

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

Office of Chief Counsel Internal Revenue Service

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memorandum

CC:EL:GL:Br3:DAKohn
TL-N-4611-97

date: DEC 3 1997

to: District Counsel, Ohio District
Attention: Mary E. Pierce

CC:NER:OHI:CIN

from: Chief, Branch 3 (General Litigation)

CC:EL:GL:Br3

subject: Significant Service Center Advice -- Amended Returns Processing

This responds to your request for Significant Advice dated August 26, 1997, in connection with a question posed regarding handling of amended returns by Examination personnel. Your request directed to the Assistant Chief Counsel (Income Tax and Accounting) was forwarded to this division by transmittal dated October 16, 1997 (copy attached).

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 the CCDM. 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

Should the Examination and service center functions of the National Office develop procedures governing the processing of amended returns given to revenue agents to ensure that amounts which are reflected on such returns and which are due and owing are ultimately assessed?

Conclusion

In light of the language of I.R.C. § 6201(a) directing the Service to assess amounts which are shown on taxpayer returns and which have not yet been paid, and to ensure that amounts reflected on amended returns are assessed before expiration of the statute of limitations, procedures directing revenue agents to submit such returns for service center processing, and ultimately assessment, should be developed.

Facts

Your incoming memorandum reflects that the issue of how revenue agents should handle amended returns reflecting tax due and owing has arisen in the context of a specific criminal tax case, but that this issue frequently arises in other contexts as well. The typical scenario which gives rise to this issue appears to be that a taxpayer examination is under way when the taxpayer or his representative submits to the revenue agent assigned to the examination one or more amended returns. Evidently, even in situations where the statute of limitations on assessment remains open, the additional amounts reflected by the amended returns are not routinely assessed by the Service.

Authority addressing processing for assessment of amounts shown on amended returns is notably nonexistent. You have indicated that one rationale provided for not assessing such amounts is that most examinations result in "Agreed" cases which culminate in payment of the additional amounts shown on the amended returns, obviating the need for assessment of those amounts where they are received before the statute of limitations has run. However, you note in your memorandum that the absence of procedures directing Examination personnel to submit for processing amended returns reflecting tax due and owing "may detract from the IRS' compliance mission."

Discussion

We agree that the absence of procedures directing Examination to submit amended returns for service center processing may, in many instances, result in such returns not being processed for assessment and, consequently, in collectible amounts not being collected. 1/ Furthermore, our opinion is that the development of such procedures is necessary to ensure that amounts due and owing are assessed before the statute of limitations expires, and are therefore ultimately able to be collected.

1/ We note that in a memorandum dated March 7, 1997 (copy attached) which addresses several other issues pertaining to processing of amended returns, and which this division was asked to review, the Associate District Counsel (Rocky Mountain District) indicated that amended returns are in fact routinely submitted to service centers for assessment processing. See pp. 2-3. That memorandum does not counter our assertion that procedures governing this area presently do not exist.

Moreover, the development of appropriate procedures would be consistent with the Internal Revenue Code, specifically I.R.C. § 6201(a). That provision states, in pertinent part:

The Secretary is authorized and required to make the ... assessments of all taxes ... imposed by this title ... which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) TAXES SHOWN ON RETURN. -- The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

I.R.C. § 6201(a)(emphasis supplied). The regulations indicate that an "amended return" is to be treated as a "return," at least for the purpose of determining the amount of any deficiency which exists. See Treas. Reg. § 301.6211-1(a).

Like you, we were unable to find additional authority offering guidance for revenue agents on how amended returns reflecting potentially assessable amounts should be dealt with. However, we believe that the above statutory language implies that taxes which are due and owing and which are reflected by an amended return submitted to Service personnel by a taxpayer should be assessed, even where a given examination is likely to result in an "Agreed" case. Accordingly, to ensure that this occurs, and to protect against the potential loss of revenue from untimely assessments, we believe procedures should be in place which direct Examination personnel to effect processing of amended returns for assessment. Our understanding is that no such procedures currently exist; as a result, our opinion is that Examination and the service center functions should develop such procedures.

Thank you for soliciting our advice on this issue. If you have questions or comments regarding this memorandum, please do not hesitate to contact either me or Debbie Kohn, the General Litigation Division docket attorney assigned to this matter, at 202/622-3630.

/s/
LAWRENCE H. SCHATTNER

Attachments:

- 1) Significant Service Center Advice Assignment Transmittal dated October 16, 1997, with attached memorandum dated August 26, 1997.
- 2) Memorandum to Assistant Chief Counsel (Field Service) from Associate District Counsel (Salt Lake City) dated March 7, 1997.

cc: Assistant Regional Counsel (GL), Northeast Region
Assistant Chief Counsel (Income Tax and Accounting)
Sandra Moody, Executive Assistant to the National Director
Customer Service Operations
Pat Hudak, Executive Assistant to the National Director
Submissions Processing