Office of Chief Counsel   **ACKNOWLEDGED 9-10-97**
Internal Revenue Service   **SCA 1997-011**

memorandum

CC:DOM:IT&A:3
CAProhofsky WTA-N-108819-97

date: May 23, 1997

to: Janet M. Balbo, Acting National Director,
         Submission Processing, T:S
              Attn: Curt Reuter

from: Assistant Chief Counsel, CC:DOM:IT&A

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subject: Significant Service Center Advice

        This responds to your request for Significant Advice dated
May 8, 1997, in connection with questions posed by the Submission
Processing function of the National Office.

<u>Disclosure Statement</u>

        **Unless specifically marked "Acknowledged Significant Advice,
May Be Disseminated" above, this memorandum is <u>not</u> to be
circulated or disseminated except as provided in the CCDM. This
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attorney-client and deliberative process privileges. Therefore,
this document shall not be disclosed beyond the office or
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are working the matter with the requisite "need to know." In no
event shall it be disclosed to taxpayers or their
representatives.**

Issues

1)   If a taxpayer claims the earned income credit and attaches
Schedule EIC showing a year of birth for the qualifying child
that would qualify for the EIC, but the Service's National
Account Profile (NAP) data from the Social Security
Administration show a different year of birth that would make the
child too old to qualify, may the Service treat this discrepancy
as a mathematical or clerical error?

2)   If a taxpayer claims the EIC without qualifying children,
can the Service use NAP data to determine whether the taxpayer
meets the age criteria for EIC eligibility, and disallow the EIC
if the taxpayer does not?

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3)   If a taxpayer claims the dependent care credit and the
Service uses NAP data to determine that the child claimed is more
than 12 years old, and therefore not qualified, can the Service
treat the entry claiming the credit as a math error and reduce or
remove the credit?

Conclusion

The Service does not have authority to treat these
discrepancies as mathematical or clerical errors. If a
"qualifying child" or "eligible individual" for the EIC, or a
"qualifying individual" for the dependent care credit is not
qualified for age reasons, adjustments must be made through the
deficiency procedures.

Discussion

The Service uses NAP data to determine whether correct TINs
have been reported for the EIC, dependent care credit, and
personal exemptions, disallowing the entries as math errors if
correct TINs were omitted. The Service also uses NAP data to
determine whether various age criteria are met for the EIC and
the dependent care credit. You ask whether the credits can be
disallowed as math errors when the NAP data show that age
criteria are not met.

A "qualifying individual" for purposes of the dependent care
credit includes a dependent of the taxpayer who is under the age
of 13 and with respect to whom the taxpayer is entitled to a
personal exemption deduction under § 151(c). § 21(b)(1)(A) of
the Code.

An individual must be under the age of 19, or a student
under the age of 24, to be a "qualifying child" for the earned
income credit. § 32(c)(3)(C).

An individual who does not have a qualifying child must have
attained the age of 25, but not attained the age of 65, to be an
"eligible individual" for the earned income credit.
§ 32(c)(1)(A)(ii)(II).

Section 6213(b) of the Internal Revenue Code provides that
the Service may summarily assess additional tax due as a result
of a mathematical or clerical error ("math error") without
sending the taxpayer a notice of deficiency and without giving
the taxpayer an opportunity to petition the Tax Court. The
assessment must be abated at the taxpayer's request. Section
6213(g)(2) defines the term "mathematical or clerical error" to
mean:

(A) an error in addition, subtraction, multiplication, or division shown on any return;

(B) an incorrect use of any table if the incorrect use is apparent from the existence of other information on the return;

(C) an entry on a return of an item that is inconsistent with another entry of the same or another item on the return;

(D) an omission of information required to be supplied on the return to substantiate an entry on the return;

(E) an entry on a return of a deduction or credit in an amount that exceeds a statutory limit, if the limit is expressed as a specified monetary amount, or as a percentage, ratio, or fraction, and if the items entering into the application of such limit appear on such return;

(F) an omission of a correct taxpayer identification number (TIN) required under § 32 (relating to the earned income credit) to be included on a return;

(G) an entry on a return claiming the credit under § 32 with respect to net earnings from self-employment described in § 32(c)(2)(A) to the extent self-employment tax on the earnings has not been paid; and

(H) an omission of a correct TIN required under § 21 (relating to expenses for household and dependent care necessary for gainful employment) or § 151 (relating to allowance of deductions for personal exemptions).

Prior to recent legislative changes, the only situations in which the math error procedures could be used were those in which the error was apparent from the face of the return, and the correct amount was determinable with a high degree of probability from the information that appears on the return. General Explanation of the Tax Reform Act of 1976, 94th Cong., 2d Sess. 372-74 (1976), 1976-3 (Vol. 2) C.B. 1, 384-86.

The Small Business Job Protection Act, P.L. No. 104-188, and the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. No. 104-193, modified this rule by adding specific authority for the Service to treat missing or incorrect TINs as math errors for certain purposes. § 6213(g)(2)(F) and (H). Our understanding is that the Service discovers most of these TIN errors by checking the reported information against NAP data. However, the authority in § 6213(g)(2)(F) and (H) is limited to

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missing or incorrect TINs. The math error definitions in
§ 6213(g)(2)(F) and (H) do not include other inaccuracies
revealed by NAP data. Thus, failure to meet age criteria is not
a math error under § 6213(g)(2)(F) or (H).

     Of the other meanings of "math error," only § 6213(g)(2)(C)
and (E) are potentially applicable. However, § 6213(g)(2)(C)
requires that two entries on the return are inconsistent. As
discussed above, age inaccuaracies are determined by checking
entries on the return against the NAP data, information not on
the return. Because only one entry on the return is involved,
§ 6213(g)(2)(C) does not apply.

     Section 6213(g)(2)(E) pertains to entries claiming
deductions or credits. Nevertheless, the definition only
includes entries claiming a deduction or credit in excess of a
statutory limit expressed as a specified monetary amount, or as a
percentage, ratio, or fraction. For example, an entry claiming
the medical expense deduction under § 213 without meeting the
7.5%-of-adjusted-gross-income floor is a math error. The age
provisions for the earned income credit and dependent care credit
are not within this definition.

     We note that eligibility for the dependent exemption under
§ 151 may also depend on meeting age requirements. See
§ 151(c)(1)(B). Since an individual may qualify as a dependent,
regardless of age, if his or her income is less than the
exemption amount, see § 151(c)(1)(A), it is unlikely that the
Service can determine that an individual is ineligible based
solely on NAP data. However, to the extent it is possible, our
conclusion would apply in the § 151 context as well.

     If you have any comments or suggestions on the
interpretation of this provision, please call Cathy Prohofsky at
622-4930.

                              Assistant Chief Counsel
                              (Income Tax & Accounting)

                         by_____
                              Michael D. Finley
                              Chief, Branch 3

cc: EOSCO, T:S
     EOCSO, T:C