



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

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Assistant Chief Counsel, Administrative Provisions and
Judicial Proceedings CC:P&A:APJP

SUBJECT: Validity of Form 2750, Waiver Extending Statutory Period for
Assessment of Trust Fund Recovery Penalty

This Field Service Advice responds to your memorandum dated May 11, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

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LEGEND

Taxpayer	=
Year 1	=
\$ a	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date A	=
Date B	=

ISSUES:

- 1) Whether I.R.C. section 6501(c)(4)(B) applies to the facts of this case?
- 2) If section 6501(c)(4)(B) applies to this case, whether the Service complied with the statutory provision?
- 3) If the Service did not comply with section 6501(c)(4)(B), whether the Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, secured in this case is valid?

CONCLUSIONS

- 1) Section 6501(c)(4)(B) applies to the facts of this case.
- 2) The facts of this case show that the Service complied with section 6501(c)(4)(B) when requesting the consents executed here.
- 3) The Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, secured in this case is valid.

FACTS

Taxpayer has incurred unpaid employment tax liabilities for the four quarters of taxable Year 1 totaling \$ a. The responsible persons of Taxpayer had arrived at an informal installment agreement with the revenue officer responsible for their case. On Date 1, the revenue officer contacted the responsible persons about the unpaid employment tax liabilities. The revenue officer requested that the responsible persons execute a Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, with respect to the Year 1 employment tax liabilities of Taxpayer. The responsible persons declined to sign the Form 2750,

stating that they had applied for a loan, and if the loan were approved the tax liability would be paid. The responsible persons stated that they would sign Forms 2750 if the loan were not approved. The responsible persons repeated this commitment on Date 2 and on Date 3. On Date 3, the Revenue officer contacted the responsible persons and stated that the Form 2750 needed to be signed as soon as possible. The responsible persons informed the Revenue officer that due to another creditor's action they had hired an attorney and intended to seek bankruptcy protection. The responsible persons stated that they would still sign the Forms 2750 if their attorney agreed it was in their best interests. After obtaining a copy of the power of attorney, the Revenue officer contacted the attorney, who requested copies of the Form 2750. Upon review of the proposed Form 2750, the attorney noted that it requested an extension of the period of limitations for assessment of the trust fund recovery penalty to Date A. The attorney told the Revenue officer that he wanted to resolve his client's difficulties by the end of the year. The attorney proposed that the Form 2750 extend the period of limitations for a shorter period. Accordingly, the Form 2750 was revised to reflect an expiration date of Date B. On Date 4, the Revenue officer met with the responsible persons and their attorney. The responsible persons' attorney then advised the responsible persons that they should sign the Form 2750, and the Form 2750 was executed by the responsible persons on Date 4.

Before the execution of the Form 2750 on Date 4, the revenue officer did not mail a copy of Letter 907 to the responsible persons. The revenue officer did not provide a copy of Publication 1035 to the responsible persons. The revenue officer did not relate the section 6501(c)(4)(B) rights to the responsible persons.

LAW AND ANALYSIS

Issue 1): Whether section 6501(c)(4)(B) applies to this case.

Section 6501(c)(4)(B) was added to the Code by section 3461(b) of the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 (RRA 98). Section 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right to refuse to extend the period of limitations for assessment, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide an extension. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that, in some cases, taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice, but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998). Section 6501(c)(4)(B) applies to each request to extend the period of limitations for assessment made after December 31, 1999.

Because the sequence of events in this case began with a request that the responsible persons extend the period of limitations on Date 1, which predated the effective date of section 6501(c)(4)(B), it could be argued that the sequence of events represents one, continuing, request that the responsible persons extend the period of limitations for assessment. If one, continuing, request for an extension were made, and that request occurred on a date which preceded the effective date of section 6501(c)(4)(B), section 6501(c)(4)(B) would not apply to this case. As explained further in the paragraph directly below, we think the facts presented in this case do not represent a “continuing request” scenario.

