

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Sheila E. Jones
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from: Charles A. Hall
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(Procedure & Administration)

subject: Application of section 3201(d) of RRA 98 to Appeals exam initial contact letters

This Chief Counsel Advice responds to your assistance request dated May 24, 2006. In accordance with I.R.C. § 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

ISSUE

In examination cases involving joint returns, whether the Office of Appeals is required to send initial contact letters separately to each spouse who filed a joint return pursuant to section 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998.

CONCLUSION

The Office of Appeals is not required to send initial contact letters separately to each spouse under section 3201(d) because the letters do not contain a notice required by statute; however, Appeals is not precluded from sending them separately.

FACTS

Section 3201(d)¹ 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 under section 6013...separately to each individual filing the joint return." Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, sec. 3201(d), 112 Stat. 685, 740 (1998). On May 13, 1999, the Office of Corporate & Individual Income Tax issued a memorandum to all regional directors of the Office of Appeals (Appeals) that provided some initial guidance on what notices Appeals was required to send separately under section 3201(d) of RRA 98 (1999 Memo). The 1999 Memo contains the following list, which Counsel helped prepare, of the types of Appeals notices that must be sent separately to each spouse: (1) all initial appeals contact and conference letters, (2) all Statutory Notices of Deficiency, (3) all potential third party contact notifications, (4) any other notice required by statute, and (5) all correspondence subsequent to Appeals knowledge that either spouse has a new/separate mailing address or if the correct mailing address for one or both spouses cannot be verified.

You recently discovered that Appeals personnel handling collection issues (Collection Division) were not sending all initial contact letters separately to each spouse when both spouses resided at the same address. The Collection Division did not know about the 1999 Memo until early 2005. In April of 2005, the Collection Division asked the Collection, Bankruptcy, and Summonses Division (CBS) of the Office of Associate Chief Counsel (Procedure and Administration) whether their collection due process (CDP) initial contact letters needed to be sent separately. CDP initial contact letters are letters 3846, 3855, 3999, & 4000. CBS advised the Collection Division that they were not required to send such correspondence separately to each spouse when both spouses reside at the same address, because correspondence sent during a CDP hearing is not required by statute. The Collection Division does send notices separately to each spouse when the spouses reside at different addresses.

Consequently, you asked us whether Appeals personnel handling exam issues (Exam Division) need to continue to send initial contact letters separately to each spouse when both reside at the same address. To help us address this question, you sent us the following initial contact letters used by the Exam Division: 1539, 4046, 13221, & FOIA. In addition, you mentioned that you may draft a discussion of the application of section 3201(d) to Appeals notices for inclusion in its section of the Internal Revenue Manual (IRM), after we address your question.

LAW AND ANALYSIS

Section 3201(d) of RRA 98 requires the Service, wherever practicable, to send any notice related to a joint return separately to each individual filing the joint return.

¹ Section 3201(d) was not codified into the Internal Revenue Code.

Congress wanted to ensure that both spouses would be made aware of their tax situation with respect to their joint tax liabilities. S. Rep. No. 105-174, at 56 (1998). Congress intended this practice to increase the likelihood that separated or divorced spouses would each receive notices regarding their tax situation. S. Rep. No. 105-174, at 60. Congress expected that “where notices are being sent by registered mail,...a separate notice will be sent by registered mail to each spouse.” *Id.* 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.

Generally, our office interprets the phrase “any notice” to mean any notice required by statute. Thus, section 3201(d) only applies to documents that contain a notice required by statute, such as a statutory notice of deficiency under section 6212 and a notice and demand under section 6303.

We have interpreted the phrase “wherever practicable” to mean the Service can take certain business factors into consideration in order to determine whether it is practicable to send the notice to both filers of a joint return; thus, this is mainly a business decision for the Service. Business factors include production and mailing costs. Although the practicability of sending any particular notice to both joint filers is a business decision, the Service needs to document the analysis that was used to determine the practicability of sending duplicate notices. Another factor to consider is consistent treatment throughout the Service. The Service only needs to analyze whether or not it is practical to send the notices separately if the notice is required by statute because, otherwise, section 3201(d) does not apply.

As noted above, CBS advised the Collection Division that they were not required to send initial contact letters separately to each spouse when both spouses resided at the same address because correspondence sent during a CDP hearing is not required by statute. We agree. Further, we could not identify any notice in the exam initial contact letters that was required by statute. Therefore, the Exam Division is not required to send these notices separately to each spouse when both spouses reside at the same address. Accordingly, we now revise the list contained in the 1999 Memo of the notices required to be sent separately to each spouse under section 3201(d). The Exam Division should continue to send letters separately when the spouses reside at different addresses. Any IRM discussion regarding this issue should include the revised list.

Although Appeals is not required to send initial contact letters separately, given the spirit of section 3201(d), it is a good idea to continue to send them separately. We do not think it is necessary to send all correspondence separately, but the initial letters let taxpayers know that Appeals has their case, gives them the contact name and number of the Appeals person they should contact if they have a question, notifies them of the next contact, such as a telephone conference, and identifies the documents they need to forward to Appeals in order for their case to be processed. All of this information is important and, if a letter is sent to only one spouse, it is possible that one spouse may

not communicate this information to the other spouse, even if they reside at the same address. Our understanding is that it was a policy decision to include initial contact letters in the list of notices required to be sent separately, so you may want to elevate the issue within Appeals to decide how this should be handled with regard to both collection and examination related notices. After Appeals reaches a consensus on how to handle initial contact letters, any IRM discussion should reflect that conclusion.

CONCLUSION

For the reasons discussed above, we do not think Appeals is required to send initial contact letters separately to each spouse, but is free to do so.

If you have any further questions, please call us at .