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From:

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To:

Cc:

Subject: Rebuttal

Hi,

After reviewing the Taxpayer's protest, we believe that the CCA we prepared in January responds to all but two of the arguments that the Taxpayer raised in its protest. We therefore recommend that the rebuttal contains two pieces: (1) the text of our January CCA, and (2) a short section responding to the Taxpayer's additional arguments (pasted into the end of this e-mail).

I will attach our full proposed rebuttal (i.e., our CCA plus the paragraphs below) to a subsequent e-mail.

Thank you!

Additional Response to Argument Taxpayer Raised in its Protest

In its protest, the Taxpayer raised two points that the technical analysis in the CCA did not directly address.

First, the Taxpayer briefly argued that a court should resolve statutory ambiguities "in favor of the taxpayer." Ocean Drilling & Exploration Co. v. United States, 24 Cl. Ct. 714, 734 (1991). As a threshold matter, the Service first notes that for the Taxpayer to cite this principle implicitly undermines its general position that compensation's meaning is "plain and unambiguous" because this principle of statutory interpretation applies only "if there is a doubt as to the meaning of the provisions of the Internal Revenue Code." Ocean Drilling, 24 Cl. Ct. at 734. More significantly, the present controversy's context is distinct from that of Ocean Drilling because here there is a treasury regulation that states the Service's interpretation of the statutory provision at issue. That is, here Treas. Reg. § 31.3231(e)-1 states:

The term compensation has the same meaning as the term wages in section 3121(a), determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation.

By contrast, the court in Ocean Drilling cited this principle in the context of a dispute in which no treasury regulation stated the Service's position. There, the Service was arguing that regulations promulgated under § 638 of the Code governed the meaning of a term in § 953 of the Code. The court cited several principles of statutory interpretation to conclude that the regulations under § 638 did not apply to § 953, including (but not limited to) the principle that a court should interpret statutory ambiguities in the taxpayer's favor. In the present controversy, though, Treas. Reg. § 31.3231(e)-1 applies to the statutory term at issue.

Second, the Taxpayer asserts that the language of Treas. Reg. § 31.3231(e)-1 itself recognizes that compensation can be narrower than wages due to the phrase “except as specifically limited by RRTA.” The preamble to the regulations, as reproduced above, directly contradicts an intent for such interpretation of that phrase. Rather, the quoted regulatory language acknowledges that Congress had enacted and may in the future enact separate exclusions and provisions regarding the application of RRTA tax and FICA tax. For example, § 3231(e)(1) excludes from RRTA “compensation earned in the service of a local lodge or division of a railway-labor-organization employer” if it is less than \$25 a month and certain “[c]ompensation for service as a delegate to a national or international convention of a railway labor organization.”