



OFFICE OF
CHIEF COUNSEL

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

CC:PA:APJP:2/SLHartford
WTA-N-129409-00

MEMORANDUM FOR: JACK HOLSTEIN (NATIONAL OFFICE INNOCENT SPOUSE PROJECT
MANAGER)
OP:EX:IS
Attn:Lynne M. Morrison

FROM: Assistant Chief Counsel
Administrative Provisions & Judicial Practice
CC:PA:APJP

SUBJECT: Rescission of Section 6015 Final Determination Letters

This is in response to your e-mail of December 6, 2000, requesting information concerning whether the Service can rescind a final determination letter sent to a taxpayer in accordance with section 6015.

Issue:

Whether the Service can rescind a final determination letter that was issued in error.

Conclusion:

Neither section 6015 nor its legislative history suggest that the Service can rescind a final determination letter that has already been mailed to a taxpayer. Moreover, the authority to rescind a final determination letter would likely parallel the Service's authority to rescind a statutory notice of deficiency. In this regard, Congress has specifically granted the Service the authority to rescind statutory notices of deficiency. Until Congress grants the Service similar authority with respect to final determination letters, the Service cannot rescind final determination letters that have been issued in error.

Facts:

Section 6015(e)(1)(A) provides that a requesting spouse may petition the Tax Court by filing a petition not later than the 90th day after the date the Service mails a final determination letter to the requesting spouse. However, in a number of cases, a requesting spouse timely responds to a preliminary determination letter but the requesting spouse's request for Appeals consideration is either not received or not associated with the case file by the time the Service sends out the final determination letter. In such cases, the Service would like to rescind the final determination letter and attempt to resolve the case administratively, without the involvement of the Tax Court.

Legal Analysis:

A final determination letter contains a statement of the time period within which a taxpayer may file a petition with the Tax Court and delays final resolution of the taxpayer's request for relief until the expiration of the period for filing a petition with the Tax Court. The purpose of section 6015(e) is to provide the requesting spouse with an opportunity to challenge in the Tax Court an administrative denial of relief from joint and several liability. As a general rule, a requesting spouse is entitled to only

PMTA: 00415

one final administrative determination of relief.¹ Withdrawal of a final determination letter is inconsistent with the statutory scheme of section 6015. For example, withdrawing a final determination letter presupposes that a second notice of determination may be issued. However, nothing in section 6015 or any other section of the Code provides the authority for issuing a second final determination letter. In addition, final determination letters are intended to be issued only after complete consideration of cases by the Service. The credibility that therefore attaches to their issuance would be impaired by allowing the Service to rescind certain final determination letters but not others.

¹This statement is consistent with the Service's current position. See Prop. Treas. Reg. § 1.6015, 66 Fed. Reg. 3888 (proposed January 17, 2001) (to be at 26 C.F.R. pt. 1). Although the proposed Treasury regulations indicate that there are limited situations in which a requesting spouse may receive more than one final determination letter, those situations are limited to cases in which a second election under section 6015(c) is made, and the marital status of the requesting spouse differs from the status at the time of the first election. *Id.* Moreover, the proposed Treasury regulations do not indicate that in those situations, the first final determination letter shall be rescinded; the Service has only acknowledged that there may be instances in which a second final determination letter may be issued.

As support for concluding that the Service does not have the authority to rescind a final determination letter, we have examined the scope of the Service's authority to rescind statutory notices of deficiency. Section 6212(d) provides that if the Service and the taxpayer mutually agree, the Service may rescind a notice of deficiency mailed to the taxpayer. Prior to 1986, the Service did not have the authority to rescind notices of deficiency.² In explaining the reasons for the change, the Senate Finance Committee recognized that there are situations where it would be appropriate to permit the withdrawal of a statutory notice of deficiency to "permit the matter to be disposed of in the most efficient way." S. Rep. No. 99-313 (1986). However, both the House of Representatives and the Senate agreed that withdrawal of a statutory notice of deficiency can only occur in cases where both the Service and the taxpayer mutually agree to the rescission. H.R. Rep. No. 99-841 (1986); S. Rep. No. 99-313 (1986). Thus, even if we were to conclude that the Service's authority to rescind a final determination letter should parallel the Service's authority to rescind a statutory notice of deficiency, the rescission could only occur in situations where the Service and the taxpayer mutually agree to the rescission.

Moreover, the Service has provided guidance to taxpayers wishing to consent to rescission of a notice of deficiency. Rev. Proc. 98-54, 1998-2 C.B. 531. In accordance with the revenue procedure, taxpayers can request Form 8626 ("Agreement to Rescind Notice of Deficiency"). There has been no such guidance provided to taxpayers wishing to consent to rescission of a final determination letter. Further, there is no indication on Form 8626 that it can be used to rescind anything other than a notice of deficiency.

In addition, the principles of statutory construction support our conclusion that the Service does not have the authority to rescind a final determination letter. "The most basic tenet of statutory construction is to begin with the language of the statute itself." General Dynamics Corp. v. Commissioner, 108 T.C. 107, 122-23 (1997) (citing United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989)). In the context of section 6015, there is no mention of the ability to rescind a final determination letter. When a statute is silent, the statute's legislative history can be used in an attempt to determine congressional intent. General Dynamics Corp., 108 T.C. at 122 (citations omitted). However, nothing in the legislative history for section 6015 indicates that Congress intended for the Service to have statutory authority to rescind a final determination letter.

If you have any questions, please contact Susan L. Hartford at (202) 622-8529.

CURTIS G. WILSON

By: _____
Judith M. Wall
Chief, Branch 2

² Section 6212(d) was added to the Code by section 1562 of the Tax Reform Act of 1986. See P.L. No. 99-514.