

Office of Chief Counsel
Internal Revenue Service
memorandum

Number: **200118052**
Release Date: 5/4/2001
UIL: 52.00-00
CC:PA:CBS:Br3/GL-128007-00

March 26, 2001

MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE), BUFFALO

FROM: Lawrence H. Schattner
Branch 3 (Collection, Bankruptcy & Summons)

SUBJECT: Automatic Collection Statute Extensions under I.R.C. 6503(c)

This Chief Counsel Advice is in response to your request of January 11, 2001, that we pre-review your memorandum to the New York Territory Manager concerning the above-referenced subject. This document is not to be relied upon or otherwise cited as precedent.

ISSUE:

Whether I.R.C. 6503(c) permanently extends the collection period of Native Americans who live in Canada but work in the United States.

FACTS:

The following facts were gleaned from e-mail correspondence sent between counsel and a member of a team that has been working a Native American Problem Solving Initiative for the past 21/2 years. The problem solving team has been dealing with a tribe whose reservation extends from the United States into Canada. The Native Americans on the reservation move freely between the two countries. Apparently, it has been argued that the collection statute never expires in cases involving Native Americans who live on the reservation in Canada, work in the United States, have a valid social security number, and file a Form 1040. (For the most part, these Native Americans work five days in the United States and return to their homes on the reservation on the Canadian side of the border on weekends.) This argument is based on the belief that the collection statute is permanently extended by section 6503(c).

DISCUSSION:

Section 6503(c) provides that the collection statute shall be suspended for the period of time during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. 26 C.F.R. 301.6503(c)-1 provides that a taxpayer shall be deemed absent from the United States if he is generally and substantially absent from the United States, even though he makes "casual temporary" visits during the period.

GL-128007-00

In 1984, the United States District Court for the District of Maryland determined that the regulation under 26 C.F.R. 301.6503(c)-1 was invalid because it was contrary to the plain language of the underlying statute as well as the statute's legislative history. *United States v. Nesline*, 590 F.Supp. 884 (D. MD. 1984). The court determined that the "deemed absent" language contradicted the statutory provision that the absence must be continuous. The court also determined that the "deemed absent" language contradicted the legislature's intent as expressed in the Senate and House Reports accompanying the bill.

Prior to 1966, the suspension of the collection period depended upon the absence of the taxpayer's property from the country. Congress amended the statute to its present form in part because it is difficult to know when property is out of the country. Congress felt that suspension of the statute should depend upon the taxpayer's absence from the United States. Congress explained its intention stating:

...It is believed that the collection of the tax is most likely to be hindered during the period of a taxpayer's absence. However, there are administrative problems in keeping track of short periods of time the taxpayer may be out of the country. The bill meets this problem by not suspending the running of the period of limitations except when the taxpayer is continuously out of the country for 6 months or more.

S.Rep. No. 1708, 89th Cong. 2d Sess. 25; H.R. Rep. No. 1884, 89th Cong. 2d Sess. 23 (1966).

Following the court's decision, Chief Counsel recommended appeal. The Solicitor General decided not to appeal because of deficiencies in the record. Chief Counsel issued an AOD stating that though the Solicitor General declined to appeal *Nesline*, the Solicitor General believed that section 301.6503(c)-1 was valid and should be defended in future cases.

Legal Application:

The AOD is still the position of the office of chief counsel, and we still believe that section 301.6503(c)-1 is valid. That said, we believe that as a general proposition, section 6503(c) and the regulations thereunder do not permanently suspend the collection period for any Native American living in Canada but working in the United States. One who works in a place generally does more than make casual temporary visits to the place. The fact that the taxpayers' presence in the United States is for work/business would seem to make even relatively short visits more than casual. Certainly people who work all week in the United States and return home to Canada on the weekend make more than casual temporary visits to the United States. In any event, these cases should be determined on a case by case basis depending on the facts of each case. If a taxpayer's presence is truly casual section 301.6503(c)-1 would

GL-128007-00

apply. If a taxpayer's presence is more than casual temporary section 6503(c) does not apply.