



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224  
November 28, 2000

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL - PHILADELPHIA (SMALL  
BUSINESS / SELF EMPLOYED) CC:SB:2:PHL:1

Attn: David A. Breen

FROM: Assistant Chief Counsel (Administrative Provisions and  
Judicial Practice) CC:PA:APJP

SUBJECT: I.R.C. 6651(a)(2) Computation

This memorandum is in response to your request for Significant Service Center Advice dated November 7, 2000 in connection with a question posed by the Philadelphia Service Center. In your request you stated that the Philadelphia Service Center, along with other Service Centers, are using the Report Generation System (RGS) program for notices of deficiency on substitute for returns made by the Service under the authority of I.R.C. § 6020(b) (§ 6020(b) returns). The RGS program automatically includes the dollar amount for the addition to tax under § 6651(a)(2) for all notices of deficiency. As you correctly state, including the dollar amount of the § 6651(a)(2) addition to tax on notices of deficiency for § 6020(b) returns is not in accordance with Chief Counsel Notice N(35)000-169 when the addition has not accrued to the maximum amount (i.e., 25% of the unpaid tax). Thus, the RGS program is in conflict with this Chief Counsel Notice when including the § 6651(a)(2) addition to tax for 6020(b) returns on notices of deficiency.

Issues

The RGS program that the Service uses to prepare a statutory notice of deficiency is not capable of computing the § 6651(a)(1) addition to tax at a rate of 4.5% per month, unless an amount is included in the notice of deficiency for the § 6651(a)(2) addition to tax. Therefore, in order to comply with Chief Counsel Notice N(35)000-169, the Service must manually compute both additions to tax for a majority of § 6020(b) returns. The Service considers manual computations to be burdensome and is asking for permission to issue a notice of deficiency in one of the following three ways:

(1) overstate the § 6651(a)(1) addition to tax by calculating the addition at a rate of 5% per month (rather than at the correct rate of 4.5% per month) and include the statement for the addition to tax under § 6651(a)(2) as specified in the Chief Counsel Notice without including an amount for the addition,

(2) compute the § 6651(a)(2) addition to tax as of a specified date (presumably other than the correct starting date for the addition), so that the § 6651(a)(1) addition will be correctly computed at a rate of 4.5% per month, or

(3) include the correct accrued amount of the addition to tax under § 6651(a)(2) as of the date of the notice, at a rate of .5% per month, with a statement that the final amount cannot be computed because it will continue to accrue up to a maximum of 25% of the amount of tax owed at a rate of .5% per month.

### Conclusions

In accordance with § 6751(a), each notice of penalty must include a correct computation of the penalty; thus, we have made the following conclusions. The first option cannot be used because it overstates the addition to tax under § 6651(a)(1). The second option cannot be used because it does not properly calculate the addition to tax under § 6651(a)(2) from the required starting date. The third option is feasible because it accurately calculates the additions to tax under both § 6651(a)(1) and § 6651(a)(2).

### Discussion

Section 6651(a)(1) imposes an addition to tax for failure to file a return on the date prescribed (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause. The amount of the addition to tax is 5 percent of the amount required to be shown if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 6651(a)(2) imposes an addition to tax for failure to pay the amount shown as tax on the return on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the addition to tax is 0.5 percent of the amount of unpaid tax if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, not exceeding 25 percent in the aggregate.

Section 6651(c)(1) provides that the amount of the addition under § 6651(a)(1) will be reduced by the amount of the addition under § 6651(a)(2) for any month (or

fraction thereof) to which an addition to tax applies under both § 6651(a)(1) and § 6651(a)(2). Thus, when both § 6651(a)(1) and § 6651(a)(2) apply in the same month, the addition under § 6651(a)(1) is 4.5 percent [5 percent (§ 6651(a)(1) amount) minus .5 percent (§ 6651(a)(2) amount)].

Section 6651(g)(2) provides that for purposes of § 6651(a)(2) a return prepared by the Service under § 6020(b) is treated as a return filed by the taxpayer. Section 6020(b)(1) of the Code provides that the Service may execute a return for a taxpayer who fails to make any return required by any internal revenue law or regulation at the time prescribed or who makes, willfully or otherwise, a false or fraudulent return.

Section 6751(a) provides that the Service must include with each notice of a penalty the following information: (1) the name of the penalty, (2) the section of the Code under which the penalty is imposed, and (3) a computation of the penalty.

Chief Counsel previously determined, based on the new § 6651(g)(2) provision, that the Tax Court has jurisdiction over the addition to tax under § 6651(a)(2) on a § 6020(b) return and that the notice of deficiency for a § 6020(b) return must not include the amount of the addition to tax under § 6651(a)(2). See Chief Counsel Notice N(35)000-169 (November 16, 1999), Service Center Advice SCA 200004033 (December 1, 1999). Instead, Chief Counsel stated that the notice of deficiency must include the following statement, “the amount cannot be determined at this time and that an addition to tax of 0.5 percent will be imposed for each additional month, or fraction thereof, of nonpayment, up to 25 percent.” See Id.

We have reconsidered our prior advice and have determined that the notice of deficiency may include a dollar amount for the addition to tax under § 6651(a)(2). However, the following additional language must be referenced with an asterisk next to the dollar amount of the addition to tax under § 6651(a)(2) in the notice of deficiency:

This amount only reflects the addition to tax under § 6651(a)(2) through the date of this notice. The addition to tax will continue to accrue from the due date of the return at a rate of 0.5 percent for each month, or fraction thereof, of nonpayment, not exceeding 25 percent.

If you have any questions or concerns regarding this response, please contact Brad Taylor at (202)622-4940.

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Branch 2