

## Part I

### Section 6213. —Restrictions Applicable to Deficiencies

Rev. Rul. 2005-51

#### ISSUE

Whether the mathematical or clerical error summary assessment procedures of section 6213(b) of the Internal Revenue Code apply when a taxpayer files an income tax return that reports income in an amount different from that reported on a Form W-2, Wage and Tax Statement, attached to the return.

#### FACTS

##### Situation 1.

T, a single individual, filed a Form 1040, U.S. Individual Income Tax Return, for 2003. The return reported wages of \$18,000 on the appropriate line. No other income was reported. The only deductions claimed by T were the standard deduction under section 63 of \$4,750 and the deduction for personal exemption under section 151 of \$3,050. The return reported taxable income of \$10,200 and a tax liability of \$1,184. T claimed federal income tax withheld in the amount of \$2,000 and a refund due of \$816.

T attached to the Form 1040 return a Form W-2, Wage and Tax Statement, issued by T's employer. The Form W-2 reported wages of \$25,000 and federal income tax withheld of \$2,000. T also attached a statement saying that he received only \$18,000 in wages during 2003, not the \$25,000 reported on the Form W-2. If T's correct wage income was the entire \$25,000 during 2003, T's correct income tax liability

was \$2,234 and, after taking into account the federal income tax withheld, \$234 of tax was unpaid.

### Situation 2.

T, a single individual, filed a Form 1040, U.S. Individual Income Tax Return, for 2003. The return reported wages of \$50,000 on the appropriate line. No other income was reported. The only deductions claimed by T were the standard deduction of \$4,750 and the deduction for personal exemption of \$3,050. The return reported taxable income of \$42,200 and a tax liability of \$7,366. T claimed federal income tax withheld in the amount of \$8,000 and a refund due of \$634.

T attached to the return three Forms W-2, Wage and Tax Statement, issued by T's employers. The Forms W-2 reported wages totaling \$55,000 and federal income tax withheld totaling \$8,000. One of the Forms W-2 reported wages of \$5,000 and federal income tax withheld of \$500; T did not attach a statement to the return explaining the discrepancy between the total wages reported on T's Form 1040 return and the total wages reported on the attached Forms W-2. If T's correct wage income for 2003 was \$55,000, T's correct income tax liability was \$8,616 and, after taking into account the federal income tax withheld, \$616 of tax was unpaid.

### LAW AND ANALYSIS

Section 6201(a)(1) authorizes the Secretary to assess all taxes determined by a taxpayer for which a return was made. In both Situation 1 and Situation 2, there is a discrepancy between the amounts reported on the face of the Form 1040 returns and the amounts reported on the attached Forms W-2. If the Forms W-2 are correct, the

correct tax exceeds the tax shown on the returns, and there is a deficiency. See I.R.C. § 6211. If the Secretary determines a deficiency based on the information on the Forms W-2 and sends a notice of deficiency to T pursuant to section 6212, section 6213(a) prohibits the Secretary from assessing the deficiency until the period to petition that notice to the Tax Court expires or, if T files a petition, until the Tax Court's decision becomes final. The restrictions of section 6213(a) do not apply, however, in the case of mathematical or clerical errors appearing on the return, when the Secretary may summarily assess the additional tax due without mailing a notice of deficiency. I.R.C. § 6213(b)(1).

Section 6213(g)(2) defines "mathematical or clerical error" by reference to 13 enumerated situations. Those situations include "an entry on a return of an item which is inconsistent with another entry of the same or another item on such return." I.R.C. § 6213(g)(2)(C). The Tax Reform Act of 1976, Pub. L. No. 94-455, § 1206, 90 Stat. 1520 (1976) (the Act), clarified the situations in which the Secretary may use the summary assessment authority of section 6213(b) for mathematical or clerical errors arising from inconsistencies. The legislative history of the Act states that the exception for inconsistent entries applies only "where it is apparent which of the inconsistent entries is correct and which is incorrect." S. Rep. No. 938, 94th Cong., 2d Sess., 376 (1976), 1976-3 (Vol. 3) C.B. 49, 414.

Under the facts described in Situation 1 and Situation 2, it is not apparent whether the amount reported by the taxpayer on the face of the return or the amount reported on the Form W-2 is correct. In Situation 1, T's attachment explains the

discrepancy between the return and the Form W-2, thereby making clear that T disputes the correctness of the Form W-2. In Situation 2, no attachment or comment explains the discrepancy between the return and the Forms W-2; while it is possible that T made a mathematical or clerical error by failing to include information from one of the three attached Forms W-2, it is also possible that T disputes the information on that form.

In the case of a discrepancy between the income reported by a taxpayer on an income tax return and the income reported on a Form W-2 attached to the return, it is not apparent which entry is correct. Therefore, the Internal Revenue Service may not use the summary assessment procedures of section 6213(b). Instead, the Service must follow the deficiency procedures prescribed by sections 6212 and 6213(a).

#### HOLDING(S)

##### Situation 1.

The Service may not use the summary assessment procedures of section 6213(b) if T filed a Form 1040 return reporting an amount of wages and a tax liability, but attached a Form W-2 reflecting payment of a different amount of wages. In the circumstances described, the Service must issue a notice of deficiency under section 6212(a).

##### Situation 2.

The Service may not use the summary assessment procedures of section 6213(b) if the taxpayer filed a Form 1040 return reporting wages from several Forms W-2 and a tax liability, but also attaches a Form W-2 reflecting payment of wages that appear not to be reported on the Form 1040 return. In the circumstances described, the

Service must issue a notice of deficiency under section 6212(a) if it determines a deficiency in T's income tax for 2003.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Blaise G. Dusenberry of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Blaise G. Dusenberry on (202) 622-7800 (not a toll-free call).