Office of Chief Counsel
Internal Revenue Service
memorandum

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to: James B. Wallace
Director
(Tax Policy & Procedures - Exam)

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(Tax Policy & Procedures – Exam)

from: Blaise Dusenberry
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subject: IRC §6532 - Commencement of the Two Year Period for Filing Suit and the Claim Disallowance Letter

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether the mailing of the claim disallowance letter commences the two-year period of limitation to file suit under IRC § 6532 if the letter fails to state that the taxpayer has two years to file suit.

CONCLUSION

Claim disallowance letters are valid and trigger the two-year limitation period for bringing suit even if they do not include language describing the statutory limitation period. [redacted]

FACTS

When the Service disallows a claim for refund, it sends a letter, known as a Notice of Claim Disallowance, to the taxpayer explaining that disallowance. IRC § 6402(l). Section 6532(a)(1) indicates that the mailing of the Notice of Claim Disallowance by certified or registered mail triggers the beginning of the two-year limitations period in which the taxpayer can bring a suit for refund.

Although the Notice of Claim Disallowance letter sent by the Service generally contains a statement advising the taxpayer that the two-year period began on the date of the letter, the Service occasionally mails these letters without the paragraph notifying the taxpayer of the two-year period for filing suit. Procedure and Administration was asked whether the failure to include a notification about the limitations period invalidates the Notice, and whether two-year period begins even without the language being included in the letter.

LAW AND ANALYSIS

IRM 21.5.3.4.6.1 specifically states that the letters providing notification of disallowance must include the right to file suit. Additionally, the IRM specifies the Service should send the taxpayer letter 105C or 106C, respectively, for fully or partially disallowed claims. The versions of those letters on the forms and pubs website include language regarding the two-year limitations period.

The applicable sections of the Internal Revenue Code, and the interpreting regulations, however, do not expressly require the Service to include language about the right to file suit or the limitations period in the Notice. Section 6402(l) simply instructs the Service to "provide the taxpayer with an explanation" when disallowing a claim for refund. Section 6532(a)(1) requires the Service to provide notification that a claim has been disallowed by certified or registered mail. Section 6532(a)(1) states that the taxpayer may not bring any suit for recovery of a refund under section 7422(a) "after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates." IRC § 7422(a); see also Treas. Reg. 301.6532-1(a)(2)("[N]o suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum may be brought after the expiration of 2 years from the date of mailing . . . by either registered or certified mail . . . to a taxpayer of a notice of disallowance of the part of the claim to which the suit.") Neither the statute nor the regulations contain a mandate that the Notice of Claim Disallowance include a statement regarding the limitations period for filing suit.

Many Courts have indicated that the notice must only provide actual notification that the disallowance has occurred. Specifically, in Smith v. United States, the Fifth Circuit held that "the purpose of a notice of disallowance is to provide the taxpayer with official notification of the Commissioner's adverse action. So long as the taxpayer receives adequate notice of the Commissioner's disallowance, no particular form of notice is

necessary to start the running of the period of limitations." Smith v. United States, 478 F.2d 398 (5th Cir. 1973), citing, A.G. Reeves Steel Const. Co. v. Weiss, 119 F.2d 472 (6th Cir.), cert. denied, 314 U.S. 677 (1941); see also Carter v. Farmers Underwriters Ass'n, 115 F.2d 302 (9th Cir. 1940) (holding that a letter that advised the taxpayer that the claim was rejected was sufficient to start the limitations period). There was no express indication in Smith whether the 2 year language was included, but given the level of detail in that case, it is likely that it would have been noted if such language had been included.

The District Court of the Eastern District of Louisiana, however, has held that the taxpayer "was entitled to receive, at some point, the requisite notice of full disallowance stating that the taxpayer had two years to file in federal court." Tidewater, Inc. v United States, 2007-2 U.S.T.C. P50,755 (E.D. LA 2007). That unreported decision, however, addressed a situation in which the taxpayer had actually never received any notification of a final disallowance. Instead, the Service sent only a notice that indicated that the disallowance was proposed and that the actual disallowance would occur as of a future date. As Tidewater is an unreported district court case, and the facts of that case can be distinguished from those at issue here, it is instructional more than precedential.

As no controlling authority requires the Service to send the taxpayer a statement regarding the limitations period, the lack of such language does not invalidate a disallowance letter. [redacted]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Danielle W. Pierce at (202) 622-4910 if you have any further questions.