



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR: SBSE ASSOCIATE AREA COUNSEL (ATLANTA)

FROM: Alan C. Levine
Chief, Branch1 Collection, Bankruptcy & Summonses

SUBJECT: Collection Statute Upon Reversal of EITC

The following provides our response to your request for Significant Service Center Advice, dated February 1, 2002. This document may not be used or cited as precedent. I.R.C. § 6110(k)(3).

ISSUE

Whether, upon reversal of an Earned Income Tax Credit (EITC) as the result of an examination of a return, the service center should reflect the date of the audit's additional assessment or the original date of filing of the return as the date commencing the running of the collection statute of limitation.

CONCLUSION

Upon reversal of the EITC, the statute of limitations on collection will run from the date of the related Transaction Code (TC) 300 denoting the additional examination assessment.

FACTS

In the example propounded by your office, the Internal Revenue Service (Service) proposes a change to a return which results in a deficiency where the taxpayer files a return claiming an EITC. This deficiency is based in part on the disallowance of the EITC. After the taxpayer defaults on the statutory notice of deficiency or loses the case in Tax Court, the portion of the deficiency not based on the disallowance of the EITC is assessed as an examination tax assessment under TC 300. The actual assessment date reflected on the transcript of account is the date of the TC 300 entry. However, the transcript shows the reversal of the EITC under TC 765 as the date of the filing of the return. The reversal of the EITC does not produce a separate system date (as does the TC 300). Thus, it appears from the transcript that the collection statute date for the EITC begins to run as of the date of filing the original tax return, and not the date of the additional audit assessment.

You note that a prior memorandum, from the Director, Office of Field Operations, dated November 25, 1985, concludes that the assessment date is the date of the TC 300, so that the statute of limitations on collection will run from the date of the new assessment.

LAW AND ANALYSIS

Disallowance of the EITC is subject to deficiency procedures. See I.R.C. § 6211(b)(4)(A). 1/ Treas. Reg. § 301.6203-1 provides the date of assessment is the date the transcript of account is signed by an assessment officer. The record of assessment is the Form 23C (now RACS Report-006). 2/ The problem, as we understand it, is that the reversal of the EITC will be reflected on the transcript of account as a different (earlier) date than that of the actual assessment. We would note, however, the cycle date for the TC 300 and TC 765 will indicate the actual time period within which the examination tax assessment and reversal of the EITC posted.

We do think that the Service can rely on the date of the related TC 300 for the date commencing the running of the statute of limitations on collection under I.R.C. § 6502(a) if there is some factual predicate to establish that both the assessment and reversal were part of the same deficiency determination. Depending on the circumstances, this may be self-evident from the transcript of account (as where the same document locator number appears for both the assessment and EITC reversal and both actions post during the same cycle) or may require an affidavit from the Service Center records keeper.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

None.

If you have any further questions, please call 202-622-3610.

1/ Other credits subject to the deficiency procedures include the fuel tax credit and the refundable portion of the child tax credit.

2/ Form 23C is a manually prepared version of the Summary Record of Assessments referred to in Treas. Reg. section 301.6203-1. RACS (Revenue Accounting and Control System) Report-006 is a computer produced version of the same information, namely, the total summarized assessment amounts. These reports are a compilation of the total amount of tax, penalties and interest that are assessed for a particular day, without reference to any specific taxpayer. Therefore, these records do not list the specific taxpayers assessed on a particular day nor do they list the specific amount each taxpayer has been assessed. When a RACS Report-006 is unavailable, the Service Center will manually prepare a Form 23C.