



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 29, 1999

Number: **200002044**
Release Date: 1/14/2000
UILC: 9999.98-00

CC:DOM:FS:PROC
TL-N-4141-98_WLI6

INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL,
KENTUCKY-TENNESSEE DISTRICT
CC:SER:KYT:LOU
Attn: AMWinkler

FROM: Sara M. Coe
Chief, Procedural Branch
Field Service Division
CC:DOM:FS:PROC

SUBJECT: Appeal Rights In Processing Excise Tax Refund Claims

This responds to your request for Significant Advice, dated June 10, 1999, in connection with an inquiry from the Cincinnati Service Center. They have requested information on some general rules applicable to Appeals consideration of excise tax claims for refund. As described below, there are general rules applicable to excise taxes, but the regulations and the IRM do not provide detailed procedures for all aspects related to Appeals consideration of these claims.

Facts

The Cincinnati Service Center processes all excise tax claims for refund filed on Form 8849, Claim for Refund of Excise Taxes. This form covers claims for certain miscellaneous excise taxes within the jurisdiction of the Internal Revenue Service under subtitle D of the Internal Revenue Code (other than chapters 41-45). Such claims may be allowed, disallowed in full, disallowed in part, or returned without consideration. The service center is studying the current procedures relating to Appeals consideration of certain types of excise tax refund claims that are not allowed. After the service center reviews the general rules applicable to Appeals consideration of excise tax refund claims, they may develop proposals for special processing of certain types of excise tax cases, and these proposals will be submitted to the National Director of Appeals.

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Discussion

There is no section of the Internal Revenue Code that expressly provides rules requiring Appeals consideration of cases. The rules for Appeals consideration of cases are contained primarily in the Statement of Procedural Rules, which informs the public of the procedures to be followed by a government agency and the public in their dealings with each other. The Statement of Procedural Rules for the Appeals function of the Internal Revenue Service is 26 C.F.R. § 601.106. Additionally, there are proposed amendments to § 601.106 published in the Federal Register on September 20, 1993 (58 Fed. Reg. 48,802). The proposed rules, for the most part, simply clarify, update, and reorder the existing rules. However, § 601.106(b)(4) of the proposed regulations changes the rules concerning the information that a taxpayer provides to initiate an appeal (the protest rules). Also, additional guidance on Appeals consideration of cases is contained in parts 1, 4, and 8 of the IRM.

Section 601.106 of the Statement of Procedural Rules

Section 601.106(a)(1)(ii) of the regulations provides:

Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of—

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer or chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability;

.....

in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

Section 601.106(a)(1)(iii) prescribes the information that a taxpayer provides to initiate an appeal (the protest rules). Section 601.106(a)(1)(iii)(a) provides in part that an oral request is sufficient to obtain Appeals consideration in (1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund is \$2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required. See also

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§ 601.105(d)(2) (which includes a reference to an “Appeals office conference”).

Section 601.106(a)(3) of the regulations provides that the authority vested in Appeals “does not extend to the determination of liability for any excise tax imposed by subtitle E or by subchapter D of chapter 78, to the extent it relates to subtitle E.”

Section 601.106(d)(2)(ii) of the regulations provides in part that if a claim for refund is disallowed in full or in part by Appeals and the taxpayer does not sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, Appeals will issue a statutory notice of claim disallowance.

Section 601.106(e)(1) of the regulations provides that an Appeals office is authorized to transfer settlement jurisdiction in a nondocketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer’s books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

We note that the Statement of Procedural Rules for the examination of returns and claims for refund, credit or abatement are in 26 C.F.R. § 601.105. Section 601.105(e)(2) provides in part that when claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers’ returns are originally examined.¹ Also, § 601.105(d) provides in part that the district director will send to the taxpayer a 30-day letter if the report of the examiner recommends the denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. This letter, among other things, informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. See also § 601.105 (c); § 601.106(b).

¹With respect to certain provisions special to particular taxes, § 601.105(e)(6) provides a cross-reference to § 601.402, which was removed as obsolete. Section 601.402 did not relate to Appeals.

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Proposed § 601.106 of the Statement of Procedural Rules

Section 601.106(a)(1) of the proposed regulations provides:

Appeals is the administrative appeals office of the Internal Revenue Service. Its purpose is to resolve tax controversies without litigation, to the extent possible. Appeals is to approach these controversies in a fair and impartial manner to both the taxpayer and the government.

Section 601.106(a)(2)(ii) of the proposed regulations provides in part:

Each region contains Appeals offices with local office facilities within the region. An Appeals office has jurisdiction over cases originating in the office of any District Director, Service Center/Compliance Center Director, or the Assistant Commissioner (International) situated in the region, or in any case in which jurisdiction has been transferred to the region.

Section 601.106(a)(3) of the proposed regulations provides:

Appeals offices have exclusive settlement jurisdiction and final authority within the Internal Revenue Service for the determination of the following types of tax liability and other items—

(i) Federal income tax, estate tax (including extensions for payment under section 6161(a)(2) of the Internal Revenue Code), gift tax, generation-skipping transfer tax, or miscellaneous excise taxes under chapter 41, 42, 43, 44, or 45 of subtitle D of the Internal Revenue Code, all of which are subject to the deficiency procedures . . . ;

.....

