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From:

Sent: Friday, November 05, 2010 3:50:43 PM

To:

Cc:

Subject: NOD sent to POA

Hi

The answers below were drafted in response to your questions. These answers also incorporate the suggested answers which you provided. If you have any questions or would like to discuss, please do not hesitate to give me a call.

- 1. If the Notice of Deficiency (NOD) was mailed to the Taxpayer's last known address but the Taxpayer did not receive it, however a copy of the NOD was received by the authorized Power of Attorney (POA), is the Taxpayer entitled to raise challenges to the underlying liability during a Collection Due Process (CDP) hearing?**

Receipt of a Notice of Deficiency by a taxpayer's Power of Attorney can be imputed to the taxpayer. Cf. Calderone v. Commissioner, T.C. Memo. 2004-240 (2004). If you can prove that the POA notified the taxpayer with time to petition the court, this would constitute a prior opportunity to dispute the liability. Ordinarily a properly represented taxpayer may be presumed to have received notice based on his representation. However, the facts of Calderone demonstrate that there can be exceptions to this when the taxpayer is not properly represented. Ultimately the answer to the question is highly fact dependent, and each case would need to be looked into individually to determine whether the taxpayer will be allowed to raise challenges to the underlying liability during a CDP hearing.

Note: The above answer assumes that the representative's address is not also the taxpayer's "last known address." When a taxpayer executes a Power of Attorney that directs that original correspondence be sent to their representative's address, that address becomes a "last known address." Expanding Envelope & Folder Corp. v. Shotz, 385 F.2d 402, 404 (3d Cir. 1967). Under these circumstances, sending the Notice of Deficiency to the POA would constitute a prior opportunity for the taxpayer.

2. If the NOD was NOT mailed to the Taxpayer's last known address but a copy was mailed to his POA, is the IRC 6212(a) requirement met for making a valid assessment?

Generally, a notice of deficiency must be mailed to the taxpayer at the taxpayer's "last known address" in order to be valid. I.R.C. § 6212(b)(1). Sending a copy of the Notice of Deficiency to a POA does NOT satisfy the "last known address" requirement unless the petitioner receives actual notice of the deficiencies determined against him within sufficient time to file a timely petition with the Tax Court. McKay v. Commissioner, 89 T.C. 1063 (1987). In McKay, the representative gave the copy to petitioner within days of receiving the copy. Each case would need to be looked into individually to determine if the notice was valid.

Note: The above answer assumes that the representative's address is not also the taxpayer's "last known address." When a taxpayer executes a Power of Attorney that directs that original correspondence be sent to the attorney's address, that address becomes a "last known address" for purposes of § 6212. Expanding Envelope & Folder Corp. v. Shotz, 385 F.2d 402, 404 (3d Cir. 1967). Under these circumstances, sending the Notice of Deficiency to the POA would satisfy the "last known address" requirement of 6212(a).

Best regards,