



OFFICE OF
CHIEF COUNSEL

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

APR 10 2000

MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS
C:TA:TAO

FROM: Carol A. Campbell *CAC*
Technical Advisor to the Counsel to the National Taxpayer
Advocate
CC:NTA

SUBJECT: [REDACTED]

At your request, we have reviewed and are returning the attached files related to the above named taxpayer. There is no legal issue in this case that merits further consideration. There is no argument that the taxpayer is legally responsible for the payment of the trust fund recovery penalty assessed against him. The fact that someone else could also have been responsible for payment of the trust fund taxes or is in a better position to pay the liability is not relevant to the validity of the assessment against this taxpayer. If the liability against [REDACTED] is valid, then the Service has a responsibility to collect it, if the taxpayer has the ability to pay the assessed penalty amount.

[REDACTED] is essentially asserting that he should not be solely liable for the trust fund recovery penalty related to the failure of the corporation for which he was a corporate officer to pay employment taxes for the last quarter of [REDACTED] and the first three quarters of [REDACTED]. The penalty was assessed in [REDACTED] against both [REDACTED] and his father, who was also a corporate officer. The penalty against his father was abated in [REDACTED], apparently based on affidavits indicating that [REDACTED] was solely responsible for the operation of the corporation, including the filing of employment tax returns and the payment of the employment taxes.

Whether the Service was correct or in error in abating the trust fund recovery penalty assessment against [REDACTED] father does not impact the assessment

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against [REDACTED] or the Service's ability to collect the assessed amount.¹ In none of the documents in your files does [REDACTED] dispute his liability for the trust fund recovery penalty. The fact that the trust fund recovery penalty could have been assessed against another party who may also have been responsible and willful in failing to pay over the corporation's employment taxes does not preclude the collection of the full amount of the liability from [REDACTED]. Irrespective of the number of parties determined to be responsible for the payment of trust fund taxes, the Service is not required to collect proportionately from all assessed parties.² The Service, however, will only collect the full amount of the unpaid trust fund taxes once.

Unless [REDACTED] substantiates a change in his financial condition and an inability to continue payments pursuant to his installment agreement, there does not appear to be any further assistance the Service can provide to this taxpayer.³

If you have additional questions, please advise.

¹ Moreover, because the statute of limitations for the assessment of the trust fund recovery penalty for these periods appears to have expired, the Service has no further ability to assess the penalty for the [REDACTED] quarters. Thus, whether [REDACTED] father could have been held liable for the trust fund taxes, no longer has any legal significance.

² Recent legislation provides taxpayers who have paid trust fund taxes a right to recover against other responsible parties amounts in excess of the paying parties proportionate share of the paid liability when there is more than one responsible party. See I.R.C. § 6672(d). This legislation, effective for penalties assessed after July 30, 1996, does not, however, impose any obligation on the Service to collect in a proportionate manner.

³ In formulating a response to [REDACTED], references to the liability of his father or the lack thereof should be avoided as this would be disclosing the information of another taxpayer. The response to [REDACTED] should focus upon the fact that his liability is undisputed and therefore collectible.