

ID: CCA-710125-08

Number: **200907027**

Release Date: 2/13/2009

Office:

UILC: 6503.00-00

---

**From:**

**Sent:** [7/10/08]

**To:**

**Cc:**

**Subject:** [Question on Statute Tolling]

came to a different conclusion than and I did (see below), and I wanted to re-read the FSA before I got back to you. We had originally looked to Andrews as it was more recent than the FSA, but draws a valid distinction between the case at issue and Andrews in that Andrews dealt with the mailing of a copy of a statutory notice of deficiency while your case deals with a reissued, redated statutory notice of deficiency. The FSA held that the mailing of a second notice of deficiency did not automatically invalidate the first notice and that the first notice still suspended the running of the period of limitations. As a result, in your case, the second notice was valid and the suspension period under 6503 was further extended upon its mailing.

Let me know if you have any further questions.

---

I'm not sure I agree. In Andrews, petitioners were mailed a copy of the prior notice, with a cover letter carrying a new date. That cover letter is not a notice of deficiency and did not purport to give the taxpayers another 90-day period to file a petition. In your case, a new, redated notice of deficiency was mailed during the tolled statutory period, which was intended to provide a new petition filing period. Assuming the second notice was identical in amount to the first notice, I believe it was timely mailed within the limitations period. I believe the 1993 FSA that is cited answers this question and holds that so long as the second notice did not determine an additional deficiency, it is timely since mailed within the suspension period. The statute was probably open in and an assessment could have been made.

Why is this question being asked now, in 2008, when the statute surely has by now expired? Is someone planning to cast blame for an expired statute years after the fact? Given that this question is still somewhat unsettled, I hope someone isn't punished for taking a debatable legal position we might not now agree with.

I am available to meet to discuss this if you wish.