

memorandum

CC:INTL:07:CLisecki
PRESP-120086-22

date: March 8, 2023

to: Ursula Gee
Program Manger
Withholding, Exchange & International Individual
Compliance Practice Network (WEIIC)

from: Cleve Lisecki
Branch Chief
(Office of the Associate Chief Counsel)

subject: Advice to a Program Manager requested and received from the Office of the Associate
Chief Counsel (International)

Attached is a memorandum of advice issued by International that was previously emailed
to Mrs. Ursula Gee.

Attachment (1)

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:01:BGDusenberry
PRES-120086-22

UILC: 6501.00-00, 6017.00-00

date: March 07, 2023

to: Cleve Lisecki
Branch Chief
Associate Chief Counsel (International)

from: Kevin Gillin
Senior Technician Reviewer
(Procedure & Administration)

subject: Application of the Statute of Limitations for Assessment of Self-Employment Tax To Territorial Returns

ISSUE

Does the statute of limitations for the assessment of self-employment tax begin to run for bona fide residents of the United States territories of Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. Virgin Islands (USVI) who fail to file a Form 1040-SS, U.S. Self-Employment Tax Return, with the IRS.

CONCLUSION

The statute of limitations on assessment for self-employment tax does not begin to run if a bona fide resident of CNMI or Guam fails to file the required Form 1040-SS with the IRS to report net earnings from self-employment. A territory income tax return filed with Guam or the CNMI does not start the running of the period of limitations for self-employment tax purposes as that return is not filed with the IRS. In contrast, a territory income tax return filed with the USVI likely does start the statute of limitations for self-employment tax purposes because a USVI income tax return is deemed to be filed with the IRS pursuant to Treas. Reg. 1.932-1(c)(2)(ii), and Rev. Rul. 82-185 provides that a Form 1040, U.S. Individual Income Tax Return, filed with the IRS starts the statute of limitations for self-employment tax purposes.

LAW AND ANALYSIS

In general, section 1 of the Code imposes an income tax on all United States citizens and residents. This includes the residents of the U.S. territories CNMI, Guam, and the

USVI (mirror code territories), who are generally citizens of the U.S. and are subject to the provisions of the Code. Individuals are liable for federal income tax whether the income is received from sources within the United States as well as outside the U.S. Section 6011, in relevant part, provides that when required by regulations, any person made liable for any tax shall make a return according to the forms prescribed by the Secretary. With certain exceptions, every individual having gross income for the taxable year that equals or exceeds the exemption amount is required to file a federal income tax return with the IRS. Sec. 6012(a).

For U.S. residents the individual income tax return is made on Form 1040, U.S. Individual Income Tax Return. Treas. Reg. 1.6012-1(a)(6). With respect to the individual income tax filing obligations for residents of the CNMI, Guam, and the USVI, section 932 (USVI) and section 935 (Guam and CNMI) provide that bona fide residents of these territories discharge their federal income tax filing requirement by filing an income tax return reporting all income from whatever source only with the territory tax department. See section 932 and section 935. Guam residents file their territory return with the Guam Department of Revenue and Taxation on Form 1040, Guam Individual Income Tax Return. CNMI residents file their territory return with the CNMI Division of Revenue and Taxation on Form 1040CM, Northern Marianas Territorial Income Tax Return. And USVI residents file their territory return with the Virgin Islands Bureau of Internal Revenue on the U.S. Form 1040.

In addition to the tax on gross income under section 1, section 1401 of the Code imposes a tax on the net self-employment income of every individual. The self-employment tax under section 1401 also applies to residents of Guam, CNMI and the USVI. While also a tax on income, the tax on self-employment income arises under Chapter 2 of the Code and is subject to additional return filing requirements.

