



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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MEMORANDUM FOR District Counsel, South Texas District
CC:MSR:STX:AUS

FROM: Chief, Branch 6
CC:ITA:B6

SUBJECT: Significant Service Center Advice:
Alternative Minimum Tax/Math Errors

This responds to your request for Significant Advice dated September 14, 2000, in connection with a question posed by the Austin Service Center.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issue

Your request presents the issue of whether a taxpayer who uses the standard deduction in computing taxable income for regular tax purposes may use itemized deductions when computing alternative minimum taxable income (AMTI) for alternative minimum tax (AMT) purposes.

Conclusion

We conclude that this is not permissible under the Internal Revenue Code.

Analysis

The starting point for determining AMTI is taxable income as reported for regular tax purposes. Code section 55(b)(2) states, “The term ‘alternative minimum taxable income’ means the taxable income of the taxpayer for the taxable year– (A) determined with the adjustments provided in section 56 and section 58, and (B) increased by the amount of the items of tax preference described in section 57.” (Emphasis supplied.) Thus, a taxpayer who has elected to use the standard deduction in lieu of itemized deductions begins the computation of AMTI by using a taxable income figure that takes into account the standard deduction, but not itemized deductions. I.R.C. § 63.

Code section 56(b)(1)(E) then states that in computing AMTI the standard deduction shall not be allowed. Thus, taxable income is increased by the amount of the standard deduction. No provision exists, however, for decreasing taxable income by the amount of itemized deductions that were never taken into account when computing taxable income. Without such authority, a taxpayer is precluded from using itemized deductions for both regular and AMT purposes by section 63. See Treas. Reg. § 1.55-1(a) (“Except as otherwise provided by statute, regulations or other published guidance . . . all Internal Revenue Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining the alternative minimum taxable income of the taxpayer.”)

Section 56(b)(1)(F) only states that when computing AMTI “Section 68 [overall limitation on itemized deductions] shall not apply.” This provision by its terms does not permit a taxpayer to take itemized deductions that are not allowable for purposes of regular tax. Rather, it provides that the limitations of section 68 do not apply, so that a taxpayer who has taken itemized deductions for regular tax purposes must recompute those without regard to the limitation. The legislative history underlying section 68 confirms this intent: “For purposes of the alternative minimum tax, itemized deductions which are otherwise allowed in computing AMT are not reduced by the provision (i.e., the cutback amount determined for regular tax purposes is disregarded in calculating AMTI).” A footnote adds, “This is accomplished by providing a negative adjustment for AMT purposes for the amount of the regular tax cutback in itemized deductions.” H. Rept. No. 101-964, 101st Cong., 2d Sess. 1032 (1990). The committee language makes clear that section 56(b)(1)(F) applies only where there has been an itemized deduction cutback determined for regular tax purposes, which could have occurred only if the taxpayer itemized his or her deductions.

If you have any questions, please contact John Aramburu of this office at (202) 622-4960.