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Assistant Commissioner (Criminal Investigation) CP:CI

Acting Assistant Chief Counsel (Criminal Tax) CC:EL:CT

Final Regulation - § 301.6867-1, Presumptions Where Owner of Large Amount of Cash is not Identified

The purpose of this memorandum is to advise you of the issuance of final regulations (copy attached) regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. We bring this to your attention because this procedure represents an alternative to forfeiture in cases where agents discover large amounts of cash but may not be able to establish a legal basis for forfeiture.

The final regulations which were issued August 2, 1995, reflect changes in the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations also incorporate the rules of current Treas. Reg. § 301.6867-1T, relating to cash and cash equivalents.

The Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding § 6867. This new provision was designed to be used in making jeopardy or termination assessments when there is no known owner of large amounts of cash. I.R.C. § 6867 is specifically directed at individuals in physical possession of \$10,000 or more in cash who do not claim the cash as belonging to themselves or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash. Under these circumstances the Code presumes that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. The Technical and Miscellaneous Review Act of 1988, which amended I.R.C. § 6867 for taxable years beginning after December 31, 1986, provides that the tax rate to be applied is the highest individual rate under I.R.C. § 1 instead of a straight 50% rate which applied prior to December 31, 1986.

Under I.R.C. § 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for purposes of assessment and collection. Additionally, the possessor of cash is subject to I.R.C. § 7429(a)(1) which entitles that

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individual to a written statement of information concerning the assessment. Because I.R.C. § 6867 does not treat the possessor as the taxpayer for the purposes of I.R.C. §§ 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the regulations do not permit the possessor of cash to maintain an action under I.R.C. § 7429 for such review. In addition, because I.R.C. § 7422, relating to civil actions for refund, is not included under I.R.C. § 6867, possessors of cash, solely in their capacity as possessors of cash, may not institute a suit for refund in district court after the deficiency has been collected. This in no way diminishes the right of the possessor of cash to petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

The true owner of cash may maintain an action under I.R.C. § 7429 for administrative and judicial review of the deficiency notice issued to the possessor. After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may also bring an action in federal district court to recover the cash. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor of the cash.

Section 301.6867-1(f) of the final regulations provides definitions for cash, cash equivalents, the value of cash equivalents, the possessor of cash, and the true owner of the cash. In addition, several other items have been identified and added to the list of specific cash equivalents.

Should you have any questions regarding this regulation, please feel free to contact Martin Needle of my staff at 622-4470.

Dominic Paris

DOMINIC A. PARIS

Attachment:
As stated