Office of Chief Counsel
Internal Revenue Service
memorandum

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Division Counsel (Wage & Investment)

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subject: Adjusting the assessment statute expiration date on IRS systems

This memo is in response to your request for guidance on whether the assessment statute expiration date (ASED) may be changed in IRS systems when the Service finds a substantial omission of income as defined under Internal Revenue Code § 6501(e)(1).

We conclude that the Service may enter Transaction Code (TC) 560 to update the ASED in IRS systems to reflect the correct six-year statute period provided in I.R.C. § 6501(e)(1) when the Service finds a substantial omission of income under that section.

<u>FACTS</u>

You requested this advice in connection with the processing of certain amended tax returns received after the standard three-year statute of limitations. These returns amend timely filed tax returns but report a substantial omission of income as defined in I.R.C. § 6501(e)(1). The amended returns are filed before the expiration of the six-year statute of limitations described in I.R.C. § 6501(e)(1).

Currently, the Service requests a manual assessment of the tax reported on these amended tax returns by completing Form 2859, *Request for Quick or Prompt Assessment*. Even though the assessment is timely under I.R.C. § 6501(e)(1), the Service must make a manual assessment because (1) IRS systems reflect the original ASED as three years from the due date of the tax return and (2) the date of assessment for the tax on each amended return falls after that ASED date reflected in IRS systems.

The Service could update the ASED in IRS systems by entering TC 560 with the correct date computed under the six-year statute of limitations described in I.R.C. § 6501(e)(1). However, entering TC 560 to update the ASED would allow any function within the

Service to make an additional assessment through the updated ASED reflected on IRS systems. For example, the Service would assess further additional tax reported on a second amended tax return if the second amended tax return is filed and tax is assessed before the updated ASED reflected on IRS systems. Or, the Service could start an examination of the taxpayer months after the TC 560 is entered and assess additional tax before the updated ASED reflected on IRS systems.

LAW AND ANALYSIS

I.R.C. § 6501(a) provides the general rule that the amount of any tax shall be assessed within three years after the tax return is filed. I.R.C. § 6501(b)(1) provides that a return is deemed filed on the due date if it is filed early but is deemed filed on the date filed if it is filed late.

I.R.C. § 6501(e)(1) lists an exception to the three-year period of limitations of I.R.C. § 6501(a) for three substantial omissions of income. The exception applies to an individual taxpayer filing Form 1040 when (i) the taxpayer omits from gross income an amount properly includible in excess of 25 percent of the gross income stated in the return, (ii) the taxpayer omits from gross income more than $5,000 attributable to certain foreign financial assets, or (iii) the taxpayer omits from gross income a constructive dividend. I.R.C. § 6501(e)(1) does not apply to the first two scenarios listed in this paragraph if the amount omitted from gross income is disclosed in the return, or in a statement attached to the return, in a manner sufficient to apprise the Service of the nature and amount of the income.

When the Service finds a gross omission of income under I.R.C. § 6501(e)(1), it may assess tax or begin a proceeding in court for the collection of tax without assessment at any time within six years after the return was filed. The Service may assess any increased deficiency before the expiration of this period and is not limited to an assessment of tax related to the gross omission. Colestock v. Commissioner, 102 T.C. 380 (1994).

Because the six-year period of limitations on assessment under I.R.C. § 6501(e)(1) does not apply solely to the tax related to the gross omission of income found, the Service may enter TC 560 to update the ASED in IRS systems to the date computed under the six-year statute of limitations described in I.R.C. § 6501(e)(1). This would permit, for example, the Service to assess tax reported on a second amended return if the Service makes the assessment before the updated ASED reflected on IRS systems. This would also permit the Service to start an examination of a taxpayer months after the TC 560 is entered and assess any additional tax if the Service makes the assessment before the updated ASED reflected on IRS systems.

Please call (202) 317-5700 if you have any further questions.