



OFFICE OF  
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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

APR 7 1999

CC:EL:GL:Br2:MJLew  
GL-100544-99

MEMORANDUM FOR ASSISTANT COMMISSIONER (COLLECTION)

FROM:

Gary Gray   
Assistant Chief Counsel (General Litigation)

SUBJECT:

Annual Notice of Tax Delinquency under I.R.C. Section  
7524 - Non-master File Accounts

(E) This is in response to your memorandum dated December 18, 1998, requesting our advice with regard to (1) whether the annual reminder notice which the Internal Revenue Service ("Service") sends to taxpayers with delinquent accounts pursuant to I.R.C. § 7524, is necessary in non-master file situations where the accounts reflect balances less than the corresponding master file deferral criterion, and less than [REDACTED] months remain on the collection statute; and (2) what actions a taxpayer may take if the Service fails to send the annual reminder notice where one is required and the Government either continues to pursue collection action or discontinues collection action.

It is our opinion that the Service is required to send the annual notice reminder to taxpayers with delinquent accounts, pursuant to I.R.C. § 7524, even in situations where the non-master file accounts reflect balances less than the corresponding master file deferral criterion, and there is less than eight months remaining on the collection statute. Further, if the Service fails to send the annual reminder notice where one is required, the taxpayer may attempt to recover any monies collected through a claim for refund, in accordance with I.R.C. §§ 6511, 7422(a) and 6532(a), or he may make a claim for civil damages for unauthorized collection actions by Service personnel, under I.R.C. § 7433.

The facts as presented in your memorandum indicate that there are approximately 7,000 non-master file accounts which reflect tax deficiencies, and where annual reminder notices have not been sent. You indicate that these accounts are over ten years old, and you are attempting to verify the validity of the assessments. Your limited review of the Fresno Service Center database indicates that some statutes had been extended by litigation or waiver. Other accounts have been classified as not collectible. Moreover, in some situations, there is a problem in

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locating supporting documentation for extension of the statute, especially where record retention schedules have resulted in the destruction of records, and in other cases, the taxpayer is deceased.

Section 7524, which is effective for calendar years after 1996, is titled "Annual Notice of Tax Deficiency" and provides:

Not less than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

Under this provision, the Secretary does not have the discretion to decide whether or not to send the notice based on resource, tax administration or policy considerations. As indicated in a prior memorandum on this issue, we interpret the language contained in I.R.C. § 7524 as imposing a mandatory requirement that the notice be sent annually for all tax delinquencies.<sup>1</sup>

To the extent the non-master file account reflects a tax delinquency, an annual reminder notice is required. It is important in the first instance to determine which of the approximately 7,000 cases in non-master file requires the annual reminder notice. Non-master file cases could include all types of taxpayers and involve tax accounts which, for various reasons, cannot be entered in the master file. These cases include situations involving an innocent spouse, a split assessment, single spouse bankruptcy case, single spouse offer in compromise, etc. Unlike master file cases where events can be entered automatically as they occur, non-master file cases are manually entered into the system and require manual updating. Thus, the non-master file account may not be current, depending on how frequently the data is input. You indicate that there are situations in non-master file cases where the Service lacks current information with regard to the validity of the collection statute, the taxpayer's whereabouts, or whether the taxpayer is living.

Before taking active collection action, the Service should verify that the collection statute is still open. If the Government is unable to verify or establish that the collection statute remains open, no collection action should ensue, and we recommend that the taxpayer's account be abated. The Service bears the burden of establishing that the statute for collection is still open, if that issue is ever

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<sup>1</sup> In our prior memorandum to you on this issue, dated August 12, 1998, we concluded that there are some narrow circumstances where the statute should be interpreted as not requiring the notice, such as when a TC 520 Code is input because the tax liability is the subject of litigation, on the theory that the taxpayer who is involved in litigation is aware of the delinquent taxes due. The facts as presented in this case do not indicate that any exceptions to the annual reminder notice are warranted.

