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From:

Sent: Thursday, October 08, 2015 10:12:23 AM

To:

Cc:

Bcc:

Subject: RE: 7521 Question

You asked whether the Service was required to allow audio recording of a meeting between Service employees and a taxpayer, during which the subject matter to be discussed was transfer pricing studies used to determine the taxpayers tax liability.

Section 7521(a)(1) provides that any officer or employee of the Service “in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer’s own expense and with the taxpayer’s own equipment.” Shortly after section 7521 was enacted, the Service defined “taxpayer interview” for purposes of section 7521 as a meeting between an employee of “the Examination function, the Employee Plans and Exempt Organization function, or the Collection function of the Service” and a taxpayer “when the determination or the collection of any tax is at issue.” See Notice 89-51, 1989-1 C.B. 691. The Service expanded this definition to include all Appeals face to face conferences after the Tax Court’s decision in Keene v. Commissioner, 121 T.C. 8 (2003), which held that section 7521 applied to CDP hearings. The Tax Court also held that the voluntary nature of the meeting was immaterial, and rejected a narrow view of the word “interview.”

Since the meeting at issue is a meeting between an employee of the Examination function of the Service and the taxpayer and the transfer pricing being discussed directly relates to the determination of tax at issue, the Service must allow the taxpayer to audio record the meeting, provided the taxpayer complies with the Service’s requirements. The taxpayer must make the request ten days in advance and must provide its own equipment at its own expense.

Please feel free to contact me if you have any additional questions or concerns. Thank you.