

INTERNAL REVENUE SERVICE

February 10, 1999

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MEMORANDUM FOR DISTRICT COUNSEL, NORTH-SOUTH CAROLINA DISTRICT

FROM: Barry J. Finkelstein /s/
Assistant Chief Counsel (Criminal Tax)

SUBJECT: Resubmission of Case involving

Pursuant to CCDM Part (31)4(15)0(4), we have reviewed your resubmission of the case against [redacted] for failing to file their [redacted] and [redacted] individual income tax returns, in violation of I.R.C. § 7203. In a letter dated August 25, 1998, you originally referred the cases against [redacted] to the Department of Justice. In a letter dated November 18, 1998, the Tax Division declined the cases concluding that prosecution was not warranted because there was not a reasonable probability of conviction. Our review of your resubmission was based on the memorandum you submitted, along with the exhibits and Tax Division review notes. After balancing all of these factors, we conclude the case should not be resubmitted to the Department of Justice.

Facts

[redacted] are husband and wife. They are both [redacted]. They failed to timely file income tax returns for [redacted] and [redacted], and delinquently filed those returns on [redacted], and [redacted], respectively. The Service abated the penalties based upon [redacted] allegation of [redacted]. The [redacted] failed to timely file their [redacted] and [redacted] income tax returns, the subject of the current I.R.C. § 7203 referral. Those returns were ultimately filed in [redacted] and substantial payments have been made. (It is unclear whether there are any payments still due.) The [redacted] and [redacted] returns were received within days of extended due dates (suggesting they were possibly mailed timely), reflecting no taxes due. There is no indication that the Service contests the accuracy of any of the returns.

The facts surrounding the filing of the [redacted] and [redacted] returns, the subject of the criminal

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case, are fairly complicated. As best we understand it, the [redacted] came into the IRS offices in [redacted], on September 23, 1996, to discuss their employment tax liability for the period ending March 31, 1996, after receiving a notice from the Service regarding their employment tax liability. At the meeting the Revenue Officer asked the [redacted] if they had any other outstanding returns.¹ [redacted] replied that they had not filed their 1994 and 1995 income tax returns (Forms 1040), Forms 1065 for their [redacted] business for those years, and Form 1120S for 1995.

After the September 23, 1996 meeting, a deadline of October 15, 1996 was set as to when the [redacted] and [redacted] returns would be filed. The [redacted] did not file their 1994 and 1995 income tax returns by October 15, 1996. On October 23, 1996, [redacted] called the Revenue Officer and told him that he hoped to have the 1994 and [redacted] returns filed by November 15, 1996. Following the conversation on October 23, 1996, the [redacted] made no further contact with the Revenue Officer concerning their income taxes for [redacted] and [redacted], until February 21, 1997. On that date [redacted] called, [redacted] and asked for an extension until May of 1997, to file their income tax returns. The Revenue Officer told him that he was no longer handling the case. The [redacted] hand-filed their [redacted] and [redacted] joint income tax returns with the [redacted] IRS office on February 25, 1997.

The [redacted] return filed by the [redacted] reflected a total tax liability of \$ [redacted]. The [redacted] return reported \$ [redacted] as being paid with an extension request and a tax due and owing of \$ [redacted]. No payment accompanied the filing of the [redacted] return. The [redacted] return filed by the [redacted] was labeled "TENTATIVE" and reflected a total tax of \$ [redacted]. The return reported total payments of \$ [redacted] and a tax due and owing of \$ [redacted]. No payments were made with the filing of the [redacted] return. The [redacted] filed amended [redacted] and [redacted] returns on November 18, 1997, but included no tax payments. It was not until January 20, 1998 that the [redacted] made tax payments of \$ [redacted] and \$ [redacted] towards their outstanding liabilities for [redacted] and [redacted].

As previously mentioned, you referred the case on August 25, 1998, and recommended that the [redacted] be prosecuted for the misdemeanor of failing to timely file their [redacted] and [redacted] returns. You concluded that the case rose to a level 6 under the Sentencing

¹ This is the evidence which appears to be the basis for this resubmission.

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Guidelines, which allows for a sentence of between 0 and 6 months imprisonment. As such, the case does not meet the Service's prosecution guidelines

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By their letter dated November 18, 1998, the Department of Justice concluded that prosecution was not warranted and declined the case. In their declination letter, the Tax Division pointed to several factors

. It was the Tax Division's conclusion that

The case against _____ was resubmitted based on new evidence in the form of memoranda provided by the Revenue Officer and Collection Group Manager concerning the timing of the _____ acknowledgment of their failure to file timely income tax returns for _____ and _____. The memorandum in support of resubmission also addressed each of the Tax Division's factors for declining the case _____ as well as the relative probability of conviction and the importance of the case to the Service's enforcement policy.

We agree with the original decision to refer the case and your determination that the this case does not involve _____. In fact, the Tax Division concluded that _____.

_____ . It is our experience that resubmissions on that factor rarely result in success. As evidenced in their internal documents the Tax Division conducted a thorough review of the evidence. We just disagree with their conclusion. Making resubmission more difficult herein is the fact _____.

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Accordingly, we are returning your files to you without resubmission to the Tax Division.

Any question concerning this matter may be directed to Martin Needle of the Criminal Tax Division on (202) 622-4470.

cc: Assistant Regional Counsel (CT) Southeast Region