



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
June 6, 2000

Number: **200027053**
Release Date: 7/7/2000
UIL: 6212.00-00

CC:DOM:FS:PROC
TL-N-5679-99

MEMORANDUM FOR District Counsel, Boston CC:NER:NED:BOS

FROM: Assistant Chief Counsel
Field Service CC:DOM:FS:PROC

SUBJECT: Significant Service Center Advice - ASFR Statutory Notices
of Deficiency

This Significant Service Center Advice arose as a result of your discovery of discrepancies between statutory notices originally printed off the Automated Substitute For Return (ASFR) system and mailed to taxpayers, and reprints of the same notices generated by the Andover Service Center for inclusion in the administrative file after taxpayers petition the Tax Court.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:4(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issue

Whether service centers should print a duplicate of the original notice of deficiency at the time the original notice is printed off the ASFR system?

Conclusion

Service centers should print a duplicate of the original notice of deficiency at the time the original notice printed off the ASFR system.

Discussion

As we understand the facts, your office met with employees of the Andover Customer Service Center to discuss discrepancies found between statutory notices originally printed off the ASFR system and mailed to the taxpayer, and reprints of the same notices generated by the Andover Service Center for inclusion in the administrative file after a taxpayer files a petition with the Tax Court. In certain instances, you discovered problems where there was information missing from the second, reprinted notice from that shown on the first notice and where there was different information on the second, reprinted notice from that shown on the first notice.

A properly completed Application for Registration or Certification, Postal Service Form 3877, reflects compliance with established procedures by the Internal Revenue Service (Service) for timely mailing deficiency notices. Keado v. United States, 853 F.2d 1209, 1212-13 (5th Cir. 1988). Where the existence of the notice of deficiency is not disputed, a properly completed Form 3877 by itself is sufficient, absent evidence to the contrary, to establish that the notice was properly mailed to a taxpayer. Wiley v. United States, 20 F.3d 222, 227 (6th Cir. 1994); Keado v. United States, 853 F.2d at 1213; United States v. Zolla, 724 F.2d 808, 810 (9th Cir.), cert. denied, 469 U.S. 830 (1984); United States v. Ahrens, 530 F.2d 781, 784-85 (8th Cir. 1976); Cataldo v. Commissioner, 60 T.C. 522, 524 (1973), aff'd, 499 F.2d 550 (2^d Cir. 1974) (per curiam).

However, if a taxpayer offers contrary evidence, then a copy of the statutory notice of deficiency should be submitted as evidence of the existence of the notice of deficiency and proof that it was timely mailed to the taxpayer. In Pietanza v. Commissioner, 92 T.C. 729 (1989), aff'd, 935 F.2d 1282 (3^d Cir. 1991), the Tax Court held that any presumption of regularity from the Postal Service Form 3877, standing alone, to indicate a mailing on a particular date of a notice of deficiency to particular taxpayers for a specific year, had been rebutted successfully by the taxpayers as a result of the various confusing and nonresponsive Service answers to their inquiries about the collection notices, coupled with the Service's failure to present adequate evidence in regard to its various administrative operations in this matter. The Court noted that respondent failed to present any evidence that the notice of deficiency was typed, signed, and dated or issued. A duplicate copy of the notice of deficiency was the missing evidence that respondent needed to present to satisfy its burden of proof.

Under the dictates of Pietanza, a duplicate copy of the notice will be needed to support a presumption of regularity to prove the existence of the notice and to indicate the mailing date of a notice of deficiency to particular taxpayers for a specific year. Thus, service centers should print a duplicate of the original notice of deficiency at the time the original notice is printed off the ASFR system and retain it in the administrative file.

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