

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

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subject: Last Known Address for Incarcerated Taxpayers

ISSUE

Whether the Federal Correctional Institute address of an incarcerated taxpayer, presumably maintained in the Bureau of Prisons' website and included on Form 13308, *Criminal Investigation Closing Report*, should be used as the last known address for purposes of mailing notices required under the Code to the taxpayer's last known address.<sup>1</sup>

CONCLUSION

Unless the taxpayer provides clear and concise notification that the place of incarceration should be used as the taxpayer's last known address, the Service, generally, may use the address on the most recently filed return as the taxpayer's last known address. However, this rule is subject to the facts and circumstances of each case. Where the Service has specific knowledge of the taxpayer's incarceration and there is a defect in the mailing to the last known address, the Service will be expected to use reasonable care and diligence in ascertaining the taxpayer's correct address.

ANALYSIS

The term "last known address" is defined in Treasury regulation § 301.6212-2(a) as "the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the [Service] is given clear and concise notification

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<sup>1</sup> We are not, however, opining here on whether the Service should take further action in cases where the only evidence that a taxpayer's address differs from the last known address on record is a correspondence that is returned as not deliverable.

of a different address.” This definition applies to all notices and documents mailed to a taxpayer’s last known address whenever the term “last known address” is used in the Code or regulations. Treas. Reg. § 301.6212-2(c). Change of address information provided by a taxpayer to a third party, including another government agency, is not clear and concise notification of a different address, unless the taxpayer provides the change of address information to the United States Postal Service (USPS) and the information is retained in the USPS’s National Change of Address database. Treas. Reg. § 301.6212-2(b)(1), (2).

Revenue Procedure 2010-16 provides instructions for providing the Service with clear and concise notification of a different address. Clear and concise information may be provided in writing, electronically, or verbally. Rev. Proc. 2010-16 § 5.04. Clear and concise written notification is a written statement signed by the taxpayer and mailed to the appropriate Service address, that informs the Service that the taxpayer wishes to change the address of record to a new address. *Id.* at § 5.04(1)(a). The notification must also include the taxpayer’s full name, old address, and SSN, ITIN, or EIN.

The availability of the incarcerated taxpayer’s correctional facility address on another federal government agency’s database, the Bureau of Prisons’ website, does not constitute clear and concise notification of a different address. Treas. Reg. § 301.6212-2(b)(1). The only third party agency notification that qualifies as clear and concise notification to the Service is the USPS’s National Change of Address database. Treas. Reg. § 301.6212-2(b)(2). Furthermore, although the incarcerated taxpayer’s correctional facility address may be included on Form 13308, *Criminal Investigation Closing Report*, the form does not constitute clear and concise written notification because it is not signed by the taxpayer and does not inform the Service that the taxpayer wishes to change the address of record. Rather, Form 13308 is prepared by Criminal Investigation (“CI”) when closing and transferring a case to Exam or Collection. Neither the existence of the incarcerated taxpayer’s correctional facility address on the Bureau of Prisons’ website nor the inclusion of the same on the Form 13308 completed by CI adhere to the procedures contained in Revenue Procedure 2010-16 § 4, which instruct a taxpayer how to properly notify the Service of a change of address, or meet the definition of last known address provided in Treasury regulation § 301.6212-2(a). Therefore, the correctional facility address is not the incarcerated taxpayer’s last known address for purposes Treasury Regulation § 301.6212-2(a) - (c).

However, hazards exist if the Service does not include the correction facility address as a last known address of the taxpayer. Courts impose a duty on the Service to exercise reasonable diligence when ascertaining a taxpayer’s last known address. See *Music v. United States*, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 1598000, at \*3 (N.D. Ga. 2014) (“The [Service] must exercise ‘reasonable diligence in determining the last known address.’” (quoting *United States v. Navolio*, 334 F. App’x 204, 208 (11th Cir. 2009))); *Space v. Commissioner*, T.C. Memo. 2009-230 (“If the [Service] has become aware of a change of address, the Commissioner may not rely on the address listed on the last-filed tax return but must exercise reasonable care to discern the taxpayer’s correct

address.” (citing *Pyo v. Commissioner*, 83 T.C. 626 (1984)). Whether or not the Service has exercised reasonable care in ascertaining the taxpayer’s correct address is an inquiry based on the relevant facts and circumstances. *Id.* (citing *Weinroth v. Commissioner*, 74 T.C. 430, 435 (1980)). “This inquiry focuses on ‘the information available to the IRS at the time it issued’ a notice.” *Music*, 2014 WL 1598000, at \*3 (quoting *Mulder v. Commissioner*, 855 F.2d 208, 211 (5th Cir.1988)). “Once respondent learns that a taxpayer is residing at an address other than the one shown on the return, he must exercise reasonable care and diligence in ascertaining and mailing the notice of deficiency to the correct address.” *Keeton v. Commissioner*, 74 T.C. 377, 382 (1980) (citing *Johnson v. Commissioner*, 611 F.2d 1015, 1021 (5th Cir. 1980)).

In the case of an incarcerated taxpayer, courts have generally held that the Service is entitled to use the address on the return most recently filed as the last known address, even when the Service has some knowledge of the incarceration, unless the taxpayer has provided clear and concise notification that the place of incarceration should be used. *See, e.g., Bloomfield v. Commissioner*, T.C. Memo. 2005-148; *Cohen v. United States*, 297 F.2d 760 (9th Cir. 1962); *Snell v. Commissioner*, T.C. Memo. 1993-470, *aff’d without published opinion*, 50 F.3d 16 (9th Cir. 1995); *cf. United States v. Eisenhardt*, 437 F. Supp. 247 (D. Md. 1977) (last known address was place of incarceration where taxpayer notified the Service of place and commencement date of incarceration).

