



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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MEMORANDUM FOR ASSISTANT DISTRICT COUNSEL, PENNSYLVANIA
DISTRICT

FROM: Senior Technician Reviewer, Branch 1 (Administrative
Provisions and Judicial Practice)

SUBJECT: Significant Service Center Advice

This is in reply to your request for Significant Service Center Advice dated April 13, 2000, in connection with a question posed by the Statute Unit of the Philadelphia Service Center.

Issue

Whether the procedure outlined in TEBB # 99375, which directs service centers to disallow duplicate dependent exemptions claimed on delinquent original returns reflecting married filing separate or head of household filing status, conflicts with § 6402(k) of the Internal Revenue Code (Code), which provides that the Service must provide the taxpayer with an explanation as to why a claim for refund was denied.

Conclusion

TEBB # 99375 does not conflict with § 6402(k) because the TEBB does not address the form or content of the notification to the taxpayer of the disallowance of the dependency exemption. Further, it is not clear why the Service would use claim disallowance procedures in connection with the TEBB because deficiency procedures would normally apply to adjustments made to original returns covered by the TEBB.

Facts

TEBB # 99375 was posted to the Taxpayer Service Electronic Bulletin Board (TEBB) on December 20, 1999, as a change to IRM 121.2, Statute of Limitations. TEBB # 99375 states:

Delinquent original returns reflecting marital status of married filing separate or head of household claiming dependents, must have the spouse's

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account checked for possible duplicate dependents being claimed. If previously claimed, disallow and notify the taxpayer.

TEBB # 99375 requires that the Statute unit “notify” the taxpayer of the disallowance of the dependency exemption but does not state, or indicate by cross reference, what form the notification should take.

Discussion

Section 6402(k) of the Code states:

EXPLANATION OF REASON FOR REFUND DISALLOWANCE.—In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with a explanation for such disallowance.

The Senate Report accompanying the Internal Revenue Service Restructuring and Reform Act of 1998, S. Rep. No. 174, 105th Cong., 2d Sess., 97 (1998), states that the Committee believes that taxpayers are entitled to an explanation of the reason for the disallowance or partial disallowance of a refund claim so that the taxpayer may appropriately respond to the IRS. Accordingly, the provision requires the Service to notify the taxpayer of the specific reasons for the disallowance (or partial disallowance) of the refund claim.

Section 6402(k) and its legislative history indicate that Congress was concerned that taxpayers be notified of the reasons for the disallowance of a claim for refund. Therefore, § 6402(k) applies to any claim for credit or refund for which a notice of claim disallowance is required. Neither § 6402(k) nor its legislative history states the level of specificity required in the explanation given the taxpayer. Further, § 6402(k) does not require that Examination review a claim prior to disallowance. Whether such review is appropriate in any given case is a discretionary matter on the part of the Service.

The requirements of § 6402(k) should not normally apply to the situation described in the TEBB because the TEBB addresses the processing of original returns. In the situation described in TEBB # 99375, the Service is increasing the tax shown on the original return as a result of disallowing the dependent exemption. This action will result in an increase to the tax shown on the taxpayer’s return and, accordingly, will result in a deficiency. This, in turn, requires the Service to send the taxpayer a statutory notice of deficiency pursuant to § 6213 prior to making an assessment of the correct tax. Accordingly, the Service should apply deficiency procedures in making the adjustments to original returns covered by the TEBB.

If you have any questions regarding this advice, please contact John McGreevy at (202) 622-4910.