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challenged. See Bonwit Teller & Co. v. Commissioner, 10 B.T.A. 1300 (1928); Farmers Feed Co. v. Commissioner, 10 B.T.A. 1069 (1928). If the taxpayer comes forward with evidence that the statute of limitations may have expired, the Service bears the burden of establishing the applicability of any extension. Miami Purchasing Service Corporation v. Commissioner, 76 T.C. 818 (1981). However, if the Service can verify that the collection statute is still open, it is required to send the annual reminder notice.

In a situation where the tax due balance is small, and the Service has determined that the costs of collection and administration do not warrant collection of the amount due, the unpaid portion of the assessment may be abated under I.R.C. § 6404(c). In those cases, there would no longer be a tax delinquent account, and the Service would not be required to send the annual notice. However, in situations where there is less than one year remaining on the collection statute, or it is determined that, based on an asset analysis, the amount is deemed uncollectible from the taxpayer, the account continues to reflect a tax liability which is technically collectible. In those instances, the Service is required to send the annual notice.<sup>2</sup>

You also requested our advice with regard to what actions a taxpayer may take if the Service fails to send the annual notice where one is required (in accordance with the language under I.R.C. § 7524) and either continues to pursue collection action or discontinues collection action. If the Service discontinues any collection activity, the taxpayer may simply assume that the debt has been satisfied or that, for whatever reason, the Government has decided not to pursue collection. In such cases, the taxpayer may not take any action at all. Nevertheless, the Service is not relieved of the obligation to send the annual reminder notice, if one is required. If collection action continues, the taxpayer may attempt to recover any monies collected by way of a claim for refund. However, in a civil action brought pursuant to I.R.C. § 7422(a), the taxpayer must allege and be able to prove that the taxes were collected wrongfully or without authority. An allegation that the Service failed to send the annual reminder notice, in itself, is not sufficient to entitle the taxpayer to a refund.

It is possible that the taxpayer may also attempt to make a claim for civil damages for unauthorized collection actions by Service personnel, under I.R.C. § 7433. However, in such a proceeding, the court must first decide whether failing to send

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<sup>2</sup> You also indicated that in some situations, the taxpayer has died, but continues to owe federal tax liabilities. In those cases, the Service may seek to collect any outstanding federal tax liabilities from the taxpayer's estate. If the Service determines that collection from the estate is not feasible, the account may be marked as uncollectable. Again, since there is still a tax delinquent account on the Service's records, an annual reminder notice is required.

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the annual reminder notice constitutes collection of a federal tax liability for purposes of a civil action brought under I.R.C. § 7433. Moreover, in order for the taxpayer to be successful in a suit under I.R.C. § 7433, he must establish that an "officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence" disregarded any provision of the Internal Revenue Code, or the regulations thereunder.<sup>3</sup> I.R.C. § 7433(a). In addition, the taxpayer must establish the actual amount of his damages. Id.

In any event, the decision by the Service whether or not to send the annual reminder notice to taxpayers in delinquent account status does not depend upon what remedies a taxpayer may have if the Service fails to comply with this statutory requirement. Congress has imposed a mandatory requirement on the Service to send out the annual notice to all taxpayers in delinquent account status.

In conclusion, the annual notice required by I.R.C. § 7524 is a mandatory requirement and the Secretary does not have the discretion to decline to send out the notice based on policy, resource or tax administration considerations. ~~The annual notice is required unless it is clear there is no tax delinquency. It is~~ important, therefore, that with regard to the non-master file accounts, a diligent effort be made to go through each of those accounts to determine which taxpayers are entitled to receive the annual reminder notice. In the process, if you discover certain tax delinquent accounts where it is unclear whether an annual notice is required, we will be available to meet with you to discuss any particular situations or issues which have not been addressed in our previous memoranda on this matter or in this memorandum.

If there are any questions, or if a meeting is desired, please have the person assigned to this matter contact Mae J. Lew at 622-3620. Thank you for your consideration of these matters, and we look forward to working with you further on this.

Attachment (1)

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<sup>3</sup> With respect to actions of officers or employees of the Service on or before July 22, 1998, prior to amendment of I.R.C. § 7433 by RRA § 3102(a)(1)(A), a taxpayer is required to establish that said actions were reckless and intentionally disregarded any provision of the Code or the regulations. A showing of mere negligence is insufficient.