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From:

Sent: Friday, June 10, 2011 4:13:34 PM

To:

Cc:

Subject: RE: question regarding machine-sensible data capable of being processed

Hi

I am writing in response to your question of whether the machine-sensible data media at issue should be considered records under I.R.C. § 6001 and Treas. Reg. § 1.6001-1. I agree with you that the data should be considered records for two reasons.

First, I agree with your interpretation of Rev. Rul. 71-20. It seems clear that the phrase “within a taxpayer’s automatic data processing system” is a modifier of “accounting transactions and records” rather than of “machine-sensible data media.” If the Rev. Rul. were intended to limit the “punched cards, magnetic tapes, disks, and other machine-sensible data media” to only that media within the ADP system, then the modifier would have been placed immediately following the phrase describing such media, rather than after “accounting transactions and records.” From a grammatical standpoint, the phrase “punched cards, magnetic tapes, disks, and other machine-sensible data media” stands as the performer of the actions of “recording, consolidating, and summarizing” which have as their object the “transactions and records” at issue. The “transactions and records” at issue are identified by the prepositional phrase “within a taxpayer’s automatic data processing system” that distinguishes those “transactions and records” from other transactions and records that are not within the ADP system. And this reading is further supported by the language in Rev. Proc. 98-25, which states that “The purpose of this revenue procedure is to specify the basic requirements that the Internal Revenue Service considers to be essential *in cases where a taxpayer’s records are maintained within an Automatic Data Processing System (ADP).*” Rev. Proc. 98-25 § 1 (emphasis supplied). It is the records themselves that, under Rev. Rul. 71-20, must be within the ADP, and not the media that records, consolidates, and summarizes those records. Thus, under a plain reading of Rev. Rul. 71-20, the media constitute records under I.R.C. § 6001 and Treas. Reg. § 1.6001-1.

Second, even if Rev. Rul. 71-20 did require the “machine-sensible data media” at issue to be “within the taxpayer’s automatic data processing system,” the media are still records under I.R.C. § 6001 and Treas. Reg. § 1.6001-1 because Rev. Rul. 71-20 in no way states that such media *must* be within an ADP system. Even under reading of the ruling, there is no statement requiring all machine-sensible data media to be within a taxpayer’s ADP in order to fall under I.R.C. § 6001 and Treas. Reg. §

1.6001-1. Rather, the statement (again, even under [redacted] reading) is that where such media are within the ADP system, they are under I.R.C. § 6001 and Treas. Reg. § 1.6001-1. But there is no converse statement, i.e. that machine-sensible data outside of the ADP system is outside the scope of I.R.C. § 6001 and Treas. Reg. § 1.6001-1.

In addition, [redacted] focus on Rev. Rul. 71-20 is misleading in that it ignores the general requirements of Rev. Proc. 98-25, which explicitly references Rev. Rul. 71-20 in its background section but places no requirement that machine-sensible records be within a taxpayer's ADP system. Rather, the focus is on the *materiality* of the records, as stated: "The taxpayer must retain machine-sensible records *so long as their contents may become material* to the administration of the internal revenue laws under § 1.6001-1(e)." Rev. Proc. 98-25 § 5 (emphasis supplied). There are no additional requirements stated. Thus, [redacted] attempt to focus attention on the ADP system is a red herring that draws attention from the sole requirement of materiality. And consequently, the media, as machine-sensible data that is material to the administration of the internal revenue laws, is subject to Rev. Proc. 98-25.

For these reasons, I think that you are interpreting Rev. Rul. 71-20 and Rev. Proc. 98-25 correctly and that [redacted] is required to produce the [redacted] information.

If you have any questions or need any additional information, please write me back or give me a call at your convenience.