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INCOME TAX AND ACCOUNTING

National Director, Submission Processing T:S

Assistant Chief Counsel
(Income Tax & Accounting) CC:DOM:IT&A

Authority for Sending Tax Returns and Payments to Lockboxes

This responds to your request for our opinion on the legality of requiring that tax returns and payments be sent to lockbox financial institutions. Mr. Perry D. Baird, a private sector attorney, has questioned the legality of submitting tax returns and payments to lockbox locations. Drew McElhannon of your office asked whether we have ever issued a written opinion on this matter. We have no record of previous written advice concerning the questions at issue.

ISSUES

1. May the Internal Revenue Service (Service) require taxpayers to make their tax payments at a location other than a Service office or facility (e.g. lockbox bank)?
2. May the Service direct taxpayers to send their tax returns to the Service through a post office box address of the lockbox bank?

CONCLUSION

1. Yes. Titles 31 and 26 of the United States Code permit tax payments to be made to authorized depository institutions.
2. Yes. Tax returns sent to the Service through post office box addresses of lockbox banks are filed with the Service in accordance with § 6091(b) of the Internal Revenue Code of 1986.

BACKGROUND

The Service's Lockbox Programs

In an effort to reduce the cost of processing taxpayer remittances and make funds available to the Government with less

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delay, the Internal Revenue Service ("Service") and the Financial Management Service ("FMS") have entered into memoranda of understanding for establishing a lockbox arrangement with various financial institutions. Under these arrangements, taxpayers are advised by tax forms instructions to send their tax payments, payment vouchers, and balance due tax returns in one package to the Service through a lockbox bank's post office box address. As a lockbox depository, the responsible bank collects the mail, opens and separates the documents from the payments. The bank then transmits any tax returns and document information to the Service, processes the payments, and credits the total amount of the payments to a depository clearing account for subsequent transfer to FMS.

1. Form 1040, U.S. Individual Income Tax Return

In processing year 1996, a preprinted payment voucher is included in certain Form 1040 tax packages (except the 1040A and 1040EZ). Taxpayers receiving Form 1040 Packages 5, 6, and 10 are instructed that if they owe money and are making a payment, they should mail the payment, scannable voucher and Form 1040 to "the Internal Revenue Service" in the preprinted envelope addressed to the Service with the lockbox bank's address. If no payment is made with the return, taxpayers are instructed to mail their returns in a preprinted envelope addressed to the service center.

Taxpayers who receive a scannable voucher with Form 1040 Postcard Packages 3, 5 and 6 will be instructed that if they are making a payment, they should mail the payment, scannable voucher and Form 1040 to the Service through the lockbox bank's address provided on the preprinted payment voucher. If no payment is made, the instructions require taxpayers to mail their return to the service center.

In processing year 1997, the Service plans to have two envelopes in all 1040 tax packages. Taxpayers will be instructed to mail the voucher and payment, if any, in the small envelope to the Service through the lockbox bank's address, and to mail the return in the larger envelope addressed to the service center.

2. Form 94X Series

The entire Form 94X series instructs taxpayers that if they are making a tax payment, they should send their payment, voucher, and tax return in one package to the Service through a lockbox bank's address.

3. Other Forms

In addition, lockbox banks process payments with Form 1040ES, Estimated Tax for Individuals, Form 4868, Application for

Automatic Extension of Time to File U.S. Income Tax Return, Form 2290, Heavy Vehicle Use Tax Return, CP Notice 521, Installment Agreement Reminder Notice, and CP Notice 523, Installment Agreement Default Notice.

DISCUSSION

Tax Payments Sent to Lockbox Banks

There is clear and specific statutory authority for the Service to require that tax payments be made to a lockbox bank. Section 6151(a) provides that "except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such a return shall, without assessment or notice and demand from the Secretary, **pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return** (determined without regard to any extension of time for filing the return)." (Emphasis added).

Section 6151(b) (2) further provides:

(b) Exceptions-

(2) USE OF GOVERNMENT DEPOSITORIES. - For authority of the Secretary to **require payments to Government depositories, see section 6302(c)**. (Emphasis added).

Section 6302(c) provides:

The Secretary may authorize Federal Reserve banks, and incorporated banks, trust companies, domestic building and loan associations, or credit unions which are depositories or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks, trust companies, domestic building and loan associations, or credit unions is to be treated as payment of tax to the Secretary.

Pursuant to 12 U.S.C. §§ 265 and 266 and other authorities, see e.g., 12 U.S.C. §§ 90, 1464(k), and 1789(a), the Secretary of the Treasury has authority to designate financial institutions to be depositories and financial agents of the United States. Pursuant to 31 U.S.C. § 3720(a), executive agencies of the Government are required to provide for the collection and timely deposit of money by the use of procedures which may include lockbox services. The Department of Treasury has delegated to FMS its authority to select designated Treasury depositories to support the government-wide lockbox collection services.

