

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: Addressing Issues

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. What amount of due diligence is required of the Service in ascertaining a taxpayer's proper mailing address?
2. Is it possible for the Service to update a taxpayer's address information using information placed on an envelope by the United States Postal Service ("USPS") and sent back to the Service?
3. To what extent is the Service legally permitted to alter a taxpayer's Master File address such that it conforms to information provided by third-party software?

CONCLUSIONS

1. The Service is required to exercise reasonable due diligence based on the information that has been provided to it by the taxpayer in ascertaining a taxpayer's last known address. This means that Service personnel must conduct a documented search through all regularly available internal file systems to determine if there has been a clear and concise notification of an address different than the one found on the last properly filed and processed tax return for any given taxpayer.

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2. The Service is permitted to update its address records based on information placed on an envelope by the USPS where the Service has reasonable confidence that an updated address in the NCOA database is from a specific taxpayer. Since the NCOA database provides a name, the previous address and the new address, the Service should be able to utilize the old address as a common element to evaluate whether a match exists.

3. The Service may not update a taxpayer's last known address by using third-party software; however, the Service may send a letter to an address found in third-party software in order to solicit a response from the taxpayer regarding a potential new address.

LAW AND ANALYSIS

1. What amount of due diligence is the Service required to undertake in order to ascertain a taxpayer's proper mailing address?

Section 6212 requires that certain notices and other documents be sent to the taxpayer at his "last known address."

The legislative history of the predecessor to section 6212(b) indicates the intended purpose of the "last known address" standard was to relieve the Service of the obviously impossible task of keeping an up-to-date record of taxpayers' addresses. H.R. Rep. No. 2, 70th Cong., 1st Sess. 22 (1927), 1939-1 (Part 2) C.B. 384, 399. Treas. Reg. §301.6212-2(a) defines a taxpayer's "last known address" as the address provided by the taxpayer on the most recently filed and properly processed Federal tax return unless the Service is given clear and concise notification of a different address. What constitutes "clear and concise notification" is currently set forth in Rev. Proc. 2001-18, 2001-1 C.B. 708.

Independent of any taxpayer-provided information, the Service may update the taxpayer's address of record by using the NCOA database in accordance with Treas. Reg. §301.6212-2. Treas. Reg. §301.6212-2(b)(2) states that the Service will update taxpayer addresses maintained in Service records by referring to data accumulated and maintained in the NCOA database and if that taxpayer's name and last known address in Service records match the taxpayer's name and old mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address, unless the Service is given clear and concise notification of a different address.

Treas. Reg. §301.6212-2, defining a taxpayer's last known address, was effective as of January 29, 2001. Case law has since interpreted that regulation as requiring the Service to exercise reasonable due diligence based on information the Service knew or should have known in order to ascertain a taxpayer's last known address.

In Downing v. Commissioner, T.C. Memo. 2007-291, the taxpayer submitted a Form 2848, Power of Attorney, containing an address that differed from that shown on the taxpayer's last properly filed and processed Federal tax return. The Form 2848 was received by the Service on November 4, 2002. Although the taxpayer's tax return was received by the Service on September 3, 2002, it was not processed by the Service until November 11, 2002, which was after the Form 2848 was received.

The Tax Court held that the Form 2848 provided "clear and concise" notification of a change to taxpayer's address. Downing, T.C. Memo. 2007-291 (citing Hunter v. Commissioner, T.C. Memo. 2004-81). Furthermore, the court rejected the Service's interpretation of Treas. Reg. §301.6212-2(a) to mean that an address different from that appearing on the taxpayer's most recently filed and properly processed return is effective only if made after the tax return is processed. The court stated that

"the relevant question is not whether the Service received the change of address notification before or after the last filed return was processed. Rather, 'what is of significance is what [the Service] knew at the time the ... notice was issued ..., and attributing to [the Service] information which [the Service] knows, or should know, with respect to a taxpayer's last known address through the use of its computer system.'"

Id. (quoting Abeles v. Commissioner, 91 T.C. 1019, 1035 (1988) (citations omitted)). The court stated that if the Service becomes aware of a change of address, it may not rely on the address listed on the last filed return but must exercise "reasonable diligence in ascertaining the taxpayer's correct address." Id. (citing Pyo v. Commissioner, 83 T.C. 626, 636 (1984)). In this instance the exercise of reasonable due diligence would have required the Service to recognize that the address on the Form 2848 superseded the address contained on the previously filed return.