There exists an important exception, however, when the Service possesses specific knowledge regarding the taxpayer’s incarceration, participated in the prosecution of the taxpayer, and there is an infirmity in the last known address on which the Service seeks to rely. When these facts are present, the Service cannot treat the address on the taxpayer’s most recently filed return as his or her last known address. *Minemyer v. Commissioner*, T.C. Memo. 2012-325 (Service was involved in the investigation and prosecution of the taxpayer; Service mailed the notice to the address on the taxpayer’s most recently filed return but the notice was returned to the Service as not deliverable); *Keeton v. Commissioner*, 74 T.C. 377 (1980) (the Service, by its recommendation to the Dep’t of Justice, was deemed to have participated in the prosecution resulting in taxpayers’ conviction for Federal tax crimes, therefore taxpayers’ Federal prison system address was readily available to the Service); *DiViaio v. Commissioner*, 539 F.2d 231 (D.C. Cir.1976) (deficiency notice sent to taxpayer’s address prior to incarceration was held as not sent to taxpayer’s last known address where Service aware that taxpayer had been incarcerated in Atlanta penitentiary for two years and mailed a copy of the notice addressed to the warden and requesting that the warden serve the taxpayer with the notice); *O’Brien v. Commissioner*, 62 T.C. 543 (1974) (deficiency determined as a result of the Service’s interview of the taxpayer the place of incarceration; Service mailed notice of deficiency to two addresses, one to taxpayer’s former attorney and the other to a bail bondsman, neither address was provided by taxpayer). Even in cases involving non-incarcerated taxpayers, the Service cannot rely on the address on the taxpayer’s most recently filed return when the Service has notice that the address of record is incorrect. *See Terrell v. Commissioner*, 625

F.3d 254 (5th Cir. 2010) (Notice of Final Determination was found invalid when mailed to the address on the taxpayer's most recently filed return after the Service received three prior mailings returned as undeliverable, all of which were mailed to taxpayer's last known address on record; Fifth Circuit stated the Service should have performed due diligence in determining the correct address--searching third-party databases, contacting taxpayer's employer, etc).

In *Keeton*, the petitioners' address listed on the return at issue was in Port Byron, Illinois. *Keeton*, 74 T.C. at 380. After filing the return, petitioners moved to Winona, Montana. *Id.* Subsequently, petitioners were both convicted for tax evasion. Petitioner-husband was incarcerated at Leavenworth, Kansas, and petitioner-wife moved to Atchison, Kansas. *Id.* The Service mailed the notice of deficiency to the Winona, Montana address, which was not the address on tax return at issue. *Id.* at 383. The court held that the notice of deficiency was not mailed to petitioners' last known address. The court reasoned that the Service knew that petitioners did not reside at the address listed on the return at issue (Port Byron, Illinois) as evidenced by the mailing of the notice to the Winona, Montana address. *Id.* at 382. The court concluded that the Service was bound to exercise reasonable care and diligence in ascertaining petitioners' correct address. *Id.* at 382-83. In determining whether the Service exercised reasonable care and diligence, the court relied on the fact that the Service was "entwined" with the Department of Justice's investigation, prosecution, and conviction of petitioners for tax evasion. *Id.* at 383. Because of this involvement, the court found that the Service was on notice of petitioners' sentences. Thus, the court held that reasonable care and due diligence required the Service to inquire as to petitioners' correct address, which it failed to do. *Id.*

The facts of *Minemyer* are similar to the facts of *Keeton*. Like the court in *Keeton*, the court in *Minemyer* found that the Service was on notice that the taxpayer no longer resided at the address on his most recently filed return because Service was involved in the investigation and prosecution of the taxpayer. *Minemyer*, T.C. Memo. 2012-325, at \*4. Unlike in *Keeton*, however, the Service sent a notice of intent to levy during Minemyer's incarceration to the address on his most recently filed return and the notice was returned as not deliverable. *Id.* at \*1. Shortly after the notice was returned, the taxpayer's address was updated in the Service's records to a different address. *Id.* The Service did not send a subsequent notice to the updated address, and instead proceeded with the levy. *Id.* The court found that because the notice was returned as not deliverable and because the Service knew the taxpayer was incarcerated, the Service failed to exercise reasonable care and diligence by not attempting to ascertain the taxpayer's correct address. *Id.* at \*4. As a result, the court held that the notice was not sent to the taxpayer's last known address.

The holdings in *Keeton* and *Minemyer* and similar cases appear to be limited to situations where the Service had specific knowledge of the taxpayer's incarceration due to its involvement in the criminal proceeding coupled with a defect in the last known address on which the Service relies. The defect can range from the Service mailing the

notice to an address other than the address on the most recently filed return to the notice being returned as undeliverable even when mailed to the last known address on record. The more general rule in cases involving incarcerated taxpayers, however, is that the Service is entitled to consider the address on the most recently filed return as the last known address, even if the Service has some knowledge of the incarceration, unless the taxpayer has provided clear and concise notification that the place of incarceration or some other address should be used. In conclusion, generally the address of incarceration will not meet the definition of last known address under Treasury regulation § 301.6212-2(a), however, there are some limited scenarios where a court may find, based on the facts and circumstances, that the Service should have used reasonable care and diligence in determining the taxpayer's correct address.

If you have any further questions or require further assistance, please contact Ryan Wyzik at (202) 622-5484.