Section 6017 requires an individual to file a tax return with respect to self-employment tax on net earnings from self-employment of \$400 or more. Treas. Reg. 1.6017-1(a)(2) provides the general rule for taxpayers that the return required to report self-employment tax for purposes of section 6017 shall be the Form 1040 and that for "residents of the Virgin Islands, Guam, or America Samoa", the return is to be made on Form 1040-SS. Residents of the CNMI would also file Form 1040-SS with the IRS to report self-employment tax. See 48 U.S.C. Chapter 17, sec 601(a) (setting forth that the income tax laws of the United States shall apply to CNMI "in the same manner as those laws are in force in Guam").

Section 6501 provides that the amount of tax, including income tax and self-employment tax, imposed by the Code shall be assessed within three years after the return reporting that tax was filed. If, however, no return was filed, pursuant to section 6501(c)(3), the tax may be assessed at any time. Thus, the start of the limitations period is conditioned upon the filing of a tax return, and as the Supreme Court has held there must be "meticulous compliance by the taxpayer with all named conditions in

order to secure the benefit of the limitation.” *Lucas v. Pilliod Lumber Co.*, 281 U.S. 245, 249 (1930).

CNMI and Guam

Pursuant to section 935(b)(1)(B), bona fide residents of the CNMI and Guam satisfy their federal income tax filing obligation when they file their individual income tax returns with the applicable territory, and they have no income tax filing requirement with the IRS. Separately, bona fide residents of Guam and CNMI must file a Form 1040-SS with the IRS to satisfy their separate filing requirements under section 6017 and Treas. Reg. 1.6017-1(a)(2) with respect to the separate tax liability under section 1401 for net earnings on self-employment.

The Form 1040CM and the Form 1040, Guam Individual Income Tax Return, filed with the respective territory tax department of CNMI or Guam is not filed with the IRS and would not suffice to start the period of limitations under section 6501 for purposes of a territory resident’s self-employment tax filing obligation to the IRS on Form 1040-SS. The Eighth Circuit’s opinion in *Coffey v. Commissioner* is informative. 987 F.3d 808, 812 (8th Cir. 2021) (“Returns are ‘filed’ if ‘delivered, in the appropriate form, to the specific individual or individuals identified in the Code or Regulations.’”) (quoting *Commissioner v. Estate of Sanders*, 834 F.3d 1269, 1274 (11th Cir. 2016)). The taxpayers in *Coffey*, who claimed to be residents of the USVI, had filed a Form 1040 with the USVI, portions of which were then shared by the USVI with the IRS. The taxpayer argued that this was sufficient to start the statute of limitations – with respect to federal income tax liability – in the absence of a Form 1040 filed with the IRS by the taxpayers. The Eighth Circuit rejected the taxpayers’ argument explaining that the statute of limitations “only begins when a return is filed” and because the taxpayers “did not meticulously comply with *requirements to file with the IRS*, the statute of limitations never began.” 987 F.3d at 813 (emphasis added).

Moreover, the general rule applicable to residents of the U.S. -- which provides that the return required by section 6017 is made on the U.S. Form 1040 – does not apply to residents of the territories of CNMI or Guam. Instead, Treas. Reg. 1.6017-1(a)(1) & (2), require that the return for residents of these territories shall be made on the Form 1040-SS, and even when no return is required to be filed with the IRS for purposes of income tax liabilities under section 1.

Accordingly, for residents of CNMI and Guam who file an income tax return with their respective territory, but no Form 1040-SS with the IRS as required by Treas. Reg. 1.6017-1(a)(2), the period of limitations to assess the respective self-employment tax would not have begun to run and could be assessed at any time pursuant to section 6501(c)(3).

