



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL
DISTRICT COUNSEL, PACIFIC NORTHWEST
CC:WR:PNW:HON

FROM: Curtis G. Wilson
Assistant Chief Counsel CC:PA:APJP

SUBJECT: Request for Chief Counsel Advice, Procedures to Resolve
Certain Tax Court Cases

This Chief Counsel Advice responds to your memorandum dated June 12, 2000. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A=
B=
C=

ISSUE:

How should Counsel resolve certain cases related to a common investment program where petitioners wish to enter into stipulated decisions consistent with earlier decisions in Tax Court test cases that concerned the same investment program?

CONCLUSION:

Petitioners should submit to your office for review information which would substantiate claims for sanctions in line with the Tax Court's prior holdings. Your office should make the determination with respect to whether the information provided is sufficient to substantiate sanctions in each particular case. If your office

determines the information provided is sufficient in a particular case, you should enter into a stipulated decision for that case.

FACTS:

There are numerous cases before the Tax Court involving investment programs promoted by A. Petitioners B and C were program participants and agreed with the government to be bound by the Tax Court decisions in certain test cases.

Due to government misconduct, the Tax Court decided with respect to certain test and nontest cases: that petitioners who either had not had decisions entered in their cases or whose decisions were not final were relieved of liability for certain time-sensitive, interest rate-based penalties; that sanctions pursuant to section 6673(a)(2) would be imposed against the government based upon an approximation of excess attorney's fees and costs petitioners incurred as a consequence of the misconduct; that interest on these sanctions would commence from the date of the decisions and orders; and that petitioners would not be entitled to attorney's fees pursuant to I.R.C. § 7430. The Tax Court entered decisions in the test cases reflecting its holdings.

B and C are interested in ending their involvement in the litigation by entering into a stipulated decision. They do not wish to await the outcome of any court of appeals' decision. B and C have offered to provide counsel with substantiation of attorney's fees in order to calculate appropriate sanctions in line with the Tax Court's prior holdings. Counsel anticipates other petitioners will wish to resolve their involvement in like manner rather than wait for disposition of any appeals.

LAW AND ANALYSIS

Should B and C or other petitioners whose Tax Court cases arose out of their involvement with the investment programs promoted by A wish to resolve their cases, they should submit to your office for review information which would substantiate claims for sanctions in line with the Tax Court's prior holdings. Your office should make the determination with respect to whether the information provided is sufficient to substantiate sanctions in each particular case. If your office determines the information provided is sufficient in a particular case, you should enter into a stipulated decision for that case.

The stipulated decisions should be patterned after the decisions already entered in the test cases, except the paragraph relating to the payment of interest as of the date of the decision should appear below the judge's signature due to jurisdictional concerns. The stipulated decision would also contain a paragraph above the judge's signature stating that petitioners are not entitled to an award of litigation costs under I.R.C. § 7430. You should also add a paragraph below the judge's

signature where petitioners would stipulate that they will not seek further relief under the Tax Court's Rules of Practice and Procedure or under I.R.C. § 6673 with respect to their case(s).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

None.

If you have any further questions, please call the branch telephone number.