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MEMORANDUM FOR NATIONAL DIRECTOR, SUBMISSION PROCESSING
OP:FS:S:P

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

SUBJECT: Use of Math Error Procedures to Disallow Claims Involving
Deceased Individuals

This responds to your request for advice received in this office via email dated November 30, 1999. The request concerned the use of the math error procedures to disallow exemptions or credits based on taxpayer identification numbers issued to persons who, according to data provided to the Service by the Social Security Administration, are dead.

Conclusion

The Service may use the math error procedures to disallow a § 151 exemption or § 21, 24, 25A, or 32 credit on the basis that the taxpayer identification number listed in support of the exemption or credit was issued to a person that Social Security Administration data show died prior to the year for which the exemption or credit was claimed. However, in view of the potentially sensitive nature of such an action, we recommend that steps be taken prior to use of the math error procedure to ensure that taxpayers are given notice of the problem and an opportunity to explain.

Discussion

The Social Security Administration (SSA) provides National Account Profile (NAP) data to the Service for the purpose of checking for discrepancies between the information that the SSA has with information listed by taxpayers on their tax returns. The NAP data indicate, where appropriate, a person's date of death.

Section 6213(a) provides generally that the Service must send a taxpayer a notice of deficiency and provide a taxpayer an opportunity to petition the Tax Court before

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the Service can assess a deficiency against a taxpayer. Section 6213(b)(1) provides an exception to the general rule of § 6213(a) where the taxpayer's deficiency results from a mathematical or clerical error. In such a case, the Service may summarily assess the additional tax due without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. If the Service uses the summary assessment procedures, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the Service abate its assessment. I.R.C. § 6213(b)(2)(A). The Service must abate the assessment if the taxpayer so requests. Any reassessment is subject to the general deficiency procedures.

Section 6213(g)(2) defines "mathematical or clerical error" to include the following:

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

* * * * *

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return,

(J) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

The flush language of § 6213(g)(2) provides that

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence [which includes the subparagraphs above] if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

A taxpayer who meets the requirements of § 151 may claim a dependency exemption even if the person with respect to whom the exemption was claimed died

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before the end of the year for which the exemption was claimed. Similarly, a taxpayer who meets the requirements of § 21, 24, 25A, or 32 may claim a credit even if the person with respect to whom the credit was claimed died before the end of the year for which the credit was claimed.

The question then becomes whether, when the SSA NAP data show that a TIN belongs to a person who died prior to the year for which the exemption or credit was claimed, the information provided by the taxpayer on the return "differs" from the information provided to the Service by "the person issuing the TIN," within the meaning of the flush language of § 6213(g)(2). We think it does.

First, the legislative history of P.L. 105-277, 112 Stat. 2681 (1998), which added the flush language of § 6213(g)(2), makes clear that a correct TIN is a TIN that was assigned by the SSA (or in certain limited cases, the Service) to the individual identified on the return. H.R. Conf. Rep. No. 825, 105th Cong., 2d Sess. 1588 (1998).

Second, implicit in the fact that a taxpayer lists a TIN in support of an exemption or credit is an assertion that the person to whom the TIN belongs was alive for at least some part of the year for which the exemption or credit was claimed. If the SSA NAP data show that that person died prior to the year for which the exemption or credit was claimed, then the information provided by the taxpayer on the return differs from the information provided to the Service by the SSA, within the meaning of the flush language of § 6213(g)(2).

This conclusion is supported by the explanation of P.L. 105-277 in the Conference Report, which states that "in the application of the mathematical and clerical error procedure . . . the IRS is authorized to determine that the individual identified on the tax return corresponds in every aspect (including, name, age, date of birth, and SSN) to the individual to whom the TIN is issued." *Id.* (emphasis added). We read the term "including" in the parenthetical to indicate that inconsistencies involving individual's name, age, date of birth, and SSN are not the only inconsistencies for which use of the math error procedures are appropriate. Certainly, whether an individual is alive or dead is a significant aspect of the information concerning that individual.

Therefore, we conclude that if a TIN is listed by a taxpayer in support of a § 151 exemption or § 21, 24, 25A, or 32 credit, and the SSA NAP data indicate that the TIN corresponds to a person who died prior to the year for which the exemption or credit was claimed, then the Service has the legal authority to use the math error procedures to disallow that exemption or credit.

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If you have any questions or comments regarding this matter, please call Amy Pfalzgraf at (202) 622-4930.

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