



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

August 7, 2002

Number: **200239034**
Release Date: 9/20/2002
UILC: 6050I-00.00

CC:PA:APJP:1
POSTF-114208-02

INTERNAL REVENUE SERVICE NATIONAL CHIEF COUNSEL ADVICE

MEMORANDUM FOR AREA COUNSEL

(Small Business/Self-Employed: Area 5)
Attn: Sara J. Barkley

FROM: Pamela W. Fuller, Senior Technician Reviewer
CC:PA:APJP:1

SUBJECT: 6050I Compliance Review

This Chief Counsel Advice responds to your memorandum dated March 28, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

1. May the Internal Revenue Service ("Service") direct examiners to look for transactions involving trusts, nominees, or foreign accounts while performing § 6050I compliance examinations?
2. If the Service may direct examiners to look for transactions involving trusts, nominees, or foreign accounts, is there any specific recommended language that the Service should use in giving these instructions?
3. If the examiner receives such instructions, what must the examiner tell the business about the scope and purpose of the examination? Specifically, are the examiners required to explain to the business that the purpose for the visit is a Form 8300 compliance review, but that the Service may use any information obtained for other purposes?

CONCLUSIONS

1. Generally, the Service may direct examiners to look for transactions involving trusts, nominees, or foreign accounts while performing § 6050I compliance examinations. However, the Service may not direct examiners to go beyond the scope of § 6050I.

POSTF-114208-02

2. We recommend that the Service draft the specific language directing examiners and submit the draft to the Office of Chief Counsel for review.
3. Nothing in the Internal Revenue Code (“Code”) requires an examiner to explain to a business that while the purpose of an examination is to insure compliance with § 6050I, the Service may use information for other purposes.

FACTS

The Internal Revenue Manual provides that examiners should inspect the cash receipts journal, sales journal, bank statements, and deposit slips to verify: transactions involving cash receipts of more than \$10,000; consecutive or related transactions which total in excess of \$10,000; and whether currency transactions in excess of \$10,000 were reported on Form 8300. See I.R.M. 4.26.11.4.3.

The manual further states that if an examiner discovers unusual or questionable transactions while following the procedures and scope of a compliance review, the examiner should prepare Form 5346, Examination Information Report.

The Service wants to provide written instruction to examiners working § 6050I compliance review cases to look for transactions dealing with trusts, nominees, or foreign accounts. The examiner would refer these taxpayers for potential audit consideration using Form 5346, Examination Information Report. However, the Service does not want to direct examiners to go beyond the scope of § 6050I compliance review.

LAW AND ANALYSIS

Section 6050I(a) of the Code provides that any person who is engaged in a trade or business, and who, in the course of such trade or business, receives more than \$10,000 in cash in one transaction (or 2 or more related transactions), shall make the return described in § 6050I(b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe. Form 8300 is the form required to comply with this provision. Treas. Reg. § 1.6050I-1(e)(2).

Section 1.6050I-1(c)(1)(ii)(A) of the Income Tax Regulations (“regulations”) defines “cash” as the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. Cash is also defined as a cashier’s check, bank draft, traveler’s check, or money order having a face amount of not more than \$10,000 received in a designated reporting transaction or received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the

POSTF-114208-02

reporting of the transaction under § 6050I and this section. See Treas. Reg. 1.6050I-1(c)(1)(ii)(B)(1) and (2). Section 1.6050I-1(c)(1)(iii) defines a designated reporting transaction as a retail sale of a consumer durable, a collectible, or a travel or entertainment activity.

Issue 1

If transactions involving trusts, nominees, or foreign accounts are usually suspicious or have been identified as tools that taxpayers use to avoid the reporting requirements of § 6050I, then the Service can instruct examiners specifically to look for such transactions. However, the Service is not authorized to use § 6050I compliance review as a pretext for other purposes. Therefore, the Service is not authorized to target trusts, nominees, or foreign accounts other than to determine whether such transactions are subject to § 6050I information reporting.

In addition, these instructions would only extend to transactions involving payments by cash. As stated above, for § 6050I purposes cash is defined as the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. Cash is also defined as a cashier's check, bank draft, traveler's check, or money order having a face amount of not more than \$10,000 received in a designated reporting transaction or received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under § 6050I and this section. Treas. Reg. 1.6050I-1(c)(1)(ii)(A). Therefore, the Service can only instruct examiners to look for transactions paid by cash.

Issue 2

We recommend that the Service draft the specific language directing examiners and submit the draft to the Office of Chief Counsel for review.

Issue 3

Section 6103(e)(1) and (e)(7), taken together, authorize the disclosure of (1) a tax return to the taxpayer-filer and (2) return information to the taxpayer, absent a determination (by the appropriate delegate) that disclosure would not seriously impair Federal tax administration. So long as the information the examiner wishes to disclose does not implicate the tax affairs of another taxpayer, § 6103(e) provides the requisite disclosure authority. For instance, the examiner could not tell the business that the information it produced will be used to open an examination of a customer. That would be revealing third party return information. But the examiner could tell the business that the information it produced could be used to open an income tax examination of the business, or be used in a research study of § 6050I filers.

POSTF-114208-02

At some point the broadened scrutiny during a § 6050I compliance examination may implicate § 7602(c) of the Code. Section 7602(c) requires officers and employees of the Service to notify a taxpayer before the Service contacts third parties with respect to the determination or collection of the taxpayer's tax liability. A request for a business' books and records for the purpose of determining whether the business complied with § 6050I does not in itself implicate § 7602(c). Neither do questions concerning whether a particular transaction involved the exchange of cash. These questions relate solely to whether the business has or should have filed a Form 8300.

However, further questions concerning a customer of the examined business may require a § 7602(c) prenotification letter. Generally, any questions soliciting information about the customer/taxpayer other than that needed to determine whether the business complied with § 6050I requires a prenotification letter. For example, an examiner may not question a business about a customer's/taxpayer's lifestyle or spending habits without first sending a prenotification letter. Nor may an examiner ask the business for information about the customer's/taxpayer's employer or other income sources. Each of these questions solicits information about an individual taxpayer that is not necessary to complete a § 6050I examination of the trade or business. These questions solicit information about a specific taxpayer's tax liability. They must be preceded by notification of the taxpayer under § 7602(c). If a transaction uncovered during a § 6050I compliance examination necessitates the further examination of a taxpayer, the examiner should fill out a Form 5346, which will be sent to the Planning and Special Procedures Branch, PSP.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.