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From:

Sent: Tuesday, January 12, 2010 11:58:19 AM

To:

Cc:

Subject: FW: § 6020(b) Collection Process vs. Exam Process

Turns out we think we have worked through some of this issue before.

It's our position (see attached memo which has already been released as Chief Counsel Advice) that ROs have the authority to prepare 6020(b) returns in worker class cases but the requirements of §7436 must be met prior to assessment. Letter 1085 (also attached) is used to inform the TP that a return is being filed under 6020(b) but is not an assessment (and presumably not an exam); the letter informs the TP that a return has been filed and then gives the TP the option of signing the return or contesting it either by showing that it has already filed, by filing a correct return in response to the letter, by sending in additional info, or by requesting a conference (the TP is also informed of its appeal rights). Assessment occurs as usual if the TP agrees or within 30 days of the letter if the TP does not respond.

As far as §7436 is concerned, there shouldn't be a difference between an RO filing a 6020(b) return using Letter 1085 and Exam auditing 941 non-filers; if §7436 applies an assessment cannot be made until the §7436 requirements have been met. So, it comes down to whether §7436 applies. If §7436 applies, an immediate assessment can't be made whether it's an RO or Collections that's filing the 6020(b) return, and there is no difference between the criteria for an RO to use IRC 6020(b) procedures to file delinquent 941 returns and when Exam conducts an employment tax audit and files 6020(b) returns with certification proposing an addition to tax. A 6020(b) return can always be filed, but if §7436 applies, those requirements must be taken care of first. I believe ROs in this situation (i.e., where a 6020(b) return has been prepared and there are worker class issues) are directed by the IRM to the "Employment Tax Program" so as to ensure that the §7436 requirements (and possible 530 relief) are met.

Attachment: CCA200822026