

memorandum

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date: **APR 23 1998**

to: Acting Associate District Counsel, Louisville

from: Chief, Branch 3
Office of Assistant Chief Counsel (Income Tax & Accounting)

subject: Request for Significant Service Center Advice
Statutory Contents Requirements

This responds to your request for Significant Advice dated December 11, 1997, in connection with a question posed by the Cincinnati Service Center (CSC).

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know". In no event shall it be disclosed to taxpayers or their representatives.

ISSUE

May CSC mail to a taxpayer a deficiency notice containing less information than that generated under the Report Generating Software (RGS) program?

CONCLUSION

CSC must mail to a taxpayer the entire deficiency notice generated under the RGS program to comply with § 7522 of the Internal Revenue Code. This conclusion is based solely on the facts presented.

FACTS

In August 1997, CSC converted to the RGS program for preparation of deficiency notices described in § 6212. RGS has been used by the districts for some time and has now been approved for use by all of the service centers as well. An envelope is being created to allow RGS-generated notices to be processed by the service center's mail sorting equipment. Presently, the RGS-generated notices for certain cases, such as nonfilers, are too thick to be processed by CSC's mail sorting equipment. CSC is looking for a way to process the thick notices with the equipment, pending the release of the new envelope.

It had been determined that the problem cannot be addressed, at least in the short-term, by any of the following:

- adjusting the mail sorting equipment
- printing on each side of a notice
- reformatting the text to fit more on a page
- revising the RGS program to generate shorter descriptions

You ask whether something less than the entire RGS-generated deficiency notice can be issued. Alternatively, you ask whether CSC may go back to using a predecessor of the RGS program.

We have since learned that the alternative is no longer an option. We discussed the matter with a representative of the CSC on March 19, 1998, who informed us that it has been determined that the predecessor system cannot be used by CSC.¹

DISCUSSION

Section 6212

Under § 6212(a) of the Internal Revenue Code, if it is determined that there is a deficiency in respect of any tax imposed by Subtitle A or B or chapter 41, 42, 43, or 44, the Secretary is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

Section 6212 does not require that a deficiency notice, to be valid, be framed in any particular form. Hart v. Commissioner, T.C. Memo 1982-553; Stevenson v. Commissioner, T.C. Memo 1982-16. In this regard, the deficiency notice "is only to advise the person who is to pay the deficiency that the Commissioner means to assess him; anything that does this unequivocally is good enough." Olsen v. Helvering, 88 F.2d 650, 651 (2d Cir. 1937).

With respect to the requirements of § 6212, a deficiency notice is sufficient where it fairly advises the taxpayer that the Commissioner has determined a deficiency and gives the taxpayer the amounts thereof and the years involved. Commissioner v. Stewart, 186 F.2d 239, 242 (6th Cir. 1951); Jarvis v. Commissioner, 78 T.C. 646, 655-56 (1982). Insofar as § 6212 is concerned, the notice must at a minimum indicate that the Internal Revenue Service has determined that a deficiency

¹ If the predecessor system, Micro RAR, could be used, it would be worth considering the adequacy of the notice's contents under § 7522. Apparently, the system provided descriptions similar to those in RGS, and, in addition, allowed for the editing of explanations.

exists for a particular year and specify the amount of the deficiency. Benzvi v. Commissioner, 787 F.2d 1541 (11th Cir. 1986), cert. denied, 107 S. Ct. 273 (1986); Abrams v. Commissioner, 787 F.2d 939 (4th Cir. 1986), cert. denied, 107 S. Ct. 271 (1986).

Accordingly, § 6212, by itself, does not require any descriptions to be included in the deficiency notice.

Section 7522

Section 7522(a) of the Code provides that any notice to which § 7522 applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in the notice. An inadequate description under the preceding sentence shall not invalidate the notice.²

Section 7522(b) provides that § 7522 applies to any tax due notice or deficiency notice described in § 6155, 6212, or 6303.

Section 7522 was enacted in the Omnibus Taxpayer Bill of Rights, which was part of the Technical and Miscellaneous Revenue Act of 1988.³

As explained to us by the representative of CSC, the RGS software program provides, for the benefit of the taxpayer, a description for each item contained in the deficiency notice. The descriptions are created in response to information entered by the service center employee. The program allows descriptions to be eliminated, but it does not allow them to be edited or shortened. Thus, the CSC representative indicates that the only

² Section 7522 concerns not only the existence of a description, but also the quality of the description. In Ludwig v. Commissioner, T.C. Memo. 1994-518, the Court commented that an inaccurate description in the deficiency notice was largely responsible for the initial difficulty it had in analyzing the case.

While the failure to include an adequate description does not invalidate the notice, the Tax Court has warned that there will be consequences for the Service. In Ludwig the Court commented "What then remains of the responsibility of the IRS when the Commissioner fails to obey the command of section 7522(a)? Perhaps this Court could fashion some sort of remedy for the taxpayer, such as imposing the burden of proof, or at least the burden of going forward, on the Government." The Court did not have to answer that question in Ludwig because the unsatisfactorily explained item was an adjustment in favor of the petitioners. In Lefleur v. Commissioner, T.C. Memo. 1997-312, the petitioner invited the court to shift the burden of proof. The court reviewed the notice and concluded it was adequate and, therefore, declined the request.

³ The provision was originally codified at § 7521. At the time of enactment, the Service's policy was to include with a deficiency notice the basis of that deficiency. The Service, however, generally did not explain the basis for assessing penalties or provide information on the calculation of interest. H.R. Conf. Rept. 1104, 100 Cong., 2d Sess. (1988).

option is to eliminate entirely the descriptions relating to one or more of the items in the deficiency notice.

Section 7522 requires a description for each item contained in the deficiency notice. Thus, a deficiency notice that explains some, but not all of the items contained therein would not meet the requirements of § 7522. Accordingly, the option of eliminating the description relating to one or more of the items contained in the deficiency notice is not a viable alternative and should not be implemented.⁴

If you have any questions, or if we can be of further assistance, please contact Paul E. Tellier at (202) 622-4930.

Assistant Chief Counsel
(Income Tax & Accounting)

By: _____/s/_____
Michael D. Finley
Chief, Branch 3

⁴ In addition, presently Congress is considering expanding the information on any penalty in notices. A proposal being discussed under the Taxpayer Bill of Rights 3 provisions in proposed Restructuring legislation would require that each notice imposing a penalty include (1) the name of the penalty, (2) the code section requiring the penalty, and (3) a computation of the penalty. The proposal would apply to notices issued more than 180 days after the date of enactment.