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**From:**

**Sent:** Monday, August 22, 2011 3:26 PM

**To:**

**Cc:**

**Subject:** Section 6501(e) presentation

Attached is a general discussion on 6501(c)(8) and an example of its application. If you have any questions or need further assistance, please just let me know.

Thanks,

### **An Overview of Section 6501(c)(8)**

Section 6501(c)(8)(A) provides that in the case of information required to be reported under section 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048, "the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section." Section 6501(c)(8)(B) provides that if the failure to provide the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, then the extended period for assessment shall only apply to the item(s) related to such failure.

Section 6501(c)(8) has been amended in several material respects which may affect a taxpayer with earlier tax years. First, the section was amended by PL 111-147 which added "tax return" to subparagraph (A). Thus, it now reads that "the time for assessment of any tax imposed by this title with respect to any *tax return*, event, or period to which such information relates shall not expire...". This amendment is effective for (1) returns filed after the date of enactment (3/18/10) and (2) returns filed on or before the date of enactment (3/18/2010) if the assessment period under 6501 (without regard to the amendments) had not expired as of that date. Second, PL 111-226 amended section 6501(c)(8) by adding the new subparagraph (B) which provides for the reasonable cause exception to the general rule found in subparagraph (A). As noted above, if applicable, subparagraph (B) would limit the application of the extended assessment period in subparagraph (A) to only the item(s) related to the failure to provide the required information. Likewise, this amendment is effective for (1) returns

filed after the date of enactment of PL 111-147 (3/18/10) and (2) returns filed on or before 3/18/10 but in which the assessment statute under section 6501 had not otherwise expired before that date.

Prior to the effective date of these changes, the Service had taken that position that 6501(c)(8) would only extend the assessment statute with respect to the tax consequences related to the information required to be reported under the relevant reporting section and not all transactions in the tax year at issue. See, e.g., the preamble to TD 8850 (final regulations under section 6038) and TAM 200024051. Thus, prior to the above-referenced amendments to section 6501(c)(8), it was the Service's position that 6501(c)(8) did not extend the assessment statute to *all* items on the taxpayer's tax return for the year at issue.

As the amendment to section 6501(c)(8) now makes clear, the Service's narrower application of 6501(c)(8)(A) is no longer applicable to the tax years affected by the above-referenced amendments to 6501(c)(8). As noted in the Joint Committee Technical Explanation of PL 111-147 with respect to 6501(c)(8), the change to subparagraph (A) clarified that the extension of the assessment statute applies to the taxpayer's entire tax return and is not limited to the items affected by the failure to provide the required information. Thus, it is now clear that the exception in section 6501(c)(8) to the general three-year limitations period is now applicable to the entire tax return for tax returns that are subject to the effective date of the above-referenced amendment.

### **Example**

Below is an example of how the prior version and current version of section 6501(c)(8) may apply to a single taxpayer.

Taxpayer timely filed tax returns for the tax years 2004 through 2009 but failed to properly include a Form 5471 with each return. Under the general limitations period provided in section 6501(a), only the assessment periods for the 2008 and 2009 tax years remain open under the general three-year limitations period.

For the 2004 and 2005 tax years, it is assumed that the general three-year assessment period for each year had expired before 3/18/2010, the effective date of the recent amendments section 6501(c)(8). Accordingly, based on the Service's prior application of 6501(c)(8), the assessment statute remains open for these tax years only with respect to any item(s) related to the failure to provide the required information.

For the 2006 through 2009 tax years, the assessment limitations period remains open indefinitely with respect to all items on the tax returns for each of these tax years

because each return was either (1) filed after the date of enactment of the (c)(8) legislation (i.e., the return was filed after 3/18/2010) or (2) filed prior to the date of enactment of the (c)(8) legislation (3/18/2010) but the assessment period under section 6501 had not otherwise expired as of that date. However, if the taxpayer can establish that the failure to file the required form was due to reasonable and not willful neglect for any of these tax years, then the limitations period is only extended with respect to those items related to the failure to furnish the required information.