The Tax Court in Duren v. Commissioner, T.C. Memo. 2003-242, however, held that an unsigned Form 1040 return containing a new address that was not processed by the Service for 65 days, 5 days after the mailing of the notice of deficiency, containing a new taxpayer address was not clear and concise notification of a new address. The court stated:

A taxpayer can have only one last known address on the date that a notice of deficiency is issued. (citing Abeles v. Commissioner, 91 T.C. 1019, 1030 (1988)). What knowledge the Commissioner has acquired concerning the taxpayer's address is a question of fact. (citing King v. Commissioner, 857 F.2d 676, 678, 679 (9th Cir. 1988)). The Commissioner must exercise reasonable diligence in ascertaining the taxpayer's correct address; however, he is entitled to treat the address appearing on a taxpayer's return as the last known address in the absence of clear and concise notification from the taxpayer directing the Commissioner to use a different address. Id. 'Correspondence bearing an address different from that on the most recent return does not, by itself, constitute clear and concise notice. * * * In order to supplant the address on

his/her most recent return, the taxpayer must clearly indicate that the former address is no longer to be used.' (citing King, 857 F.2d at 681)).

Duren v. Commissioner, T.C. Memo. 2003-242.

In Hunter v. Commissioner, T.C. Memo. 2004-81 the Tax Court held that the listing of an address on a Form 2848 that was different than a taxpayer's address on his last filed return gave the Service clear and concise notification of his new address. The court stated that the Service "is chargeable with knowing the information that it has readily available when it sends notices to taxpayers. . . the steady advance of technology continues to lighten the IRS's burden in searching its own records for current address information." Id. (citing Union Tex. Int'l Corp. v. Commissioner, 110 T.C. 321, 324 (1998)). The fact that the Form 2848 did not specifically notify the Service that the taxpayer desired the listed address to replace the old address did not absolve the Service from knowledge of this new address.

In Camerato v. Commissioner, T.C. Memo. 2002-28, the Tax Court held that oral notification from the taxpayer of his desire to have the Service use a preferred address did not constitute clear and concise notification of a new taxpayer address.

The courts have not required that the Service consult every piece of information available to it when determining a taxpayer's correct address. In Hylar v. Commissioner, T.C. Memo. 2002-321, the court held that oral notification to Service employees of a taxpayer's new address does not constitute clear and concise notification if the Service employees are not involved in the issuance of statutory notices. Hylar v. Commissioner, T.C. Memo. 2002-321. The Tax Court in Hylar quoted the following language from the Court of Appeals for the Ninth Circuit:

If we required agents mailing notices of deficiency to take into account address information acquired by agents in different divisions in the course of unrelated investigations, the IRS could ensure that notices were validly addressed only by systematically recording in a central file all address information acquired in any fashion. We decline to require the IRS to do that. [I]t would impose an unreasonable administrative burden on the IRS.

United States v. Zolla, 724 F.2d 808, 811 (9th Cir. 1984). Additionally the Tax Court held in Hylar that a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, did not constitute clear and concise notification of a new taxpayer address, as that Form does not indicate that it is intended as a notification of a change of address.

The question of the required amount of due diligence the Service is required to exercise to ascertain a taxpayer's correct address is therefore a question of fact. There have been instances prior to the issuance of Treas. Reg. §301.6212-2 where courts have found that even if mail is deemed undeliverable the Service must undertake additional

investigation to obtain a valid address in order to satisfy the reasonable care and diligence standard. Mulder v. Commissioner, 855 F.2d 208 (5th Cir.1988). However, since the effective date of the Regulation, the Tax Court appears to take the position that the Service must use all of the information reasonably available to it to determine whether the taxpayer gave clear and concise notification of a different address. Reasonably available information is that which is possessed by the Service in its regularly used files at the time the mail is sent to the taxpayer. This standard will require a documented search through such Service files to determine that the address used is correct as printed and represents the last known address. However, in the absence of clear and concise notification of a different address directly from the taxpayer, the Service must use the address that appeared on the taxpayer's most recently properly filed and processed Federal tax return.

2. Is it possible for the Service to update a taxpayer's address information using information placed on an envelope by the USPS and sent back to the Service?

