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From: [REDACTED]

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To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: assessments v. liability

Noelle,

You've asked about the distinction between assessments and liabilities and when an unpaid Form 1040 liability becomes a "delinquent federal debt." The Code imposes liabilities. Different liabilities are imposed at different times. For example, an income tax liability exists immediately after midnight on December 31 (this assumes a calendar year taxpayer - there are different taxable periods allowed for the income tax). Once the period closes, there is a liability imposed based on all of the items that comprise the liability (gain, loss, *etc.*), even though the amount might not be subject to determination for a while. And other liabilities are imposed at other times. There are excise tax liabilities that are imposed on activities, and employment tax liabilities imposed on wages, by way of examples.

The existence of a liability is distinguishable from an assessment. The assessment is the (later) recording of the liability, and the assessment will have its own consequences (*e.g.*, the section 6502 period of limitation on collection after assessment will be triggered). A liability is also distinguishable from the payment due date for such liability, which also is established by statute. For example, income taxes are due on April 15 of the following year (this is a bit oversimplified, it assumes individuals, and calendar years, *etc.*). And there are also rules regarding early payments (they are treated as being paid on the due date, but only for certain purposes).

At the end of the day, to answer your question regarding when a liability is considered to be past-due, you really need to specify the purpose for which you are asking. For most (nearly all?) purposes, a liability is past due if it is not paid in full as of the payment due date. Derivatively, a liability is not past-due if the due date has not elapsed, even if the liability has been imposed. And the reason I say you need to ask for a particular purpose is because I don't think there is an answer in the abstract. An example of a purpose for which you might ask the question would be interest. Underpayment interest is imposed not just on an unpaid liability, but on a liability that is past due. That is why interest does not accrue from January 1 on an unpaid income tax liability.

Consider section 6303 notice and demand. Notice and demand is required for the FTL to arise under section 6321. A notice and demand that represents a first contact letter is actually a notice of assessment and a demand for an already past-due payment obligation. The taxpayer was required to pay earlier by statute. If the taxpayer neglects to pay following notice and demand, which follows assessment, which follows the filing of the form 1040 in your hypothetical, which follows the close of the tax year, then the lien will not arise until long after the liability was imposed. The liability was, in fact, imposed much earlier. This can be demonstrated by considering bankruptcy. If a taxpayer files for bankruptcy protection in March, the Service can (and will) file a proof of claim that will include the income tax liability for the previous (and now closed) year. The liability exists, even though the payment due date may not have elapsed.

I understand that this is a hypothetical. If you have a live matter, and it involves a statute that is looking for a "delinquent federal debt," then there might be an established black-letter-law answer particular to whatever purpose this is. In that case, please follow up so that I can check. But, in general, I hope this answers your question about the distinction between a liability and an assessment and when a liability becomes delinquent.

Happy to discuss. Regards!

Micah A. Levy

