

Internal Revenue Service
memorandum

CC:EL:GL:Br1:MDGrogan
GL-704026-97

Acknowledged 3/23/98
SCA 1998-004

date: November 14, 1997

to: Kansas-Missouri Associate District Counsel (CC:MSR:KSM:KCY)

from: Chief, Branch 1 (General Litigation) CC:EL:GL

subject: Request for Significant Service Center Advice--
Notice of Assessment (section 6303(a) Notices)

Your request for advice on the above-referenced matter was forwarded to General Litigation for response. The facts as we understand them can be summarized as follows: The Kansas City Service Center failed, within 60 days of assessment, to issue the Service's customary Section 6303(a) notices for approximately 14,000 assessments made during cycle 9713. The Service Center did however send Final Notice/Notice of Intent to Levy (CP504) within the 60-day time frame. Your memorandum goes on to state that while the usual Section 6303(a) notice (CPS01) "gives the date by which payment must be received for the taxpayer to receive the benefit of the interest free period under I.R.C. § 6601(e)(2) or (3) ... the [final notice] makes no reference ... to an interest free period since this notice is not a notice with respect to which there would normally be an interest free period." The error made at the service center raises two questions: first, whether the final notice sent to the taxpayers is sufficient notice and demand under I.R.C. § 6303(a) and second, whether the affected taxpayers received the benefits of the interest-free period under I.R.C. § 6601(e).

CONCLUSION

Regarding the first question, we believe that the notice sent by the service center is sufficient as notice and demand under I.R.C. § 6303(a). However, there are two points to consider: (1) Because the final notices at issue will serve as the requisite Section 6303(a) notice, the service center will need to send the taxpayers another notice of intent to levy in order to satisfy the requirements of I.R.C. § 6331(d) and the regulations thereunder. (2) Absent a rider or some other means of explanation, receipt of two virtually identical final notices may prove confusing to taxpayers. Regarding the second question, although it is our understanding that the

taxpayers have not been denied the benefit of any portion of the interest-free period, if this is not in fact the case, the situations should be remedied by corrections, manual if necessary, to the taxpayers' accounts, not abatements of the tax liabilities at issue.

DISCUSSION

Failure to provide the customary first notice within 60 days.

Section 6303 requires that as soon as practicable but within 60 days of assessment the Service must provide the taxpayer notice of the amount of taxes due and demand payment. In addition, Section 7522 requires that such notices "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." No statutory or regulatory provision dictates the particular form which must be used to satisfy these requirements. ¹/ The final notices sent by the service center meet the statutory requirements for notice and demand. We do not believe that the failure of the notice and demand to state that there is an interest-free is improper. There is no statutory requirement, under Section 6303(a), 6601(e), or elsewhere, that a Section 6303(a) notice reference the interest-free period. In addition, we do not believe that the inaccuracy of the amount of interest shown on the notices is fatal. As a practical matter, we note that notices generated are commonly fail to reflect the precise amount of interest due. Moreover, while I.R.C. § 7522 requires that the amount of interest be shown, it also provides that an inadequate description does not invalidate the notice.

Having concluded that notice meeting the statutory requirements of the Code was provided within 60 days of assessment, we need not rely on the regulation under I.R.C. § 6303, which states that failure to provide Section 6303 notice within 60 days-cf assessment does not invalidate the notice. As you discussed in your memorandum, the court in Blackston v. United States, 778 F.S. 244 (D. Md 1991) was unpersuaded by the government's position, but did not directly

¹ The Manual does provide for the use of particular forms. See, e.g., IRM Handbook No. 6810 (Taxpayer Service), 762.1. However, we note that Manual provisions are directive, not mandatory and provide no substantive rights to taxpayers. See Caceres v. United States, 440 U.S. 741 (1979).

address the regulation under I.R.C. § 6303. In a case decided shortly after Blackston, the United States District Court for the District of Oregon expressly rejected the portion of the treasury regulation which provides that a late notice is not invalid. Crowd Management Services, Inc. v. United States, 792 F.S. 87 (D. Ore. 1992).

As noted in the conclusion on page 1, another final notice--this one serving as the final notice-- will have to be provided the taxpayers as required by Section 6331(d). While there is no requirement as to the form of the final notice and the Section 6303 notice, two notices must be issued. Treasury Reg. § 301.6331-2(a)(1) states that a notice of intent to levy is separate from, but may be given at the same time as, the notice and demand. 2/

Failure to provide taxpayers the benefits of the interest-free period.

On page 3-4 of your memorandum you state that the final notice makes no reference to the interest-free period and that the service center has informed you that it cannot treat such notices as generating an interest-free period. As we discussed informally with your office previously, it is our understanding, confirmed by discussions with Neil Schroeder of Customer Service--Accounts Resolution in the National Office, that taxpayers, in fact, do receive the benefits of the interest-free period with the issuance of a final notice. it has been the long-standing practice of the Service to provide an interest-free period with each balance due notice--the first through the last. This is not because it is statutorily required, rather the Service does so because it would be too administratively burdensome to, in the absence of an interest free period, recalculate the interest due from the date of the notice to the date the taxpayer paid. This way, if the taxpayer pays within the time provided on the notice, the Service does not have-to recalculate interest.

2 Arguably this regulation could be cited as suggesting the use of two different forms. Nevertheless, it does not so require and, as stated above, we believe that no particular form is required, any form meeting the statutory requirements for notice and demand would be sufficient.

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The foregoing notwithstanding, there still appears to be some confusion whether the notice sent in this case could trigger an interest-free period from the date of the notice until the date of payment, provided payment is made within the time indicated in I.R.C. § 6601(e). 3/ Failure to provide the affected taxpayers with the statutory interest-free period would be improper. Assuming that for whatever reason that has occurred, we would recommend that the appropriate corrections be made to the affected taxpayers' accounts, although from discussions with Special Procedures we understand that it may be difficult for the service center to make systemic changes and may have to make manual corrections.

If you have questions or comments regarding the foregoing, please contact Deborah Grogan at (202) 622-3610.

/s/
ALAN C. LEVINE

cc: Executive office of Service Center Operations T:S
Executive Office of Customer Service Operations T:C

3 The local service center continues to maintain that the last notice is not associated with an interest-free period, while the National office asserts that it does provide an interest-free period.