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From: [REDACTED]
Sent: Tuesday, October 25, 2016 9:45:56 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: EIN Issuance Volume

Hello ;

You have asked whether Accounts Management could restrict the issuance of Employer Identification Numbers (EINs) to applicants that have a Social Security Number or an Individual Tax Identification Number. You have also asked whether it would be legally permissible for Accounts Management to deny an EIN request if the responsible party has not filed a return.

It is our view that I.R.C. §§ 6011(b), 6109(a)(1) and 6109(c) and the underlying Treasury regulations give the Internal Revenue Service (Service) broad authority to deny an EIN request if the applicant does not have a Social Security Number (SSN), an Individual Taxpayer Identification Number (ITIN), or has not filed a return.

I.R.C. § 6109(a)(1) generally provides that any person required to file a return, statement, or other document shall include such identifying number as may be prescribed for securing proper identification. See also Treas. Reg. § 301.6109-1(d)(4)(ii). I.R.C. § 6011(b) authorizes the Service to require such information with respect to persons subject to taxes as is necessary or helpful in securing proper identification of such persons. I.R.C. § 6109(c) of the Code provides that the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person.

The broad language contained in sections 6011(b) and 6109(a)(1) and 6109(c) taken together indicates that Congress has vested in the Service broad discretionary authority deemed necessary or helpful for the proper identification of a taxpayer, employer, employee, or other person for purposes of filing returns and documents. *Cf.* Rev. Rul. 73-526, 1973-2 C.B. 404 (a new EIN should be requested by the new corporation in a consolidation and in any reincorporation transaction not qualifying as a section 368(a)(1)(F) reorganization). Adoption of rules that would limit issuance of an EIN to a human being that has a SSN or ITIN and has filed a return reasonably restricts use of EINs to its statutory purposes.

Although it is our view that this policy is supportable under the Code, it is bound to be controversial. Please consider conducting a risk assessment to determine if it is advisable to implement this proposal.

Please contact this office if we can be of further assistance.