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From:

Sent: Friday, April 20, 2012 10:20:54 AM

To:

Cc:

Subject: FW: 6166, 7479 and 6403.questions

My reviewer, _____ and I have provided answers to your questions below. Please let me know if you would like to discuss any of the answers or if you have any further questions.

Thanks,

Issue 1.

The estate is on a 6166 installment plan. Exam maintains that certain assets which the estate considered to be part of the closely-held business are actually not part of the closely-held business. As a result, the size of the business vis-à-vis the whole estate is reduced. The estate still qualifies for the 6166 election but the deferrable tax is decreased because of the reduced business/estate ratio. Exam issued a 6166 determination letter. If Appeals sustains Exam's position, would the Tax Court have jurisdiction under IRC 7479 to review this determination? In effect, the election has not been terminated.

Answer. Section 7479 (a)(1) states that the Tax Court may make a declaration when the Secretary has made a determination as to whether an estate may make an election under section 6166 "with respect to any property included" in the estate. Section 7479(a)(2) states that the Tax Court may make a declaration when the Secretary has made a determination about whether the section 6166 extension of time for payment of estate tax has ceased to apply "with respect to any property included" in the estate. We interpret this language permitting a declaration with respect to estate property as encompassing the Service's determination that the amount of deferred payment of estate tax should be reduced. It makes no difference whether the reason for the reduction of the deferred payment is because certain estate assets are held not to be closely held business assets or the value of those assets is determined to be lower. The Tax Court would have jurisdiction under section 7479 to review Appeals's determination that the amount of the deferred payment of estate tax should be reduced.

Issue 2.

The estate is on a 6166 installment plan. Exam audits the return and finds a deficiency. Exam issued a Stat Notice. Exam also issued a 6166 determination letter because, based on the different asset values per Stat Notice, the estate no longer qualifies for a 6166 election or, like above, still qualifies but to a lesser extent. Estate petitions the Tax Court with respect to the deficiency. Estate also files an appeal with respect to the 6166 termination letter. Appeals now has the 6166 portion of the case but it is computationally impossible to

resolve the issue because the underlying asset values are subject to the Tax Court's jurisdiction. What should Appeals do?

In this respect, I have reviewed CCDM 35.8.5.3 and Tax Court Rule 141 & 155. [REDACTED]

Answer. In cases like this, Appeals will be unable to make a determination about whether the estate is entitled to defer payment of its estate taxes, or the amount of the tax it may defer, until the Tax Court decides the value of the estate in the deficiency proceeding, and the Tax Court decision becomes final. For this reason, Appeals should sustain Exam's determination and allow the estate to petition the Tax Court under section 7479. [REDACTED]

Issue 3. Estate timely filed Form 4768, requesting an extension of time to file and to pay the estate tax. In addition, the estate attached a letter stating it would be making an election under IRC 6166 and that the payment enclosed () was to be applied to the non-deferred portion of the estate tax.

The estate tax return was filed timely. The non-deferred portion of the tax turned out to be much less than the amount remitted (only). In a letter with the return, the estate requested a refund for the amount of the non-deferred tax overpaid.

The IRS Service Center responded that the overpayment had to be applied to the deferred tax and would not be refunded. The Notice contains a one-sentence statement citing IRC 6403 as support for its position.

If the estate cannot designate what portion of the estimated payment submitted with the extension request (Form 4768), it's in a lose-lose position. If the non-deferred tax is understated, it will be subject to a failure to pay penalty and interest on the underpayment. If the non-deferred tax is overstated, the IRS keeps the money and the taxpayer loses the deferral benefit of IRC 6166 as to the overpayment. What are your thoughts on this issue?

Answer. In general, before the Service is permitted to refund an amount of tax paid, section 6402 requires that there be an overpayment. An overpayment exists when the amount of tax paid exceeds the amount of tax properly due. In the fact pattern above, the estate may have overpaid the non-deferred portion of the estate tax but the estate did not overpay its total estate tax liability. Section 6403 provides an exception to section 6402, permitting a refund of amounts in excess of the section 6166 installment payment, but section 6403 is inapplicable to the circumstance you describe. Section 6403 is only applicable when a section 6166 election has been made and the payment is submitted as an installment payment. Under the facts you describe, the section 6166 election had not been made (the election is made on Form 706, Part 3, Line 3, not in the letter accompanying the extension request) and the payment was not submitted as an installment payment. As a result none of the payment may be treated as an installment payment under section 6403. The general rule embodied in section 6402 applies. Because the original payment did not exceed the total tax due, there is no overpayment of tax that can be refunded.