(iii) Employment tax or certain miscellaneous excise tax under subtitle D of the Internal Revenue Code (which are not subject to the deficiency procedures except as noted in paragraph (a)(3)(i)(A) [sic²] of this section);

.....

(x) Any other disputed tax issues that the Internal Revenue Service determines are administratively appealable.

²It appears that the reference should be just to paragraph (a)(3)(i).

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Section 601.106(a)(4)(v) of the proposed regulations provides that the authority described in § 601.106(a)(2) and (a)(3) does not include the authority to determine alcohol, tobacco, and certain other excise tax liability under subtitle E of the Code or under subchapter D, chapter 78 of subtitle F of the Code, insofar as subchapter D relates to taxes imposed under subtitle E.

Section 601.106(b)(1) of the proposed regulations provides that the Appeals process is initiated at the request of the taxpayer. Section 601.106(b)(3)(i) of the proposed regulations provides:

A taxpayer may request an appeal in any case in which a District Director, Service Center/Compliance Center Director, or the Assistant Commissioner (International) has issued a letter proposing adjustments (commonly referred to as the 30 day letter) concerning an item described in paragraph (a)(3) of this section. (The taxpayer will be informed of the right to an administrative appeal in this letter.)

Section 601.106(b)(4) of the proposed regulations provides the rules concerning the filing and content of a protest, and it makes substantive changes to the rules in § 601.106(a)(1)(iii) of the current regulations. The proposed regulations provide the general rule that an appeal is initiated by filing a protest, and simplified procedures are provided for small cases. See generally Publication 5 (Rev. 01-1999), Your Appeal Rights and How To Prepare a Protest If You Don't Agree; page 7 of Publication 556 (Rev. 02-1999), Examination of Returns, Appeal Rights, and Claims for Refund.

Section 601.106(e)(2)(ii)(B) of the proposed regulations provides that if a claim for refund is disallowed in full or in part by Appeals and the taxpayer does not sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, Appeals will issue a statutory notice of claim disallowance.

Section 601.106(f)(1) of the proposed regulations provides rules concerning the transfer of nondocketed cases to another Appeals office. Section 601.106(f)(1)(i) of the proposed regulations provides that an Appeals office may transfer jurisdiction in a nondocketed case to an office that is closer to the taxpayer's residence or place of business if the taxpayer's books and records are available there. Section 601.106(f)(1)(ii) of the proposed regulations provides that an Appeals office may transfer jurisdiction in a nondocketed case to another office to relieve the taxpayer of hardship. The request is made to the transferring office which will determine whether hardship exists. If hardship exists, the transfer will be made if the taxpayer's books and records are available to the receiving office, and if both offices agree that the transfer is not an attempt to obtain a more favorable resolution of the disputed issues. Section 601.106(f)(1)(iii) of the proposed regulations provides that from time to time special transfer rules will be published in

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the Internal Revenue Manual for certain types of cases. Section 601.106(f)(1)(iv) of the proposed regulations provides that transfers within a region for reasons other than those listed above must be approved by both the transferring and receiving Regional Directors of Appeals. If the directors cannot agree, the proposed transfer may be referred to the National Director of Appeals for decision.

Parts 1, 4, and 8 of the IRM

IRM 1.1.7 (02/26/1999) relates to the organization and staffing for the office of the National Director of Appeals. IRM 1.1.7.1(1) describes the mission as follows:

To solve tax controversies, without litigation, on a fair and impartial basis to both the Government and the taxpayer and in a manner that enhances voluntary compliance and public confidence in the integrity and efficiency of the Service. This is accomplished by developing and supervising nationwide programs for the administrative system of tax appeals.

IRM 1.1.7.1(3)(a) provides that the cases handled for the Service include appeals of the decisions of district directors or service center directors, generally involving income, profits, estate, gift, and excise tax (except those imposed on alcohol, tobacco, and firearms).

IRM 1.1.7.8(3) provides in part that the Regional Director of Appeals is responsible to the National Director of Appeals for taxpayer appeals of the decisions of district directors or service center directors, generally involving income, profits, estate, gift, excise tax (except on alcohol, firearms, and tobacco), employment taxes, offers-in-compromise, refund claims, penalty appeals, overassessments, pension plans, exempt organizations, and cases under the jurisdiction of Appeals docketed in the United States Tax Court.

IRM 8.5.1 (02/18/1999) relates to Appeals consideration of claim and overassessment cases. IRM 8.5.1.6.3(1) provides that taxpayers have the right to request reconsideration of claims disallowed by service centers. The notice of claim disallowance issued by the service centers advises them of this procedure. IRM 8.5.1.6.3(3) provides that most service center reconsideration cases can be handled by correspondence or telephone. However, a face to face conference will be provided if the taxpayer requests one and it is deemed necessary by the appeals officer.

IRM 4.3.3 (07/30/1999) contains the Excise Tax Handbook for the Examination function. IRM 4.3.3.7.1 discusses claims for refund or abatement. IRM 4.3.3.7.4(1) describes examples of situations for which a no consideration letter should be issued by a service center or district office. IRM 4.3.3.7.6 provides procedures for

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examination and disposition of claims on their merits. IRM 4.3.3.7.6.1(1) provides that the general procedures for examining returns, issuing preliminary letters, and referring cases to Appeals apply in disposing of excise tax refund claims.

cc: National Director of Appeals
Regional Director of Appeals, Southeast Region