USVI

Separate consideration must be given residents of the USVI. Pursuant to section 932(c)(1), bona fide residents of the USVI similarly discharge their federal income tax filing requirement when they a territory income tax return with the USVI. However, with respect to residents of the USVI, the regulations under section 932 provide that “for purposes of the U.S. statute of limitations under section 6501(a), an income tax return filed with the Virgin Islands by an individual . . . will be deemed to be a U.S. income tax return provided that the United States and the Virgin Islands have entered into an agreement for the routine exchange of income tax information.” Treas. Reg. sec. 1.932-1(c)(2)(ii). This regulation has been effective for taxpayers for years ending after December 31, 2006, and an agreement between the USVI and the United States for the routine exchange of income tax information satisfying the requirements of the Commissioner has been in effect since 2007. Thus, for tax years 2007 and later, individual income tax returns filed with the USVI are deemed to be filed with the IRS for statute of limitations purposes.

Because the USVI filing is deemed to be a U.S. income tax return for statute of limitations purposes, consideration must be given to Revenue Ruling 82-185, 1982-2 C.B. 395. In Rev. Rul. 82-185, the IRS considered whether the filing of a Form 1040 with the IRS (by a resident of the U.S.) that reports all income but makes no entry with respect to self-employment tax was sufficient to begin the limitations period for assessment of the self-employment tax. Rev. Rul. 82-185 noted the holdings of *Lane-Wells Co.*, 321 U.S. 219; *S-K Liquidating Co. v. Commissioner*, 64 T.C. 713, 717-18 (1975); and Rev. Rul. 75-552, 1975-2 C.B. 476, which establish the principle that the filing of a return for one type of tax will not start the running of the period of limitations for a separate and distinct type of tax.

Notwithstanding that principle, Rev. Rul. 82-185 held that because the self-employment tax imposed by section 1401 and the individual income tax imposed by section 1 are so closely connected, the filing of a return with respect to one of these taxes must be accepted as the filing of a return with respect to both taxes. “Individual income taxes and self-employment taxes are income taxes under subtitle A of the Code. Moreover, both of these taxes are on the taxpayer's own income and are required to be reported on the same form (Form 1040). The close connection between these two taxes is emphasized by section 1.1401-1(a) of the regulations....” 1982-2 C.B. 395. The ruling concluded that because the self-employment tax is so closely related to the individual income tax, the filing of a Form 1040 that fully reports all income but contains no entry with respect to self-employment tax will be treated as the filing of a valid self-employment tax return, and that filing will trigger the running of the period of limitations for both taxes.

Under Rev. Rul. 82-185, a bona fide resident of the USVI who files a Form 1040 (mistakenly or on a protective basis) with the IRS that reports all income would be treated as having filed a valid self-employment tax return that begins the period of

limitations.

And as discussed above, bona fide residents of the USVI remain liable to the United States for the self-employment tax and are otherwise required to file Form 1040-SS with the IRS pursuant to Treas. Reg. 1.6017-1(a)(2).

The scenario addressed in Rev. Rul. 82-185 involved a Form 1040 that fully reported income, including self-employment income, but contained no entry with respect to the self-employment tax. While returns generally need not be correct to start the assessment period, there is some authority that there must be sufficient data for the IRS to calculate the tax. *Compare Standard Office Bldg. Corp. v. United States*, 819 F.2d 1371, 1381 (7th Cir. 1987) (“Since the returns gave the Internal Revenue Service all the information it needed to assess the tax, and it already knew everything it needed to know in order to decide whether [taxpayer] was subject to railroad retirement or social security, it would seem that the statute of limitations started to run with the filing of each social security tax return.”); *with Atl. Land & Imp. Co. v. United States*, 790 F.2d 853, 859 (11th Cir. 1986) (“Of crucial importance [to the SECA tax rule] is whether the return, as filed, included sufficient information to allow the IRS to compute the taxpayer’s liability.”); *see also Germantown Trust Co. v. Commissioner*, 309 U.S. 304, 308 (1940) (a taxpayer who filed its return on an improper form nevertheless triggered the statute of limitations because the return “contained all of the data from which a tax could be computed and assessed although it did not purport to

state any amount due as tax.”); *Commissioner v. Lane-Wells*, 321 U.S. 219, 223 (1940) (The purpose of filing requirements “is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.”). [REDACTED]

[REDACTED]