

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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from: Ashton Trice
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subject: Form 8300 Penalties and Limitations Period

This memorandum responds to your request for assistance dated September 5, 2008. This advice may not be used or cited as precedent.

Issue

1. Whether there is a period of limitations on the assessment of a penalty imposed by section 6722 for failure to furnish a payee statement.
2. Whether the failure to provide on Form 8300 identifying information of the person from whom cash was received, such as the person's Taxpayer Identification Number, is sufficiently egregious to be subject to the section 6721 penalty.

Conclusion

1. There is no period of limitations applicable to the assessment of a penalty under section 6722. The Service may avoid arguing over the limitations period if it assesses the section 6722 penalty within 3 years after a business files Form 8300.
2. The penalty under section 6721 may always be assessed on information returns that contain errors or omissions that relate to taxpayer identification numbers, surnames of payees, and monetary amounts.

PMTA : 02014

Facts

A Business timely filed a Form 8300 with the Service in 2003, omitting the Taxpayer Identification Numbers (TIN) of a customer who paid cash to the business. The business did not provide a payee statement notifying each customer whose name was identified on Form 8300. An agent conducting a Form 8300 examination asserted penalties for the failure to file a correct Form 8300 under section 6721, and for the failure to furnish a payee statement under section 6722. On review, the case was returned to the field based on the determination that the period of limitations on assessment had run on both penalties.

Analysis

Section 6050I(a) and Treas. Reg. § 1.6050I-1(e) require that any person engaged in a trade or business that receives cash in excess of \$10,000 in one transaction, or two or more related transactions, file Form 8300 with the Service within 15 days of receipt of the reportable cash payment. Form 8300 must include the customer's name, TIN, and address, the amount of cash received, the date and nature of the transaction, and other information as required on the form. I.R.C. § 6050I(b); Treas. Reg. § 1.6050I-1(e)(2). The purpose of this information is so the Service can maintain reports or records which have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, by directing the federal government's attention to unusual or questionable transactions. See IRS Form 8300. Any business required to file Form 8300 must also furnish a written statement to each person identified on the form by January 31 of the succeeding calendar year. I.R.C. § 6050I(e); Treas. Reg. § 1.6050I-1(f)(3). This statement must identify the business' name, address, and telephone number, the aggregate amount of reportable cash received during the calendar year, and that the information was reported to the IRS. *Id.*

1. Statute of limitations on the assessment of penalties imposed by section 6722

Section 6501 of the Code provides that, except as otherwise provided, tax must be assessed within 3 years after the return was filed, whether or not such return was filed on or after the date prescribed. For purposes of the statute of limitations on assessment of taxes, the term "return" means the return required to be filed by the taxpayer. I.R.C. § 6501(a). Thus, section 6501(a) depends upon the filing of a return to begin the running of the limitations period.

Section 6501 does not impose a limitation period on the assessment of penalties that are not dependent upon the filing of a return. See Sage v. United States, 980 F.2d 18, 25 (5th Circ. 1990) (holding that section 6501 does not apply to the assessment of penalties under sections 6700 and 6701 because no return is filed by the person subject to the penalty); Kuchan v. United States, 679 F. Supp. 764 (N.D. Ill. 1988) (same). Section 6722 imposes a penalty that is not dependent upon the filing of a return. Instead, section 6722 imposes penalties on businesses that do not provide timely,

complete, and correct payee statements to customers that the businesses should have identified in Forms 8300 filed with the Service. I.R.C. §§ 60501(e) and 6724(d)(2)(L); Treas. Reg. § 301.6722-1(d)(2)(xi). Thus, the limitations period in section 6501(a) does not apply to the section 6722 penalty. Furthermore, no other statute imposes a period of limitations on the assessment of penalties under section 6722. Accordingly, there is no period of limitations that applies to the assessment of penalties under section 6722 and the penalty may be assessed at any time. Cf. Mullikin v. United States, 952 F.2d 920 (6th Cir. 1991) (concluding that no statute of limitations applies to the section 6701 penalty).

Although we believe that there is no period of limitations that applies to the assessment of penalties under section 6722, to avoid the argument that an assessment has not been made on a timely basis, we urge the Service to assess the section 6722 penalty within 3 years after the taxpayer files Form 8300, to the extent practicable.

2. Failure to provide identifying information, such as the Taxpayer Identification Number on Form 8300.

Section 6721 imposes a penalty in the case of: (1) any failure to file an information return with the Service on or before the required filing date, or (2) any failure to include all the information required to be shown on the return or the inclusion of incorrect information. The term "information return" is defined in section 6724(d)(1) and Treas. Reg. § 301.6721-1(g)(1) and includes Form 8300. Information that section 60501 requires to be shown on the Form 8300 includes: (1) the name, address, and TIN of the person from whom the cash was received, (2) the amount of cash received, and (3) the date and nature of the transaction.

Despite these requirements, the penalty imposed by section 6721 will not be assessed for errors or omissions that are considered inconsequential. Treas. Reg. § 301.6721-1(c)(1). The term "inconsequential" means any failure that does not prevent or hinder the Service from processing the return, matching the information return shown with the payee's tax return, or otherwise putting the information return to its intended use. *Id.* The Regulations provide examples that are considered inconsequential errors and these include misspellings of the payee's address and the payee's first name. Errors or omissions are never considered inconsequential if they relate to: (1) a taxpayer identification number; (2) a surname of a payee; and (3) any monetary amount. Treas. Reg. § 301.6721-1(c)(2).

Under these rules, the section 6721 penalty may always be assessed on errors or omissions on a Form 8300 that relate to the taxpayer identification number, the surname of the person from whom cash was received, and the amount of cash received.

If you have any questions, please contact Grace Kim at 202-622-4940.