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From:

Sent: Monday, April 23, 2012 10:24:59 AM

To:

Cc:

Subject: Appeals authority

Re: Appeals authority to enter a closing agreement covering an item in a year other than under appeal (a "future year") even though that future year is currently under examination.

Hi SPR § 601.106(g) addresses the limitations on the jurisdiction and function of Appeals and ¶(g)(3) covers Appeals jurisdiction with respect to closing agreements, but the SPR doesn't get into specifics. For specifics, I'd look at the Appeals IRMs. Several have procedures for coordinating with Exam which would allow Exam to raise specific concerns; i.e., a future year item really isn't related to an item in the year before Appeals (e.g., it's not a recurring item), or the proper treatment of the item in the future year depends on facts and circumstances that will arise in that future year. Here are some references -

A closing agreement may be entered for a period ending after the date of the agreement with respect to one or more separate items or transactions (i.e., it can't be for the entire liability for the future year. See Treas. Reg. 301.7121-1(b)(3) ("agreement may relate to one or more separate items affecting the tax liability"). The authority delegated to Appeals for these years is more narrowly set out as covering "related specific items affecting other taxable periods." See IRM 1.2.47.4 (08-18-1997) Delegation Order 8-3 (formerly DO-97, Rev. 34) at ¶(14). This delegation reflected in the Appeals closing agreement handbook at IRM 8.13.1.1.4.(4) which sets out (two) general limitations on Appeals authority. And the delegation is reflected in an example that allows for consideration of future years "when an issue is disposed of on an intermediate basis and the issue is recurring (providing later tax treatment will not depend on factual circumstances of later years)." See IRM 8.13.1.1.2(m). Guidelines for closing agreements are in Rev. Proc. 68-16 and the preceding parenthetical is reflected therein at §7.03, *Matters Not Properly Determinable*, which provides "Determinations should not attempt to fix tax treatment for future years where correct treatment will depend primarily on circumstances that will arise subsequent to the agreement, such as the application of capital gains treatment to future sales of real estate or the treatment of farm losses for future years." If you want to discuss whether a particular item can be covered in a future year's closing agreement, let me know and I'll put you in touch with someone in .

The need for coordination on future years is mentioned in Rev. Proc. 68-16 at § 7.05, *Related Cases and Years*, which cautions that "The direct or indirect impact of the determination of a specific matter upon other years or related cases particularly those within the jurisdiction of another office, should be given careful consideration" and that coordination may be necessary. Consistent with § 7.05, the Appeals closing agreement provides for coordination where a determination on a specific matter may have a direct or indirect impact on other years or related cases that are under another office's jurisdiction. IRM 8.13.1.3.5 at (1)&(2). Another Appeals IRM details coordination procedures for "related cases" (i.e., those involving a common or similar issue such as different years of the same taxpayer received at different times). IRM 8.2.3.2 at (1). See IRM 8.2.3.7.1 regarding future years that are under exam but for which an RAR has not been issued.