



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

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OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR SHIRLEY M. EBREO
AGENT- ET SPECIALIST
SBSE C:14

FROM: Jerry E. Holmes
Branch Chief
CC:TEGE:EOEG:ET2

SUBJECT: Penalties and Statute of Limitations on Forms 1099

We contacted Chief Counsel's Procedural Division for a consideration of the general questions you submitted to this office concerning possible penalties and statute of limitations problems when a company fails to issue Forms 1099 to its agents. The following is their analysis of the applicable penalties and statute of limitations on Forms 1099.

Issues:

1. Whether there is a statute of limitations on assessment for penalties imposed pursuant to sections 6721 and 6722.
2. To the extent there is a statute of limitations on assessment for penalties imposed pursuant to sections 6721 and 6722, whether the statute has run with respect to the filing of Forms 1099-MISC.

Legal Analysis:

Section 6721 imposes a penalty in the case of (1) any failure to file an information return with the Service on or before the required filing date, or (2) any failure to include all the information required to be shown on the return or the inclusion of incorrect information. The term "information return" is defined in section 6724(d)(1) and Treas. Reg. § 301.6721-1(g)(1) and includes a statement of payments to another person required by section 6041(a). Section 6041(a) provides that any person engaged in a trade or business that makes certain payments in the course of its trade or business must file information returns with the Service. The information return is generally made on Forms 1096 and 1099. Treas. Reg. § 1.6041-1(a)(2). The penalty is \$50 for each

TL-N-6348-00

information return with respect to which a failure occurs, but the maximum penalty cannot exceed \$250,000 during the calendar year.

Section 6722 imposes a penalty on a payor for (1) failure to provide a timely payee statement; (2) failure to include all necessary information on a payee statement; or (3) the inclusion of incorrect information on a payee statement. The term “payee statement” is defined in section 6724(d)(2) and Treas. Reg. § 301.6722-1(d)(2) and includes the recipient’s copy of Form 1099-MISC. The penalty is \$50 for each failure with respect to a payee statement, but penalties for such failures cannot exceed \$100,000 during any calendar year.

Neither the Code nor the Treasury Regulations provide a statute of limitations for the assessment of penalties imposed pursuant to sections 6721 and 6722. However, section 6671(a) provides as follows:

[t]he penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to ‘tax’ imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

The “subchapter” referred to in section 6671 is “Subchapter B–Assessable Penalties,” and covers sections 6671 through 6724. Thus, penalties imposed pursuant to sections 6721 and 6722 should be assessed and collected in the same manner as taxes.

Section 6501 of the Internal Revenue Code provides that, except as otherwise provided, tax must be assessed within 3 years after the return was filed, whether or not such return was filed on or after the date prescribed. As an exception to the general rule, section 6501(c)(3) provides that in the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

For purposes of the statute of limitations on assessment, the term “return” means the return required to be filed by the taxpayer. I.R.C. § 6501(a). Thus, section 6501(a) depends upon the filing of a return to begin the running of the limitations period. We have not reached a final conclusion as to whether an information return is a return within the meaning of section 6501.¹ We can resolve the instant case, however, without reaching that question at this time. We recommend that you advise the revenue agent that even if an information return is a return within the meaning of section 6501, the statute of limitations on assessment has not expired as no return was filed. I.R.C.

¹ We recognize that this is an issue which must be addressed for cases in which Form 1099-MISC is filed with missing information or incorrect information.

TL-N-6348-00

§ 6501(c)(3).

If you have any further questions, please call Elizabeth Edwards of this office at (202) 622-6040.