

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:NEW:TL-N-6466-00
CConnell

date: 12/11/00

to: Revenue Agent Edward Ruhno

from: Associate Area Counsel, LMSB, Newark

subject: [REDACTED] Refund Prior to Examination

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Advice

The taxpayer in the above referenced case filed a claim and requested an expedited refund prior to the examination of its claim. The taxpayer is willing to provide the Service with a security agreement under I.R.M. 4.3.5.6.5.3.

Agent Ruhno stated that under past Service procedures he would have recommended that the Service comply with the taxpayer's request. However, I.R.M. 4.3.5.6.3 (as amended 4/30/99) now states that the Joint Committee will accept a report for review prior to the examination of the "source year" only if "the refunds reported reflect the minimum amount to which the taxpayer is entitled, regardless of the outcome of the examination of the source year return . . ." At this point,

Agent Ruhno is unable to determine the minimum amount to which [REDACTED] will be entitled. Accordingly, you have sought our advice on whether Agent Ruhno has authority to recommend issuance of the requested refund.

Attached is a newsletter entitled, "Joint Committee Reviewer." This newsletter publishes articles of procedural or technical issues related to Joint Committee issues. It is disseminated to Joint Committee groups assigned to the Large Mid Size Business organization. We believe you may rely upon the newsletter for the procedural issues related to [REDACTED]'s request.

Paragraph 4) on page 2 of the November, 2000 newsletter states:

Based on a recent Chief Counsel Field Service Advice, language in section 6.5 will be expanded, when the IRM is revised, to advise Field personnel to exercise discretion that the Refund claim issues could reasonably lead to allowance of a substantial part of the claimed Refund and result in an overpayment of taxes, i.e., analysis of source year identifies principal items that could, based on taxpayer's economic situation, reasonably lead to a NOL and applicable carryback refunds; excess FTC due to limitation; accounting error. Until the IRM is revised, the above procedures should be followed.

We understand that Agent Ruhno has determined that the issues raised in [REDACTED]'s refund claim could reasonably lead to allowance of a substantial part of its claim and Agent Ruhno agrees that the Service should comply with the taxpayer's request. Based upon the newsletter and the pending change in the manual, as well as Agent Ruhno's analysis, we believe you are authorized to recommend the expedited refund claim if the taxpayer provides adequate security, pursuant to the Modified Expedite Refund Report requirements of I.R.M. 4.3.5.6.5. As the newsletter points out, the Modified Expedite Refund Report provisions of I.R.M. 4.3.5.6.5.1 through .6 are not limited by the "minimum amount" provisions of I.R.M. 4.3.5.6.3.

Craig Connell, Esq. of this office is available to assist you in drafting and reviewing the required security agreement. He can be reached at 973-645-2592.

This advice is subject to National Office ten day post review.

Area Counsel

By: /S/ William F. Halley

WILLIAM F. HALLEY
Associate Area Counsel (LMSB)

Attachments

cc: Team Manager Joseph Kraemer