

ID: CCA_2010030109160941

Number: **201013044**

Release Date: 4/2/2010

Office:

UILC: 6230.03-00, 6230.03-01

From:

Sent: Monday, March 01, 2010 9:16:16 AM

To:

Cc:

Subject: IRC 6230 questions

Good morning

I've addressed your section 6230 questions and included them below for your review. Please feel free to call me if you have any questions. Thanks.

Issues:

In General:

1. This question has been referred to our General Legal Services division for coordination. We'll respond to this question when we hear back from them.
2. Is the notice of computational adjustment required to be sent?

Per Chief Counsel Notice 2009-027, [Frequently Asked Questions Regarding The Unified Partnership Audit And Litigation Procedures Set Forth In Sections 6221-6234](#) (August 21, 2009), for purposes of I.R.C. § 6230(c)(2), the Service is deemed to have sent to the partner a notice of computational adjustment when it sends to the partner Form 4549, Income Tax Examination Changes, showing the adjustments making the partner's tax return consistent with partnership-level determinations and the subsequent change to tax liability. [See](#) IRM 8.19.1.6.9.7(3), Computational Adjustments.

The Service is required to send the partner the notice of computational adjustment because this is the first bill by which collection initiates. The date the Service does so starts the 6-month period that the partner has for filing a claim for refund on the grounds that the Service erroneously imposed any penalty. [See](#) I.R.C. §§ 6230(c)(1)(C) and (2)(A).

3. Should this notice of computational adjustment be mailed by certified mail?

There is no requirement for the notice of computational adjustment to be mailed via certified mail; however, since the date of mailing starts the above-described 6 month period for the partner to file a claim for refund, the Service may send the notice of computational adjustment via certified mail to easily establish this date.

4. If the notice of computational adjustment is not sent or it is not sent by an authorized person and the penalties referred to in IRC 6230(c)(1)(C) were assessed, does the 6 month period referred to in IRC 6230(c)(2)(A) exist? What are the repercussions?

If the Service does not send a notice of computational adjustment imposing penalties relating to an adjustment to a partnership item, the 6-month period described in I.R.C. § 6230(c)(2)(A) does not start. If the notice of computational adjustment imposing penalties is sent by any IRS person, it is arguable that the 6-month period described in I.R.C. § 6230(c)(2)(A) starts the day after the mailing regardless since the partner does receive the notice and has the opportunity to file a claim for refund.

As it relates to this specific case:

1. Does the Form 1040x filed on April 8th, 2004 meet the requirements of IRC 6227(d)?

This issue is moot because, even if the Form 1040X could qualify as an administrative adjustment request (AAR) (see Samueli v. Comm'r, 2009 WL 1397177 (May 18, 2009)), I.R.C. § 6228(b)(2)(C) prevents a petition from being filed based on an AAR after a TEFRA proceeding has begun.

2. Should the tax amounts referred to on the April 8th, 2004 Form 1040x have been assessed?

Yes. I.R.C. § 6201(a)(1) permits the assessment. See Treas. Reg. § 301.6201-1(a)(1).

3. Did the Form 4549-A issued January 7, 2009 meet the requirements of the notice of computational adjustment referred to in IRC 6231(c)(2)(A)?

The above should refer to I.R.C. § 6230(c)(2)(A), as there is no I.R.C. § 6231(c)(2)(A).

Chief Counsel Notice 2009-027, Frequently Asked Questions Regarding The Unified Partnership Audit And Litigation Procedures Set Forth In Sections 6221-6234 (August 21, 2009) directs that the Service is deemed to have sent to the partner a "notice of computational adjustment" when it sends to the partner a Form 4549 and refers to IRM 8.19.1.6.9.7(3). IRM 8.19.1.6.9.7(3) states that a form entitled "Notice of Income Tax Examination Changes" is used for the purpose of notifying the partner of computational adjustment. The Form 4549 is entitled "Income Tax Examination Changes" while the Form 4549-A is entitled "Income Tax Discrepancy Adjustments." These forms are virtually identical except the Form 4549 includes a signature line for the taxpayer, which, if signed, waives the taxpayer's appeal rights with the Service and ability to contest the form with the Tax Court. The Form 4549-A does not include a signature line for the taxpayer but conveys the same information as the Form 4549; consequently, it meets the requirements of the notice of computational adjustment referred to in I.R.C. § 6230(c)(2)(A), starting the 6-month period on January 8, 2009 (i.e. the day after the Service mailed the Form 4549-A).

4. Does the Taxpayer's representative (POA) prepared Letter dated February 6th, 2009 meet the requirements of IRC 6230(c)(2)(A)? In particular, since it was not filed with the Service Center as required by Internal Revenue Regulation § 301.6230(c)-1.

Because the claim was not filed with the Service Center, it is not a valid claim.

5. If not, is the only option left for the Taxpayer to pay the penalty and file suit in US Court of Claims?

The taxpayer can pay the penalty and then file suit for refund in the U.S. Court of Federal Claims or district court, but only if he does so within the period provided under I.R.C. § 6230(c).

6. May collection of the account balance continue based upon the current situation?

Since the taxpayer signed Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, the Service can continue its collection efforts of the taxpayer's account balance. By signing this form, the taxpayer consented to the immediate assessment and collection of deficiencies and acknowledged that by signing, he would not be able to contest the years listed on the form unless additional deficiencies were determined for those years.

Additionally, the balance of the penalty determined in the TEFRA partnership proceeding may be collected since I.R.C. § 6230(a)(2)(A)(i) excludes such amounts from deficiency procedures.