



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Internal Revenue Service National Office Field Service
Advice

This Field Service Advice responds to your memorandum dated September 24, 1998. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A =
B =
Year 1 =
Year 4 =
Year 5 =
Year 6 =

ISSUE:

Whether the Service erred in issuing a joint refund check to A and B.

CONCLUSION:

If B filed a separate claim for refund, the Service should have issued B's share of the refund to B. Any error on the part of the Service, however, was not the

cause of B's nonreceipt of the refund because a bank cashed the jointly issued check even though it was only endorsed by A.

FACTS:

A and B filed a joint income tax return for Year 1. This return was filed one month late. The return showed no tax liability, and A and B were issued a refund of all of their withholding credits. A and B subsequently divorced and in Year 5, A timely filed the Year 4 tax return using the "Head of Household" status.

The Service had begun an audit of A and B's liability for Year 1. In Year 5, before A's return was filed, the Service assessed additional tax, penalties, and interest for Year 1. During Year 5 and Year 6, A and B both made payments to satisfy this liability. A paid a substantially greater part of the liability than did B.

In Year 6, B requested an audit reconsideration. As a result of the audit reconsideration, the Service abated a portion of the additional assessment. This partial abatement resulted in an overpayment. It does not appear that a claim for refund was ever filed for Year 1. The request for audit reconsideration was granted and, as a result, the Service, during Year 6, issued a computer-generated refund check. The refund check was issued jointly to A and B. The refund check was sent to A's address. It appears that this was the address used by A and B during Year 1. Although the check was issued to both A and B, A alone endorsed the check and presented it to a bank. The bank honored the check.

LAW AND ANALYSIS

Because there is no administrative file in this case, we do not have a copy of what B submitted at the time she requested audit reconsideration. If the audit reconsideration contained a claim for refund, either formal or informal, the refund should have been apportioned in accordance with Rev. Rul. 80-8, 1980-1 C.B. 298. If the audit reconsideration did not contain a claim for refund, it was not inappropriate for the Service to issue the refund check to both A and B. In any event, B would have recourse, outside the tax laws, against A and the bank for negotiating a check that was issued jointly to A and B, but only endorsed by A.

If the request for audit reconsideration included a claim for refund, the Service should have issued the refund in accordance with Rev. Rul. 80-8. A claim for refund may be either formal (e.g., on a Form 1040X (Amended U.S. Individual Income Tax Return) or informal. An informal claim must meet three requirements in order to be valid. First, it must be in writing or have a written component. Second,

it must specify the tax year for which a refund is sought. Third, it must state the basis for the overpayment and provide the Service with enough information to examine the claim. *United States v. Kales*, 314 U.S. 186, 194 (1941). If the request for audit reconsideration contained such a claim, and if that claim was submitted by B only, the Service should have issued the refund to B alone. B's share of the overpayment and, therefore, the amount of the refund that would be issued to B alone, would be computed according to the formula set forth in Rev. Rul. 80-8.

Assuming that the request for audit reconsideration included a claim for refund, the Service should have issued to B alone B's share of the refund. Instead, the Service issued the entire amount of the refund to both A and B. The Service issued B's portion of the refund. It also issued A's portion of the refund. B, however, did not get B's portion of the refund due to actions on the part of A and the bank that cashed the jointly issued check. Any error the Service may have made by issuing the full amount of the refund to both A and B did not lead to B's nonreceipt of the refund.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



If you have any further questions, please call the branch telephone number.