Treas. Reg. §301.6212-2(b)(1) states the general rule that change of address information that the taxpayer provides to a third party, such as a payor or another government agency, is not clear and concise notification of a different address for purposes of determining a last known address. Treas. Reg. §301.6212-2(b)(2), however, provides an exception to this rule by allowing the Service to update a taxpayer's address information by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database (NCOA database). Until the Service receives clear and concise notification from the taxpayer that his/her address is different from that contained in the NCOA database or the taxpayer files and the Service properly processes a tax return containing a different address, the address contained in the NCOA database will serve as the taxpayer's last known address. However, Treas. Reg. §301.6212(b)(2)(i) states that the NCOA database address may only be used as the taxpayer's last known address if the taxpayer's name and last known address in Service records "match" the taxpayer's name and old mailing address contained in the NCOA database.

It is our understanding from conversations with USPS employees that if a taxpayer changes his/her address using the NCOA database, his/her mail will be forwarded to the new address for a period of one year from the date of the taxpayer's move if the Service continues sending mail to the taxpayer's old address. After the one year period, the USPS will return any mail to the sender that was attempting to be delivered to the taxpayer's previous address and the return envelope will bear a yellow sticker stating the taxpayer's new address. In this instance, if the taxpayer's name and old address as set forth in Service records matches those contained in the NCOA database, then the Service's records will be automatically updated with taxpayer's new address and the Service will not require the forwarding service provided by USPS. In that case the Service will never receive an envelope back from the USPS bearing the yellow sticker with a different taxpayer address.

In cases where the name and/or address in the Service's records do not "match" those contained in the NCOA database, there will be no automatic update. Due to the strict parameters for name and address matching imposed by the Service, some taxpayers who have legitimately updated their address with the USPS may not have their address updated in the Service's files. Such would be the case where, for example, the taxpayer's full name is Robert Smith, but he filed a change of address request with the USPS under the name of Bob Smith.

We regard the Service's choice to impose more stringent requirements for matching of Service records and NCOA database information as a discretionary business decision. The regulation itself is silent as to the meaning of "match." Where the Service has reasonable confidence that an updated address in the NCOA database is from a specific taxpayer, then the Service records for that taxpayer may be updated accordingly. Since the NCOA database provides a name, the previous address and the new address, the Service should be able to utilize the old address as a common element to evaluate whether a match exists. Using the previous example, if the NCOA database contained an update for Bob Smith, with an old address of 1234 Main Street, Anytown, USA 98765 and a new address of 5678 First Avenue, Big City, USA 12345, and the Service had a record for Robert Smith with an address of 1234 Main Street, Anytown USA 98765, the Service could consider that a match and update Mr. Smith's address in accordance with the regulation.

In situations with greater uncertainty as to whether a match exists, the Service should examine these on a case-by-case basis, where resources allow. Short of making an update to Service records based on a questionable match with the NCOA database, the Service may also send out address inquiry letters to the new address (an "Are you there?" letter). If such a letter is sent to the taxpayer and the taxpayer returns the letter to the Service indicating that the updated address is in fact his address, the Service may update its records accordingly. Section 5.04(2) of Rev. Proc. 2001-18 states that "[c]orrespondence sent by the Service that solicits or requires a response by the taxpayer that is returned to the Service by the taxpayer with corrections marked on the taxpayer's address information will constitute clear and concise written notification of a change of address." If such a letter is sent to the taxpayer and the Service does not receive a taxpayer response, the Service should continue to use the taxpayer address as it is contained in the Service's records.

3. To what extent is the Service legally permitted to alter a taxpayer's address on record with the Service such that it conforms to information provided by third-party software?

Under Treas. Reg. §301.6212-2 change of address information that the taxpayer provides to a third party, even if to another government agency, is not clear and concise notification of a different address for purposes of determining a taxpayer's last known

address. As stated above, the Service is under no obligation to look outside its own records when obtaining information regarding a taxpayer's address. To do so would impose additional burdens on the Service and to mail to an address different than that contained in the Service's records runs the risk of running afoul of the last known address mailing requirements.

It is permissible, however, to send a taxpayer an "Are you there?" letter to the address contained in any third-party software. As discussed above, sending such a letter would give the taxpayer the opportunity to give the Service clear and concise notification of a different address and would document the Service's due diligence in attempting to locate the taxpayer.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call 202-622-6869 if you have any further questions.

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