

Office of Chief Counsel
Internal Revenue Service

memorandum

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EBBerndt

date: January 2, 2003

to: Jimmy L. Smith Director, Submission Processing W:CAS:SP:IMF:IRM
Attn: Karen Harper

from: Charles A. Hall, Senior Counsel CC:PA:APJP:2 *Charles A. Hall*

subject: **Notification Requirements for Extensions of Time to File**

This memorandum is in response to your memorandum dated October 1, 2002.

ISSUE

What is the legal authority for the notification requirements for the various extension forms?

CONCLUSION

Under the section 6081 regulations, there is no legal requirement that the Service provide notification to taxpayers that the Service granted their extension requests.

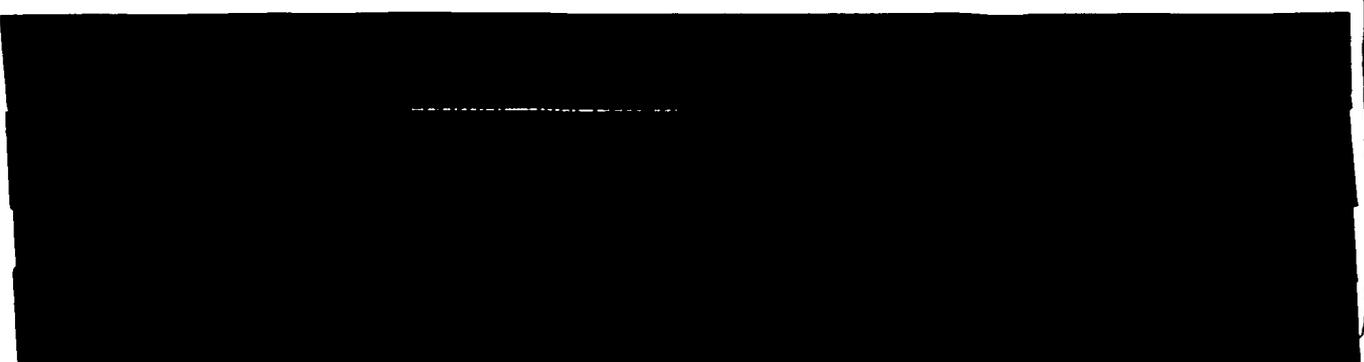
LAW AND ANALYSIS

Currently the Service does not notify the taxpayer of approval of extension requests where the taxpayer requests an automatic extension of time on: (1) Form 4868 for individual income tax returns, governed by Treas. Reg. § 1.6081-4; (2) Form 7004 for corporate income tax returns, governed by Treas. Reg. § 1.6081-3; (3) Form 8736 for partnership income tax returns, Real Estate Mortgage Investment Conduit income tax returns, or trust income tax returns, governed by Treas. Reg. §§ 1.6081-2, 1.6081-7, and 1.6081-6 respectively; and (4) Form 8868 for exempt organizations.

Please note that while the Service grants automatic extensions on Form 8868 for exempt organizations and Form 5558 for employee plans, there are currently no regulations which authorize these types of automatic extensions of time to file. Technically, extension requests for exempt organization returns and employee plan returns are governed by Treas. Reg. § 1.6081-1(b)(1), which requires a full recital of the reasons for requesting the extension. The 2002-2003 Priority Guidance Plan contains a regulation project under section 6081. We are considering whether to include procedures for requesting automatic extensions of time for exempt organizations.

All the regulations on automatic extensions, except for Treas. Reg. § 20.6091-1(b) on estate tax returns, require the Service to notify the taxpayer if the Service terminates the automatic extension. The notification of termination must provide the taxpayers at least ten days to file from the date the Service mailed the notice of termination. Notification of termination is not required if taxpayers do not fulfill all the requirements set out in the regulations for requesting an automatic extension. If the taxpayer does not fulfill those requirements, then the automatic extension request is invalid, and therefore ineffective. This may be determined retroactively, even after the return is filed. See Crocker v. Commissioner, 92 T.C. 899, 911-12 (1989). If the Service determines that the request for automatic extension was invalid, the return is treated as if the taxpayer did not file a request for an automatic extension and notification of the taxpayer is not required.

The regulations under section 6081 for extension requests (other than automatic) generally provide that the taxpayer, "where possible" should file the request for extension sufficiently before the original filing deadline to permit the Service to consider the request and reply to the taxpayer. See Treas. Reg. §§ 20.6081-1(c), 25.6081-1, 53.6081-1 (c), and 156.6081-1(b). The general regulation under section 6081, Treas. Reg. § 1.6081-1(b), also requires the taxpayer to provide a full recital of the grounds for the extension request to aid the Service in determining the length of extension, if any, to be granted. Nothing in the regulations under section 6081 requires the Service to notify taxpayers if their requests for extension of time to file are granted. The Service's consideration of the facts and circumstances surrounding the extension request, however, is what distinguishes a general request for an extension from a request for an automatic extension. If the Service stops notifying taxpayers that their requests for extension (other than automatic) have been granted, this undermines the distinction between additional requests for extension and requests for automatic extensions. Eliminating notification of the taxpayer that the extension had been granted would minimize the importance of the Service's consideration of the taxpayer's reasons for requesting an extension.



If you have any questions regarding this response, please contact Emily B. Berndt of the Administrative Provisions & Judicial Practice Division, Branch 2 at (202) 622-4088.