December 1, 2021

Internal Revenue Service
CC:PA:LPD (IRC 6501 and Pub. 1035)
Room 5207, PO Box 7604
Ben Franklin Station
Washington, D.C. 20224

RE: IRC 6501 and Publication 1035 Comments Regarding Limiting Consents to Extend the Statute of Limitations to Specific Issues

Dear Commissioner Rettig:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. The TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the view or policies of the TXCPA.

Comments

We are writing to address a particular issue we believe is prevalent regarding Internal Revenue Code (IRC) Section 6501(c) and IRS Publication 1035. Under IRC Section 6501, the IRS generally has three years to assess a deficiency against a taxpayer.[1] IRC Section 6501 provides that the taxpayer and the IRS may <u>mutually agree</u> to extend the statute of limitations.[2]

Under IRC Section 6501(c)(4), a taxpayer has the statutory right to limit the agreed-upon extension to particular issues or to a particular period of time.[3] However, our members report the IRS rarely agrees to limit a statute of limitations extension agreement to specific issues. We believe the IRS should develop policies to effectuate congressional intent by granting taxpayers the right to limit an extension to specific issues whenever possible.

IRC Section 6501(c)(4)(A) provides a general three-year statute of limitation for the IRS to assess tax but also permits extensions by agreement as follow:

> "(A) IN GENERAL. – Where, before the expiration of the time prescribed for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary

[1] IRC Section 6501(c).

[2] *Id*, Section 6501(c)(4)(A).

[3] *Id*.

> and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
>
> (B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION. – The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent."

The language in subsection (B) requiring notice to taxpayers of their right to refuse to grant an extension or to limit the extension agreement was added as part of the *IRS Restructuring and Reform Act of 1998*.[4] In its report on this Act, the Senate Finance Committee expressed concern that in some cases taxpayers "may have felt that they had no choice but to agree to extend the statute of limitations upon the request of the IRS."[5] The committee believed taxpayers should be fully informed of their rights with respect to the statute of limitations, including the right to refuse the extension or to "limit the extension to particular issues."[6]

Notably, both the right to refuse and the right to limit an extension to specific issues are unqualified in the statute. The right to limit an extension to specific issues in IRC Section 6501(c)(4)(B) exists in the same context as a taxpayer's right to refuse to extend the limitations period, which is absolute and does not require IRS consent. As such, there is at least arguably a legitimate question as to whether the IRS can properly reject a taxpayer's request to limit the statute of limitations to specific issues when it is possible to do so.

We believe that, at a minimum, the IRS should make this option available in all but very limited circumstances. Our members' experience, however, has generally been that the IRS does not typically agree – or even offer – to limit statute of limitations extension agreements to specific issues. While there is no question that administrative convenience for the IRS may very well dictate extending the period for all issues (as opposed to limiting the extension to specific issues), IRC Section 6501(c)(4)(B) clearly states that taxpayers have a statutory right to limit the extension agreements to specific issues.

Closing

We therefore request that the IRS establish procedures to more readily permit and approve taxpayer requests to limit the extension to specific issues. In instances where the IRS does not agree, we further request that the IRS develop procedures for notifying taxpayers in writing as to the specific reason for such refusal and a procedure for promptly appealing the denial to IRS management or another office within the IRS.

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[4] *Internal Revenue Service Restructuring and Reform Act of 1998*, H.R. 2676, 105th Cong. Section 3461 (1998).

[5] S. Rep. No. 105-74, at 69-70 (1998).

[6] *Id.*

Thank you for considering our comments. We would be pleased to discuss them further if you or your staff members believe it would be helpful. Please feel free to contact me at 214-749-2462 or at dcolmenero@meadowscollier.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tx.cpa.

Sincerely,

David Colmenero, CPA, JD
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by David Colmenero, CPA, JD, and Kenneth Horwitz, CPA, JD.

cc: The Honorable Lily Batchelder, Assistant Treasury Secretary (Tax Policy)
The Honorable William M. Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)