court or tax refund litigation case raising an issue under section 6501(c)(4)(B) should be coordinated immediately with the Procedural Branch of the Field Service Division.

For further information regarding this notice contact the Procedural Branch at (202) 622-7940 or (202) 622-7950.