Instead, we think the facts presented here show that several requests for the extension were made. The first request for the Form 2750 was the request made by the revenue officer on Date 1. That request was declined. On Date 2, a date which is after the effective date of section 6501(c)(4)(B), the revenue officer reminded the responsible officers of the upcoming expiration of the period of limitations, and requested, for the second time, that they execute a Form 2750 on Date 2. The responsible officers declined to sign a Form 2750 at that time, although they promised that they would sign a Form 2750 if a loan was approved. The responsible persons did not contact the revenue officer and offer to execute the Forms 2750 immediately after the loan was declined. Instead, they deferred action until the revenue officer contacted them, on Date 3, and requested that they immediately execute the extension. Thereafter, the responsible persons retained an attorney and sought legal advice regarding the Form 2750. We conclude, in this case, that the request that led to the execution of the Form 2750 was the request made to the attorney, on or after Date 3. This is the request which must comply with section 6501(c)(4)(B). That date is after the effective date of section 6501(c)(4)(B), December 31, 1999. We conclude, therefore, that section 6501(c)(4)(B) applies to this case.

Issue 2) If section 6501(c)(4)(B) applies to this case, whether the Service complied with the statutory provision.

The Service must satisfy the requirements of section 6501(c)(4)(B) by advising the taxpayers of the rights set forth in section 6501(c)(4)(B). Congress intended that the Service follow section 6501(c)(4)(B) when soliciting consents to extend the period of limitations. Here, the taxpayers were not advised of section 6501(c)(4)(B) when the consents that were later executed were requested. The facts are that the revenue officer did not advise the responsible persons or their representative of the section 6501(c)(4)(B) rights either orally or in writing, or by providing the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period.

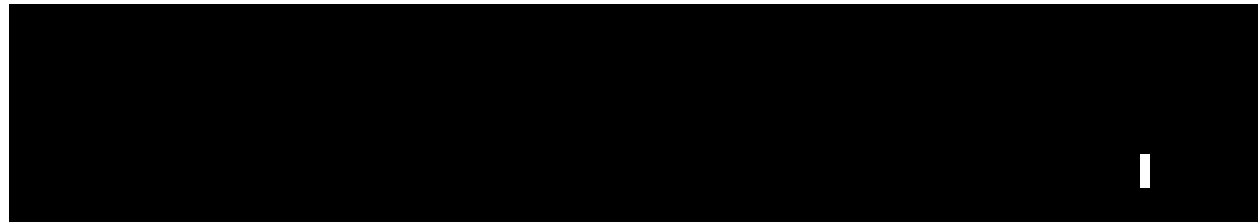
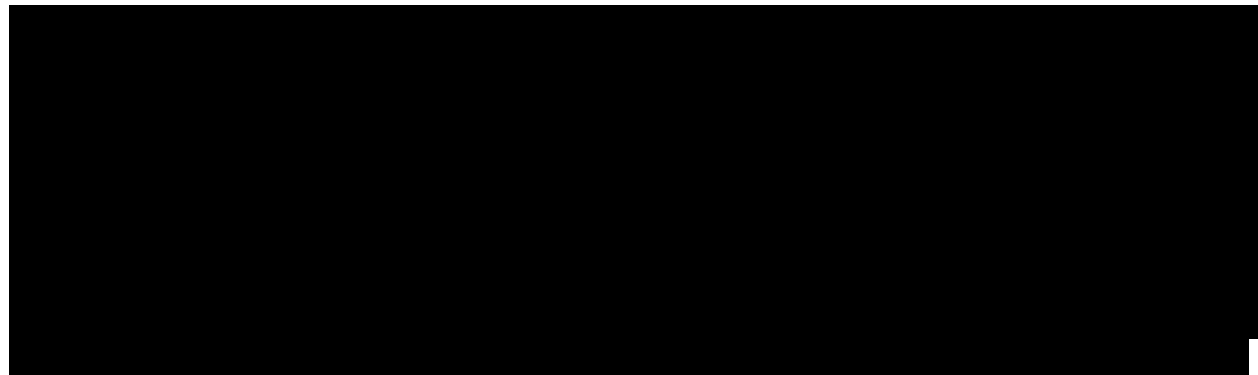
Thus, the issue then becomes whether the responsible persons and their attorney were aware of the right to refuse to extend the period of limitations or to limit the extension to particular issues or time periods. In other words, has the legislative

