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To:

Cc:

Subject: Qualified Offer Question

A few weeks ago I received a question about qualified offers and responded by addressing a few scenarios. That advice led to 2 follow up questions. Below are the questions, answers and original advice. If you have any additional questions regarding qualified offers or section 7430 generally, please do not hesitate to contact myself or branch at .

Q.1. When does the qualified offer period begin in a CDP proceeding ?

A.1. A qualified offer may not be made in a CDP proceeding unless the underlying liability is properly at issue pursuant to section 6320(c) or 6330(c)(2)(B). In cases where the taxpayer can properly dispute the liability, such as a case involving self-assessed liability, a qualified offer may be submitted in the CDP hearing. Although the regulations do not specifically address CDP, the general rules and principles apply and section 301.7430-7(c)(7) is instructive. Applying the general rules and principles as well as the cited regulation, the qualified offer period begins on the date of the first letter that allows the taxpayer an opportunity for administrative review by Appeals. The opportunity for administrative review is the key to start the qualified offer period. In CDP cases, the pertinent document would be either the notice of lien filing and right to a hearing or notice of intent to levy and right to a hearing.

Q.2. Can a qualified offer be made on an OIC - Doubt as to Liability?

A.2. No. In order for a taxpayer to be entitled to recover attorney fees under the qualified offer rule, there must be a judicial determination that the amount of the liability is less than or equal to the qualified offer. An OIC - Doubt as to Liability is subject to judicial review only if it is raised in a CDP proceeding and rejected in a Notice of Determination that is timely petitioned to the Tax Court. If a taxpayer raises an OIC - Doubt as to Liability in a CDP hearing, the Tax Court only has jurisdiction to review the rejection of the OIC for an abuse of discretion. The Court does not have jurisdiction to determine the amount of the liability. Since there is no judicial determination as to the amount of the liability, the qualified offer rule does not apply. Hence, the taxpayer may not submit a qualified offer when disputing the rejection of an OIC based on doubt as to liability.

Section 7430 excludes from the qualified offer rule any proceeding where the liability is not in issue. If in doubt please do not hesitate to contact branch . Below are a few scenarios.

1. A qualified offer may not be made in a CDP proceeding unless the underlying liability is properly at issue pursuant to section 6320(c) or 6330(c)(2)(B).

2. A qualified offer may not be made in a proceeding where the issue is entitlement to an installment agreement or offer in compromise.
3. A qualified offer may be made in a proceeding where the issue is entitlement to section 6015 innocent spouse relief.
4. A qualified offer may not be made in a declaratory judgment proceeding.
5. A qualified offer may not be made in a proceeding to enforce or quash a summons issued pursuant to the code.
6. A qualified offer may not be made in a proceeding to restrain disclosure under section 6110(f).