


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

CC:NTA:SLHartford  
PRENO-132867-10

UILC: 7526.00-00

date: September 3, 2010

to: William Nelson  
Director, Low Income Taxpayer Clinic Program Office

from: Susan L. Hartford   
Technical Advisor to the Special Counsel  
(National Taxpayer Advocate)

---

subject: Determining the "Amount in Controversy" for Purposes of LITC Representation

This memorandum responds to your request for assistance dated August 11, 2010.  
This advice may not be used or cited as precedent.

ISSUE

Pursuant to IRC § 7526(b)(1)(B)(ii), a qualified low income taxpayer clinic (LITC) represents low income taxpayers whose "amount in controversy for any taxable year generally does not exceed the amount specified in section 7463." How is the amount in controversy calculated for purposes of determining whether an LITC may accept a case from an otherwise eligible low income taxpayer?

CONCLUSION

For an LITC to accept a case representing a low income taxpayer, the amount in controversy for the taxable year *generally* cannot exceed \$50,000, the amount specified in section 7463(a). The term "generally" should be afforded its common, everyday meaning. Thus, LITCs have the discretion in determining whether they should accept a case where the taxpayer's amount in controversy exceeds \$50,000, with the understanding that such cases should not be the norm. In calculating the amount in controversy, use the rules found in section 7463(e). As a result, the amount in controversy includes penalties, additions to tax, and additional amounts to the extent those items are subject to the deficiency procedures. Interest should only be included when determining the "amount in controversy" if the amount of interest is what is in dispute.

LAW AND ANALYSISType of Tax/Type of Proceeding

Section 7526(b)(1)(B)(ii) provides that an LITC may represent low income taxpayers whose "amount in controversy for any taxable year generally does not exceed the amount specified in section 7463." Section 7463 is entitled "Disputes Involving \$50,000 or Less." Under section 7463, taxpayers may elect to have their case conducted under the Tax Court's simplified small tax case ("S" case) procedures if they meet certain criteria. Although section 7526 cross-references section 7463, a taxpayer who is receiving assistance from an LITC is not required to use the small tax case procedures; rather, section 7463 is merely the benchmark for determining whether an LITC should accept a taxpayer's case.

Small tax procedures under section 7463(a) are available if "neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds --- \$50,000 for any one taxable year" (emphasis added). Note that the "amount in controversy" is determined by the amount the taxpayer places in dispute, which is not necessarily the amount specified in the notice of deficiency. See *Kallich v. Comm'r*, 89 T.C. 676 (1987), *acq.*, 1988-2 C.B. 1 (amount in notice of deficiency exceeded amount specified in section 7463(a) but taxpayer conceded certain issues, with the result that the amount in dispute did not exceed the amount specified in section 7463(a) and case was therefore eligible for small tax case procedures). Consequently, a taxpayer who has placed in dispute an income tax deficiency of \$50,000 or less for a single taxable year is eligible for small tax case procedures for that year. If multiple years are in dispute, the small tax case procedures are only available if the amount in dispute for each year is \$50,000 or less.

The language in section 7526(b)(1)(B)(ii) essentially mirrors the language in section 7463(a)(1). Thus, if a taxpayer needs assistance from an LITC in the context of petitioning the Tax Court, the "amount in controversy" is determined by the amount the taxpayer places in dispute, not by the amount specified in the notice of deficiency. For example, suppose a taxpayer receives a notice of deficiency for \$51,500 for one taxable year. Unless the taxpayer concedes at least \$1,500, the small tax case procedures would not be available, and the LITC would generally not be able to represent the taxpayer. If multiple taxable years are placed in dispute in the Tax Court, the small case tax procedures are only available if the amount in dispute for each taxable year is \$50,000 or less. Similarly, the LITC would *generally* not be able to represent the taxpayer unless the amount in dispute for each taxable year is \$50,000 or less. (See below for a discussion of the LITC's discretion to represent a taxpayer under the "generally" umbrella of section 7526(b)(2)(B)(ii) if the amount in controversy exceeds \$50,000 for any taxable year).

Different rules apply when determining whether the small tax case procedures are available when a taxpayer petitions the Tax Court from a notice of determination rather than a notice of deficiency. In the section 6015 (innocent spouse) or section 6330

(collection due process) contexts, the \$50,000 limitation is determined by looking at all the taxable years addressed in the notice of determination, rather than the amount at issue for a single taxable year. IRC §§ 7463(f)(1); (f)(2); *Petrane v. Comm'r*, 129 T.C. 1 (2007); *Schwartz v. Comm'r*, 128 T.C. 6 (2007). Because the \$50,000 limitations in the section 6015 and section 6330 contexts, however, are not phrased in terms of the amount in controversy for the taxable year, those limitations are irrelevant when determining whether an LITC can accept a taxpayer's case in those two contexts; rather, the wording of section 7526 controls and what is relevant is the amount at issue for a single taxable year. Thus, an LITC can represent a taxpayer who has a controversy in the section 6015 or section 6330 contexts if the amount in controversy is \$50,000 or less for each taxable year for which assistance is needed. Keep in mind, however, that if petitioning the Tax Court from a notice of determination and there are multiple years involved; much like in the deficiency context, an LITC should *generally* only be representing the taxpayer if the amount in dispute for each taxable year at issue is \$50,000 or less. (See below for a discussion of the LITC's discretion to represent a taxpayer under the "generally" umbrella of section 7526(b)(2)(B)(ii) if the amount in controversy exceeds \$50,000 for any taxable year).