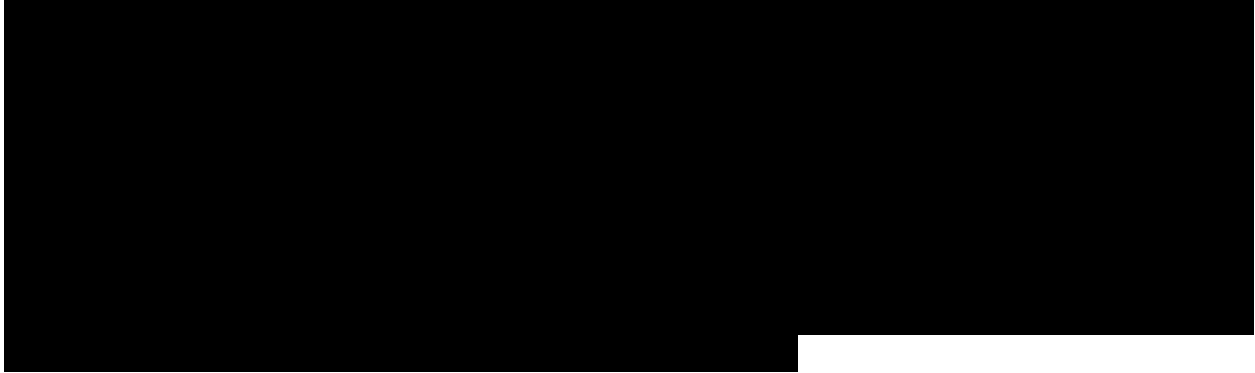
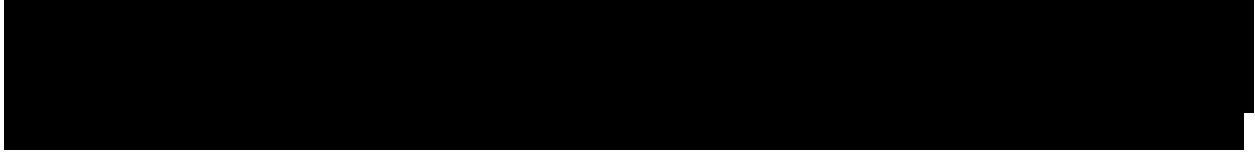
purpose behind section 6501(c)(4)(B) been fulfilled. Based on the facts provided, it appears the responsible persons and their attorney were aware of their rights with respect to extending the period of limitations. First, the responsible persons on Date 1 declined to execute the Form 2750. Second, the responsible persons on Date 2 declined to execute the Form 2750. Third, on Date 3 the responsible persons' attorney agreed to execute Form 2750 on the condition that it expire on Date B, rather than Date A, as originally proposed by the revenue officer. We believe the responsible persons and their attorney were aware that the responsible persons had a choice in agreeing to execute a consent to extend the period of limitations for assessment or to limit the consent to a particular time period. Accordingly, we believe the legislative purposes of section 6501(c)(4)(B) have been fulfilled because the actions of the responsible persons and their attorney reflect an understanding of their rights under section 6501(c)(4)(B). See S. Rep. No. 105-174 at 100 (1998); H.R. Conf. Rep. No. 105-599 at 286 (1998). Since we believe the legislative purposes have been fulfilled, we believe the Service can defend this Form 2750 if it is challenged by the responsible persons.

Issue 3) If there was not compliance with section 6501(c)(4)(B), whether the Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, secured in this case is invalid.

Since we have already concluded that, although section 6501(c)(4)(B) was not complied with, the legislative purpose of section 6501(c)(4)(B) was fulfilled and therefore the waiver here is valid.

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS





Please call the branch number if you have any further questions.