

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

Office of Chief Counsel Acknowledged 9-10-97
Internal Revenue Service SCA 1997-003

memorandum

CC:DOM:IT&A:3
CAProhofsky FREV-104938-97

date:

to: Chief, Accounts Resolution Branch, T:O:C:A:CSC

from: Assistant Chief Counsel (IT&A), CC:DOM:IT&A

subject: Significant Service Center Advice
 Definition of "Correct TIN"

This responds to your request for Significant Advice dated March 12, 1997, in which you requested our advice on the definition of a correct or "valid" TIN for purposes of the Small Business Job Protection Act, P.L. 104-188, and the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193. This advice was requested in connection with a question posed by the Adjustments function of the Cincinnati Service Center.

Disclosure Statement

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Issue

You requested our advice on the definition of a correct or "valid" TIN for purposes of the Small Business Job Protection Act, P.L. 104-188, and the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193.

Your memorandum sets forth several situations and asks which would constitute the omission of correct TINs. Situations A and B concern the use of a dependent's SSN by two or more taxpayers.

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Situations C and D (which appear to be the same) concern SSNs that do not match SSA records. Situation E covers any multiple use of an SSN for identical purposes on multiple returns.

Conclusion

We conclude that, of the situations posited, only C and D constitute the omission of correct TINs. Multiple use of correct TINs does not constitute the omission of correct TINs for purposes of section 6213(g)(2)(F) and (H). This conclusion is based solely on the situations presented.

Discussion

Section 6213(b)(1) allows the summary assessment of tax based on the correction of a mathematical or clerical error. Section 6213(g)(2)(F) and (H) include in the definition of mathematical or clerical error an omission of a correct taxpayer identifying number required under section 32 (relating to the earned income tax credit), section 21 (relating to expenses for household and dependent care services necessary for gainful employment), or section 151 (relating to allowance of deductions for personal exemptions).

A TIN that does not match the SSA records (or the Service's ITIN files) is not a correct TIN for the purposes of section 6213(g)(2)(F) and (H). The substantive sections, sections 21, 32, and 151, require that the TIN of the qualifying individual be on the return.¹ Thus, a correct TIN for purposes of section 6213 is a TIN that belongs to the qualifying individual or service provider (for the dependent care credit), the qualifying child, taxpayer, or taxpayer's spouse (for the EITC), or the dependent, taxpayer, or taxpayer's spouse (for the personal exemption).

¹ Section 32(1) provides that, for earned income tax credit purposes, the TIN for both the taxpayer/spouse requirement and the qualifying child requirement must be "a social security number issued to an individual by the Social Security Administration" Thus, an ITIN will not qualify for EITC purposes, but will be acceptable for personal exemptions and the dependent care credit. Moreover, under section 32(1), the SSN must be a particular kind of SSN. If an individual is entitled to receive an SSN solely because that individual applies for or receives benefits fully or partially funded with federal funds, such as AFDC payments or food stamps, that individual's SSN does not meet the requirements of section 32(1). Accordingly, that SSN is not a correct SSN for purposes of the EITC, and the math error provisions of section 6213(g)(2)(F) apply.

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If a TIN that matches the SSA or ITIN records appears on more than one return, however, it is an incorrect use of a correct TIN, not an incorrect TIN. In math error cases, the error is usually apparent from the face of the return. See General Explanation of the Tax Reform Act of 1976, 94th Cong., 2d Sess., 372-74 (1976), 1976-3 (Vol. 2) C.B. 1, 384-86. The use of a TIN by multiple taxpayers will be detectible only by comparing two or more returns. In addition, without further investigation it will not usually be apparent which use is incorrect. The math error definition is not broad enough to include multiple use situations. Multiple use will need to be handled through some other process.

If you have any further questions, please call Catherine Prohofsky at (202) 633-4930.

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