Determining the "amount in controversy" for LITC purposes is not as easy when the issue for which a taxpayer needs LITC assistance does not involve the taxpayer petitioning the Tax Court from a notice of deficiency or a notice of determination. Suppose a taxpayer is audited and does not respond to the statutory notice of deficiency. The IRS assesses a \$52,000 deficiency. The taxpayer seeks assistance from an LITC to request audit reconsideration and has supporting documentation for \$15,000 of the deficiency. While the taxpayer has an outstanding tax liability in excess of the \$50,000 limitation in section 7463(a), the amount the taxpayer seeks to dispute is only \$15,000. Thus, an LITC could view the "amount in controversy" as only \$15,000 and assist the taxpayer. (And even if one viewed the \$52,000 as the "amount in controversy," the LITC could rely on the "generally" umbrella of section 7526(b)(2)(B)(ii) to accept the case under certain circumstances.)

#### The term "generally"

Section 7526(b)(1)(B)(ii) provides that a taxpayer's amount in controversy generally cannot exceed the amount specified in section 7463. We were unable to locate any legislative history to explain why Congress added the word "generally" to the statute. The common meaning of the term "generally" is as follows: "in disregard of specific instances and with regard to an overall picture (generally speaking); as a rule." <http://www.merriam-webster.com/dictionary> (last visited August 13, 2010). Thus, the use of the term "generally" in the statute allows for situations where an LITC can represent a client whose amount in controversy exceeds \$50,000. It is impossible, however, to determine the number of such clients who could be served by any particular LITC; each LITC has discretion in determining whether it can accept a taxpayer's case where the amount in controversy exceeds the \$50,000 limitation of section 7463(a), with the understanding that such cases should not be the norm.

In the examples given above outside of the notice of deficiency or notice of determination contexts, there may be differences of opinion as to how to calculate the "amount in controversy." So long as the LITC overall is representing taxpayers where the amount in controversy clearly does not exceed \$50,000, taking the occasional case that could be viewed with more than \$50,000 in dispute is not a problem. Keep in mind, however, that for any case where the amount in controversy exceeds the \$50,000 limitation, the LITC "must maintain in its case file an explanation of why the case was accepted." See page 9 of Publication 3319 (May 2010). There could be many reasons for an LITC to accept a case where the amount in controversy exceeds the \$50,000 limitation. Here are perhaps some of the more common examples: An LITC may choose to accept a case where the amount in controversy exceeds the \$50,000 limitation because the issue is significant to low income taxpayers nationwide. Similarly, suppose a low income taxpayer needs representation for three separate taxable years, but one of the years exceeds the \$50,000 limitation; in terms of judicial economy, it would not make sense to bifurcate the three taxable years and only represent the taxpayer in two of the years. An LITC may also choose to accept a case where the amount in controversy exceeds the \$50,000 limitation when the taxpayer's financial situation has changed drastically (e.g., taxpayer had a six figure income during the taxable year at issue but is now currently unemployed and considered a low income taxpayer).

### Interest and Penalties

Section 7463(e) provides that for purposes of section 7463(a), the amount of the deficiency placed in dispute "includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply." Thus, any additions to tax, additional amounts, and penalties imposed by chapter 68 are included when determining the amount in controversy for LITC purposes if those items are subject to the deficiency procedures. The requirement to pay interest on a deficiency is found in Chapter 67, not Chapter 68. Consequently, the amount of deficiency eligible for the small tax case procedures and therefore LITC representation includes additions to tax, additional amounts, and penalties, but not interest.

While the rule in section 7463(e) applies only with respect to the amount of a deficiency placed in dispute, the same rules for determining the "amount in controversy" should be applied, regardless whether a notice of deficiency or a notice of determination has been issued, or whether a taxpayer has a matter not involving Tax Court litigation for which LITC representation is needed. Thus, regardless of the type of tax matter (e.g., litigation, audit reconsideration, examination, collection, or Appeals) for which a taxpayer needs assistance, the amount in controversy for LITC representation purposes should include additions to tax, additional amounts, and penalties. Interest should only be included when determining the "amount in controversy" if the amount of interest is in dispute.

Please call (202) 622-4947 if you have any further questions.