



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL
SBSE CC:SB:2

FROM: Richard G. Goldman
Branch Chief
CC:PA:APJP:B03

SUBJECT: The Validity of Assessments Made Pursuant to a Waiver on
a Modified Form 4549

This Chief Counsel Advice responds to your memorandum dated June 21, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

X=
Year 1=
Year 2=
Date 1=
Date 2=
Date 3=

ISSUES

- 1) What is the legal effect of the section 6213(d) waiver that was executed by X, when X crossed out the portion of the waiver regarding X's wishes not to exercise appeal rights or to contest the deficiency amount in the Tax Court.
- 2) Whether the Tax Court would have jurisdiction over this case to determine the validity of the assessment or the taxes due.

CONCLUSIONS

- 1) X waived the restrictions on the assessment and collection of the Service's deficiency determination pursuant to section 6213(d).

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- 2) The Tax Court's jurisdiction over a case depends upon the issuance by the Service of a valid notice of deficiency and a timely filed petition from that notice of deficiency. The Service did not issue X a notice of deficiency from which to petition the Tax Court because X signed a valid waiver. The Tax Court would not have any jurisdiction over this case to determine the validity of the assessment or the taxes due.

Validity of the Assessments

The Service examined X's Forms 1040 for the Year 1 and Year 2 tax years. The Service and X reached a resolution on all of the examined issues and agreed on the amounts of additional taxes due. X signed a Consent to Assessment and Collection, which is included as part of Form 4549, Income Tax Examination Changes, on Date 1. The preprinted language on the Form 4549, Consent to Assessment and Collection, states the following:

I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. Therefore, I give my consent to the immediate assessment and collection of any increase in tax and penalties shown above, plus additional interest as provided by law. I accept any decrease in tax and penalties shown above. I understand that this report is subject to acceptance by the appropriate I.R.S. official.

Above X's signatures, X crossed out the sentence regarding X's wish not to exercise X's appeal rights with the Internal Revenue Service and X's wish not to contest the deficiency determinations in the Tax Court. In addition, X initialed the form immediately before and after the struck sentence. The Service assessed the agreed upon deficiencies for Year 1 and Year 2 pursuant to the consent. The statute of limitations on assessment for Year 1 and Year 2 expired on Date 2 and Date 3, respectively.

Section 6212(a) states that if the Secretary determines that there is a deficiency owed in respect of tax, he is authorized to send notice of the deficiency to the taxpayer. Section 6213(a) prohibits the Service from assessing or collecting a deficiency until a notice of deficiency has been issued to the taxpayer and until the expiration of the 90 (or 150) day period within which the taxpayer may file a petition with the Tax Court. Section 6213(d), however, states that the taxpayer may at any time, whether or not a notice of deficiency has been issued, waive the restrictions on the assessment and collection of the deficiency amount.

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Once a taxpayer waives the restrictions on assessment and collection pursuant to section 6213(d), the Service is no longer required to issue a notice of deficiency to the taxpayer. See United States v. Price, 361 U.S. 304 (1960); White v. Commissioner, 537 F. Supp. 679 (D. Co. 1982).

Here, the only portion of the Consent to Assessment and Collection that was stricken by X was the statement that the taxpayer did not wish to exercise appeal rights or to contest the determination in the Tax Court. X did not strike out the portion of the Consent to Assessment and Collection that specifically consented to the immediate assessment and collection of the deficiency amounts. X has therefore expressly waived the restrictions on assessment and collection. The waiver was voluntarily and knowingly signed. There is no indication that the Service made any misrepresentations concerning the effect of the waiver. The fact that X's initials appear immediately before and after the stricken sentence clearly shows that X's execution of the waiver was a thoughtful, intentional act, and not the mere execution of a preprinted boilerplate form. By signing the waiver, X voluntarily relinquished the known restrictions on assessment and collection. Therefore, the Consent to Assessment and Collection is a valid waiver under section 6213(d), and the Service was not required to issue X a notice of deficiency prior to assessing the additional taxes due for Year 1 and Year 2. Moreover, inasmuch as assessments have been made pursuant to the consent, it may not be withdrawn. See Treas. Reg. § 301.6213-1(d) ("After such waiver has been acted upon...and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn.") The Service reasonably relied on the consent in making the assessments and would now be unable to utilize deficiency procedures in light of the expired periods of limitations on assessment.

Tax Court Jurisdiction

The Tax Court's jurisdiction to redetermine a deficiency in tax depends upon the issuance of a valid notice of deficiency and a timely filed petition. T.C. Rule 13(a); Monge v. Commissioner, 93 T.C. 22 (1989); Midland Mortgage Co. v. Commissioner, 73 T.C. 902, 907 (1980); I.R.C. § 6213(a); Kraft v. Commissioner, T.C. Memo. 1997-476.

Here, the Service did not issue a notice of deficiency to X for Year 1 or Year 2 because X filed a section 6213(d) waiver. The Tax Court does not have jurisdiction over any petition that may be filed by X for either a redetermination of the deficiency or to enjoin collection activities on an alleged improper assessment. X is not, however, completely without a possible remedy. X may still pay the remaining deficiency amount owed and file a claim for refund, or may have a collection due process remedy under sections 6320 or 6330.

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This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.