ID: CCA_2009042415001407

Office:

UILC: 6501.04-14

Number: **200922035**
Release Date: 5/29/2009

From:
Sent: Friday, April 24, 2009 3:02:55 PM
To:
Cc:
Subject: RE: S corporation and 25% omission on individual's 1040

Section 6501(e)(1)(A)(i) addresses the omission of gross income by a trade or business. The subsection states that only an omission of gross receipts would qualify as an omission of gross income as it relates to a trade or business. An overstatement of the cost basis in computing gain from the sale of goods in a trade or business would otherwise create an omission of gross income for the business but because of section 6501(e)(1)(A)(i) this would not be enough to extend the period of limitations. This subsection does not apply to the current case. The current case involves an individual taxpayer who omitted income from his Form 1040. The gross income omitted was his share (100% because he was the sole shareholder) of the S corporation income. To determine the extent of this omission the taxpayer's share of income from the corporation must be determined (See Form 1065 or Schedule K-1). should be consulted to determine which items are netted prior to flowing through and what items flow through separately. Any separately stated deductions or losses from the Schedule K-1 are not used to offset the income and gain from the S corporation prior to determining if the 25% gross income test is met, as the test is applied against gross income. *See Gmelin v. Commissioner*, T.C. Memo. 1988-338. Because the S corporation did not file a return for the year in question and did not issue it's shareholder a Schedule K-1 these amounts must first be determined before the 25% gross income test is applied. Please let me know if you have any additional questions.