



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR Jody S. Tancer, Associate District Counsel
Brooklyn CC:NER:BRK

FROM: Gary D. Gray, Assistant Chief Counsel
General Litigation CC:EL:GL

SUBJECT: Application of Section 7602(c) to Contacts Made at Request
of Government

You have asked whether section 7602(c) applies to contacts made by a Service employee at the request of the Government. After careful consideration of both the language and history of the statute, we conclude that section 7602(c) does not apply to such contacts because they are not sufficiently causally related to the determination of an internal revenue tax to fall within the statute's ambit.

Background

We understand the facts underlying your question to be as follows. The Government has asked the Service to obtain certain information from a corporation incorporated and operating in the United States. The information relates to a transaction between the U.S. corporation and a U.S. citizen living in whom the Government is investigating. The U.S. citizen is not under examination in the United States. Before passing the information on to the Government, however, the Service plans to review the information to see whether it is consistent with the taxpayer's returns. There is no reason to believe that the information will or will not lead to a decision to open an examination.

Analysis

Section 7602(c), as amended by section 3417 of the IRS Restructuring and Reform Act ("RRA"), P.L. 105-206 (1999), provides:

- (c) NOTICE OF CONTACT OF THIRD PARTIES. --
- (1) GENERAL NOTICE. -- An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer

without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) NOTICE OF SPECIFIC CONTACTS. -- The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) EXCEPTIONS. -- This subsection shall not apply --
 (A) to any contact which the taxpayer has authorized,
 (B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person, or
 (C) with respect to any pending criminal investigation.

We interpret the (c)(1) language as applying to any contact which:

1. Is a communication initiated by a Service employee, made to
2. Any person other than the taxpayer, which
3. Is with respect to the determination or collection of the taxpayer's federal tax liabilities,
4. Identifies the taxpayer, and
5. Identifies the employee's association with the Service.

The phrase "with respect to" contains the idea of purpose. That is, a contact is "with respect to" the determination of a federal tax liability when it is made for the purpose of determining the tax. This is true whether or not the Service has opened a formal examination of any particular return.

The contact with the U.S. corporation in your case is not made for the purpose of determining the U.S. citizen's federal tax liability. The contact is made because the Government asked it to be made. In other words, it is made for the purpose of fulfilling the United States' treaty obligations to _____ with respect to a tax liability. The fact that a Service employee may review the information before passing it to _____ is immaterial to the reason for the contact. The Government has requested the contact be made and the contact will be made regardless of whether a Service employee reviews the information or not. The Service's review of the information does not convert the purpose of the contact from one of fulfilling a treaty obligation to one of determining a federal tax. Even though the purpose of the review is to see whether an examination should be made of the U.S. citizen's federal tax liabilities, the purpose of the contact is still to comply with our treaty obligations.

Since the contact is not for the purpose of determining a federal tax liability, it is not therefore “with respect to” the determination or collection of the U.S. citizen’s federal tax.

We were happy to assist you in this matter. If you have any comments or questions, please do not hesitate to call me or Bryan Camp of my office, at 202-622-3630.