



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR DISTRICT COUNSEL, KENTUCKY-TENNESSEE DISTRICT

FROM: Kathryn A. Zuba
Chief, Branch 2 (General Litigation)

SUBJECT: Designation of Federal Tax Deposits

This responds to your request for assistance, dated April 5, 1999. This document is not to be cited as precedent.

ISSUE:

Can a taxpayer designate the application of a Federal Tax Deposit?

CONCLUSION:

Yes. A taxpayer can designate the application of a Federal Tax Deposit (FTD). To be effective, a designation must accompany the payment, be in writing, and clearly provide the period and type of tax to which it is to be applied.

BACKGROUND:

The Internal Revenue Service received a letter from a taxpayer's representative inquiring about the designation of Federal Tax Deposits. In the letter, the writer questions the adequacy of published guidance advising taxpayers about their right to designate partial voluntary payments, including FTDs. The writer believes that taxpayer's should be advised of this right and instructed how to designate their Federal Tax Deposits.

This letter was forwarded to your office to assist in answering the taxpayer's representative's inquiry. After thorough research, you concluded that the Service's published guidance provides taxpayers with adequate instructions regarding designation of voluntary payments, including Federal Tax Deposits. We agree with this conclusion.

LAW & ANALYSIS:

Revenue rulings and procedures are an authoritative instrument of the Commissioner of the Internal Revenue for announcing the official rulings and procedures of the Internal Revenue Service. Revenue Ruling 73-305, 1973-2 C.B. 43, sets forth the Internal Revenue Service's policy to apply a partial voluntary designated payments in accordance with the taxpayer's directions.¹ Revenue Ruling 79-284, 1979-2 C.B. 83, extends the application of Revenue Ruling 73-305 to "withheld employment taxes and collected excise taxes where the taxpayer provides specific written instructions" regarding the application. See also Rev. Proc. 99-10, 1992-1 I.R.B. 11 (effective for FTDs required to be made after January 18, 1999). Revenue Procedure 84-58, 1984-2 C.B. 501, provides that when no assessment has been made, the Service will honor the taxpayer's designation of a payment. In turn, "[i]f no designation is made by the taxpayer, the Internal Revenue Service will allocate partial payments of withheld employment taxes and collected excise taxes to tax, penalty, or interest in a manner serving its best interest. Rev. Rul. 79-284, 1979-2 C.B. 83; Policy Statement P-5-60 (February 29, 1993). See also Davis v. United States, 961 F.2d 867, 878 (9th Cir. 1992), cert. denied, 506 U.S. 1050 (1993); Wood v. United States, 808 F.2d 411, 416 (5th Cir. 1987).

Generally, designations will be accorded their ordinary meaning unless they are too ambiguous and uncertain to serve as directions to the Internal Revenue Service. See, e.g., White v. United States, 99-1 U.S.T.C. (CCH) ¶ 50,496 (Fed. Cl., April 19, 1999) (Notation "Fed. Deposit Thru 11/16/92" found too ambiguous to constitute "specific written instructions"); Hammon v. United States, 21 Cl. Ct. 14, 29 (checks sent to the Internal Revenue Service contained "ambiguous markings;" the Service was allowed to apply the funds to preexisting delinquencies). To be effective, a designation must accompany the payment, contain the taxpayer's Employer Identification Number (EIN), the period and type of tax for which the payment is intended and, if desired, a detailed description of how the payment is to be allocated between the tax, interest, and penalty. See, e.g., Kinnie v. United States, 994 F.2d 279, (6th Cir. 1993) (oral designation not binding upon Internal Revenue Service); Teets v. United States, 29 Fed. Cl. 697, 703 (1993) (allocation must be in writing). Thus, in a case of a voluntary payment sent directly to the Service, the designation should be made on the check itself. In a case of a Federal Tax Deposit, on the other hand, the designation should accompany the FTD coupon. See Wood v. United States, 808 F.2d 411, 417 (5th Cir. 1987) (holding that

¹ See also In re Technical Knockout Graphics, Inc., 833 F.2d 797 (9th Cir. 1987); Muntwyler v. United States, 703 F.2d 1030, 1032 (7th Cir. 1983); O'Dell v. United States, 326 F.2d 451, 456 (10th Cir. 1964).

designation on checks sent to a depository bank were ineffective because such direction never reach the Internal Revenue Service). Finally, the taxpayer should retain all evidence of the designation in the event the payment is misapplied.

On the basis of the foregoing, we conclude that the applicable case law and published revenue rulings and procedures provide sufficient guidance to taxpayers wishing to designate their Federal Tax Deposits. If you have questions regarding this matter, you may contact me at (202) 622-3620.