

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: December 18, 2003

to:

from:

subject: **Chief Counsel Advice**

This Chief Counsel Advice responds to your memorandum dated November 20, 2003 in connection with a question whether the dual notice requirements of section 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) can be waived. In accordance with I.R.C. § 6110(k)(3), this Field Service Advice should not be cited as precedent.

Issue

Whether the dual notice requirement of section 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) can be waived by joint filers during an examination.

Conclusion

A policy and/or practice of seeking waivers of the dual notice requirements required under section 3201(d) of RRA 98 would be perceived as an attempt to circumvent the letter and the spirit of statute which does not contemplate joint filers waiving these important notification rights. Although the language of the statute allows the Service to only send duplicate notices where "practicable", this provision's intent was to give the Service discretion in determining which notices were significant enough to require dual notification. The term "wherever practicable" cannot be construed as giving the Service permission to request that taxpayers waive this statutory right.

Facts

Section 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) provides that the Service “shall, wherever practicable, send any notice relating to a joint return” to each individual filing the joint return.” Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, sec. 3201(d), (g)(1), 112 Stat. 685, 740 (1998). IRM 4.10.1.6.8, *Separate Notice Requirements for Joint Returns* (05-14-1999), sets forth the rules regarding the issuance of separate notice during the audit of a joint return. The IRM provides that the following notices must be sent in duplicate during the examination of a joint return: initial appointment letters, all first notices of deficiency, all statutory notices of deficiency, all third party notifications using Letter 3164, and any other notice required by statute. IRM 4.10.1.6.8.1(1), *Applicability to Examination Notices* (05-14-1999). Furthermore, the IRM requires that duplicate notices be sent if the examiner determines that either spouse has a separate mailing address or if the correct mailing address for one or both of the spouses can not be verified. The examiner must verify the address of both joint taxpayers “[d]uring the first contact (either by telephone or in person).” IRM 4.10.1.6.8.2(1), *Verification of Address of Each Spouse* (05-14-1999).

Compliance would like have taxpayers waive their duplicate notice rights during the pendency of an audit. According to Compliance, the waiver would waive the dual notice requirement only during an examination, and would be presented to joint taxpayers at the commencement of an audit. If the joint taxpayers signed the waiver, the Service would not have to comply with the dual notice requirements of section 3201(d) when issuing a first notice of deficiency, a statutory notice of deficiency, a third party notification, or any other notice required by statute. Normally, these important notices would have to be sent in duplicate.

Compliance believes that the use of such a waiver would produce significant cost savings due to a reduction in postage paid; however, no statistical data was offered to support this conclusion. Compliance has not considered the additional costs generated by the waiver which would include, but are not limited to: the cost of retaining a copy of all waivers, and the time and effort expended by the examiner in discussing the waiver with the joint filers, and in documenting the discussion.

Discussion

Section 3201(d) of the RRA 98 provides that the Service “shall, wherever practicable, send any notice relating to a joint return” to each individual filing the joint return.” Congress by the enactment of this provision wanted to ensure that all joint filers would be made aware of the Service’s activities with respect to their joint tax liabilities. Section 3201(d) serves to protect those spouses that had previously been denied access to information from the Service because an abusive or controlling spouse refused to share the information with them.

A policy and/or practice of seeking waivers of the dual notice requirements required under section 3201(d) of RRA 98 would be perceived as an attempt to

circumvent the letter and the spirit of statute which does not authorize waivers. Although the language of the statute allows the Service to only send duplicate notices where “practicable”, this provision’s intent was to give the Service discretion in determining which notices were significant enough to require dual notification. The term “wherever practicable” cannot be construed as giving the Service permission to routinely request taxpayers to waive this statutory right.¹ By enacting section 3201(d), Congress clearly wanted to afford both spouses the right to receive important information from the Service regarding their joint tax account.

As a practical matter, it is unclear based on the facts presented, whether the development of a waiver would provide significant cost savings to the Government. First, the documents covered by the waiver, i.e., first notices of deficiency, statutory notices of deficiency, third party notifications using Letter 3164, and any other notice required by statute, are not that extensive. Thus, it is unclear whether the amount of mail sent by the Service would be diminished significantly.

It is also unlikely that whether the use of a waiver would result in more efficient tax administration. The statute serves to protect those spouses who are denied access to information from the Service by an abusive or controlling spouse. Thus, if a waiver was to be offered to joint filers, the Service have to ensure that both spouses signing the waiver were adequately apprised of the rights they were waiving, and were waiving them voluntarily. Under current procedures, the examiner must orally verify the addresses of both spouses at the commencement of an examination. Thus, if a waiver was to be used, the examiner would have to discuss the waiver thoroughly with both parties at this time to ensure that both spouse understood and agreed to waive their joint notification rights. The examiner would have to make a determination that both spouses signed the waiver freely, and notes of this interchange would have to be documented and retained. Thus, the waiver would likely not save the examiner time. Furthermore, because the Service may have to prove that a waiver was signed by the joint taxpayers, these waivers would have to be retained by the Service. Although the cost of developing and implementing a reliable method of retaining this information is not known, it would obviously result in an expense to the Government.

In sum, a policy of seeking waivers of the dual notice requirements required under section 3201(d) of RRA 98 is not permitted under the statute. Moreover, it is unclear based on the facts presented that this type of waiver would result in more efficient tax administration, or significant cost savings to the Government.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

¹As stated previously, the Service has already determined that the documents that would be covered by the waiver are significant enough to require dual notification. See, IRM 4.10.1.6.8.

If you have any questions, please contact this office at .