Inasmuch as the lockbox depository functions as a depository of tax receipts, the establishment and operation of the lockbox depository is also authorized and carried out under I.R.C. § 6302(c).

Based upon the authority granted in the above-mentioned statutes, the Service has implemented its lockbox programs by entering into "Memoranda of Understanding" ("MOU") (i.e. an agreement) with FMS and certain designated lockbox banks. In the lockbox programs, the MOU is an agreement on a set of definitions, terms, and conditions for the establishment and operation of an arrangement whereby: (1) the Service will advise taxpayers to remit tax payments and/or send certain tax returns to a mailing address of the lockbox depository; (2) the lockbox depository processes payments and credits the total amount of the payments to a depository clearing account for subsequent transfer to FMS; and (3) the lockbox depository transmits data associated with these payments, and all tax returns to the Service.

Tax Returns Sent to the Service through a Lockbox Bank's Post Office Box Address

The Code does not prohibit the practice of instructing taxpayers to send their tax returns to the Service through a lockbox bank's post office box instead of a service center. Although § 6091(b) of the Code (and its respective regulations) generally provide that tax returns shall be made to the Secretary either at a service center or with the district director, it does not provide instructions on **how** to file tax returns at a service center or with a district director. Instead, the Service provides specific instructions on how to file tax returns in the lockbox program through tax return instructions. Tax returns that are sent to a lockbox post office box are forwarded to service centers for further processing pursuant to MOUs signed by the Service, FMS, and lockbox financial institutions.

Section 6091(a) of the Code provides the following general rule:

When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations. (Emphasis added).

Section 6091(b) "provides otherwise" in the case of tax returns required under the authority of part II of subchapter A of Chapter 61 (i.e., I.R.C. §§ 6011 - 6096). Form 1040 and the Form 94X series are required pursuant to § 6011 of the Code. For such tax returns, § 6091(b)(1) provides that the general rule for persons other than corporations is that a return (other than a corporation return) shall be made to the Secretary-

(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

Section 6091(b)(2) provides a similar general rule and provides that a return of a corporation shall be made to the Secretary -

(i) in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) at a service center serving the internal revenue district referred to in clause (i) as the Secretary may by regulations designate.

~~Section 6091(b)(5) provides an exception to the rules set forth in I.R.C. § 6091(b)(2) in exceptional cases where the Secretary may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary.~~

Section 1.6091-2(a)(1) of the Income Tax Regulations provides that except as provided in paragraph (c) of this section, income tax returns of individuals, estates and trusts shall be filed with the district director in which is located the legal residence or principal place of business of the person required to make the return, or, if such person has no legal residence or principal place of business in any internal revenue district, with the District Director at Baltimore, Maryland 21202.

Section 1.6091-2(c) provides that notwithstanding paragraph (a) of this section, **whenever instructions applicable to income tax returns provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions.** (Emphasis added).

Section 31.6091-1(a) of the Employment Taxes and Collection of Income Tax at Source Regulations provide that the return of a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person, or in the case of corporations under subsection (b), the return shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the

corporation, except as provided in paragraph (c) of this section.

Section 31.6091-1(d) provides that notwithstanding the above-mentioned regulations, **whenever instructions applicable to such returns provide that the returns shall be filed with an internal revenue service center or an office of the Social Security Administration, such returns shall be filed in accordance with such instructions.** (Emphasis added).

According to the above-mentioned subsections of 6091 of the Code, tax returns should be filed in one of two physical locations: ~~(1) in an internal revenue district; or (2) at a service center.~~ With respect to the issue of how tax returns should be filed at a service center, §§ 1.6091-2(c) and 31.6091-1(d) of the regulations clarify that such returns should be filed in accordance with tax returns' instructions.

In the case of tax returns covered by the lockbox programs (e.g., Form 94X instructions), the Service has provided specific instructions that, if followed, will result in the filing of tax returns at the specified service center. In other words, by ~~filing tax returns with the Service through the prescribed~~ lockbox post office box address, the tax returns are considered to be filed with the service center for purposes of § 6091 of the Code as such tax returns are forwarded to service centers for further processing pursuant to Memoranda of Understanding (MOUs) signed by the Service, Financial Management Service (FMS), and the lockbox financial institution.

Please contact me or Gita Khadiri at 622-4940 if you have any questions regarding this matter, or require any assistance in responding to Mr. Baird's letter.

Assistant Chief Counsel
(Income Tax & Accounting)

By:

S/
Norlyn D. Miller, Jr.
Senior Technician Reviewer
Branch 4

cc: Chief, Lockbox & Deposit T:S:C:L
Special Counsel (Modernization & Strategic Planning) CC
Counsel TSM Network