



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL BROOKLYN CC:SB:1:BRK
ATTN: Patricia A. Rieger

FROM: Michael A. Arner
Senior Technician Reviewer, Branch 1
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SUBJECT: IRM Procedural Update 00230

This responds to your memorandum dated June 28, 2001. In accordance with I.R.C. § 6110(k)(3), it should not be cited as precedent.

ISSUE

Whether I.R.C. § 6502(a)(1) overrides the plain wording of I.R.C. § 6501(b)(3), which provides that the Service's execution of a return under I.R.C. § 6020(b) shall not start the running of the period for assessment and collection?

CONCLUSION

Section 6502(a)(1) neither conflicts with nor changes the plain wording of section 6501(b)(3).

BACKGROUND

IRM Procedural Update 00230 provides that the CSED shall be calculated from the date of the taxpayer's late-filed return showing a smaller tax liability than the amount assessed under the deficiency procedures.

DISCUSSION

Section 6020(b)(2) provides that "[a]ny return so made [the section 6020(b) return] and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

Section 6501(b)(3) provides that “[n]otwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.”

Section 6502(a)(1) provides that “[w]here the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such may be collected by levy or by a proceeding in court, but only if the levy is made or proceeding begun—within 10 years after the assessment of the tax,”

Because we interpret section 6502(a)(1), the question has been raised as to whether section 6502(a)(1) changes the clear rule in section 6501(b)(3) that the Service’s execution of a section 6020(b) return does not start the running of the collection period. We conclude that section 6502(a)(1) does not change the rule in section 6501(b)(3). Indeed, courts have explicitly rejected taxpayers’ arguments that the execution of section 6020(b) returns trigger the running of the assessment and collection period under section 6502(a)(1) and have held that section 6501(b)(3) prevents the running of these periods. E.g., Jensen v. I.R.S., 1998 U.S. App. LEXIS 30069 (9th Cir. 1998); Taylor v. I.R.S., 1994 U.S. App. LEXIS 35983 (10th Cir. 1994). (The determination of assessment date(s) is not a matter within our jurisdiction, so we have coordinated related assessment questions with Branch 2 of APJP, and we will issuing further guidance on the actual calculation of the CSED.)

Please call if you have any further questions.