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From:

Sent: Wednesday, April 08, 2009 2:49:31 PM

To:

Cc:

Subject: Section 6501, Validity of Consent to Extend SOL

This responds to your request for advice on the application of section 6501 to a series of four consents to extend the period of limitations; the second of which was unsigned by the Service. As a result of this omission and the statute of limitations concerns it raises for the particular tax year at issue, Appeals (which noted the error while the case was under consideration) has sent the case back to Service personnel for review/action. The Service has, in turn, asked for your advice on how to proceed.

Based upon the limited facts presented to us, we do not support an argument defending the validity of a Form 872 that was unsigned by the Service as this argument contravenes both the statute and our own regulation requiring execution by both parties. Section 6501 & Treas. Reg. 301.6501(c)-1(d).

Despite this "break in the chain" of consents which, in hindsight, likely caused the 3-year period under section 6501(a) to expire, for your further consideration, we posit an alternative argument that the third and fourth consents signed by both parties still validly extend the 6-year statute of limitations under section 6501(e). You have indicated that the facts of the case support the application of section 6501(e) due to a substantial omission. Therefore a valid Form 872 signed before the natural expiration of the 6-year period, or during the extension period agreed upon by the taxpayer and the Service in a prior agreement, to a date beyond that expiration would extend the period of limitations for assessment; no reference to the 6-year period on Form 872 is necessary. *Wang v. Commissioner*, TC Memo 1998-389.

You have also mentioned the possible application of section 6501(c)(9) to this case. We do not opine on that particular point.

Please contact me with any further questions or comments.

Thank you,