

Office of Chief Counsel
Internal Revenue Service

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memorandum

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CC:DOM:FS:P&SI:RLBuch

date: December 7, 1998

to: District Counsel (Brooklyn)

CC:NER:BRK

from: Assistant Chief Counsel (Field Service)

CC:DOM:FS

subject: Limitation on Assessment of TEFRA Partnership Adjustments Against Nonfiler

This responds to your request for Significant Advice, dated July 23, 1998, in connection with a question posed by the Brookhaven Service Center.

Disclosure Statement

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Issue

Whether adjustments resulting from a settlement of partnership items may be assessed against a partner that did not file its income tax return more than one year after the date of settlement of the partnership items.

Conclusion

Adjustments to the tax liability of a nonfiler may be assessed at any time, without regard to the source of the adjustments.

Facts

Taxpayer holds an interest in a partnership that is subject to the TEFRA unified audit and litigation procedures. Following the examination of the partnership's return, a settlement agreement was executed. In accordance with the settlement agreement,

tax was assessed against most partners; however, more than one year has lapsed since the settlement was reached and tax has not been assessed against Taxpayer. Taxpayer is a corporation that is required to file a corporate income tax return. No such return was filed for the tax year at issue.

Discussion

In 1982, Congress enacted the TEFRA unified audit and litigation procedures to simplify and streamline the partnership audit, litigation, and assessment process. The underlying principle of TEFRA is that "the tax treatment of items of partnership income, loss, deductions, and credits will be determined at the partnership level in a unified partnership proceeding rather than separate proceedings with the partners." Conf. Rep. No. 97-248 (1982). Partners are generally required to report items in a manner consistent with partnership treatment, and the Service may examine the partnership as an entity, rather than conduct separate examination as to each of the partners. Where applicable, the TEFRA provisions either supplant or augment the general administrative provisions.

Limitation on Assessment

Because tax is only assessed against the partners (and not the partnership), the partner's limitation on assessment controls the timeliness of any assessment as to that partner. The limitation on assessment is generally set forth in I.R.C. § 6501 and provides that taxes must generally be assessed within three years from the later of the date of filing the taxpayer's return or the due date for filing the taxpayer's return . I.R.C. § 6501(a), (b)(1). In the case of partnership items, I.R.C. § 6501(n)(2) provides for an "extension of the period in the case of partnership items" and refers to I.R.C. § 6229.

The TEFRA provisions set forth a minimum period within which the Service is able to conduct an examination of a partnership return and flow any adjustments through to the partners. Section 6229(a) provides that the period for assessment of any tax resulting from partnership items "shall not expire before the date which is 3 years after the later of" the filing of the partnership return or the due date for filing the partnership return. In essence, I.R.C. § 6229

On occasion, the I.R.C. § 6229 minimum assessment period does not have an impact on the limitation on assessment. Take the example when a partnership return was due and was filed on March 15, 1995 and a partner's return was due and was filed on April 15, 1995. In this case, the I.R.C. § 6229 minimum assessment period does not impact the partner's limitation on assessment. The I.R.C. § 6501 limitation on assessment would generally expire on April 15, 1998: three years from the due/filing date of the partner's return. The minimum assessment period under I.R.C. § 6229 would have prevented the statute from expiring before March 15, 1998: three

years from the due/filing date of the partnership's return. Accordingly, since the I.R.C. § 6501 assessment period remains open without regard to I.R.C. § 6229, assessments attributable to both partnership and nonpartnership items may be made at any time on or before April 15, 1998.

Unlike in the previous example, I.R.C. § 6229 may have an impact on the assessment period if the I.R.C. § 6229 period remains open beyond the period of limitation on assessment of I.R.C. § 6501. Take the example when a partner's return was due and was filed on March 15, 1995 and the partnership return was due and was filed on April 15, 1995. In this case, the I.R.C. § 6229 minimum assessment period extends the partner's limitation on assessment as to partnership items. The I.R.C. § 6501 limitation on assessment would generally expire on March 15, 1998: three years from the due/filing date of the partner's return. However, under the express language of I.R.C. § 6229, "the period for assessing any tax ... which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before" three years from the filing/due date of the partnership return. Accordingly, the minimum assessment period under I.R.C. § 6229 would have prevented the statute from expiring before April 15, 1998: three years from the due/filing date of the partnership's return. Accordingly, the I.R.C. § 6229 minimum assessment period for partnership items holds I.R.C. § 6501 open for assessments attributable to partnership items, while the period for assessing tax attributable to nonpartnership items would have closed.

Limitations in the Event of Settlement

A settlement agreement causes of conversion of partnership items to nonpartnership items as of the date of the settlement agreement. I.R.C. § 6231(b)(1)(C). When partnership items become nonpartnership items by reason of settlement, the period for assessing tax attributable to such items shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. I.R.C. § 6229(f)(1). As with the general extension under I.R.C. § 6229(a), this provision sets forth a minimum period within which adjustments attributable to converted items generally may be assessed against a partner who enters into a settlement, without regard to the partner's limitation period under I.R.C. § 6501. See, Harris v. Commissioner, 99 T.C. 121, 131 (1992).

Limitations for a Nonfiler

Generally, the limitation on assessment of tax against a corporation is three years from the later of the date of filing or the due date for filing the corporation's return. I.R.C. § 6501(a), (b)(1). In the event that no return is filed, tax may be assessed at any time. I.R.C. § 6501(c)(3).

Analysis

