



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

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: ASSISTANT CHIEF COUNSEL (ADMINISTRATIVE  
PROVISIONS AND JUDICIAL PRACTICE)  
CC:PA:APJP:B3

SUBJECT: INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD  
SERVICE ADVICE

This Field Service Advice responds to your memorandum dated April 17, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

**DISCLOSURE STATEMENT**

Field Service Advice is Chief Counsel Advice and is open to public inspection pursuant to the provisions of I.R.C. § 6110(i). The provisions of I.R.C. § 6110 require the Service to remove taxpayer identifying information and provide the taxpayer with notice of intention to disclose before it is made available for public inspection. I.R.C. § 6110(c) and (i). I.R.C. § 6110(i)(3)(B) also authorizes the Service to delete information from Field Service Advice that is protected from disclosure under 5 U.S.C. § 552 (b) and (c) before the document is provided to the taxpayer with notice of intention to disclose. Only the National Office function issuing the Field Service Advice is authorized to make such deletions and to make the redacted document available for public inspection. **Accordingly, the Examination, Appeals, or Counsel recipient of this document may not provide a copy of this unredacted document to the taxpayer or their representative.**

The recipient of this document may share this unredacted document only with those persons whose official tax administration duties with respect to the case and the

issues discussed in the document require inspection or disclosure of the Field Service Advice.

### LEGEND

Taxpayers =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

### ISSUE

How should the examiner proceed when two statutory notices of deficiency were sent to Taxpayers, husband and wife, who filed a joint return, at identical addresses and one of the notices is returned marked undelivered for insufficient postage.

### CONCLUSION

The examiner should immediately mail the notice with sufficient postage to the spouse for whom it was intended to satisfy the requirements of I.R.C. § 6212.

### FACTS

The examiner recently mailed duplicate copies of a statutory notice of deficiency to each of the Taxpayers, husband and wife, on Date 1, Year 4 regarding the Year 1 taxable year. The Taxpayers filed a joint Year 1 federal income tax return. One of the two Date 1 statutory notices was returned marked undelivered for insufficient postage.<sup>1</sup> The examiner requested District Counsel's advice regarding what should be his next course of action.

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<sup>1</sup>You have advised us that the statute of limitations for assessment has not expired for Year 1.

## LAW AND ANALYSIS

Pursuant to I.R.C. § 6212(a), the Service is authorized to send a notice of deficiency by certified or registered mail. The notice is deemed sufficient if it is mailed to the taxpayer at his last known address. I.R.C. § 6212(b)(1). Under these rules, a notice is deemed valid, whether or not the taxpayer receives it, if: (1) it is mailed to the taxpayer's last known address; and (2) it is mailed by registered or certified mail. Wilson v. Comr., 564 F.2d 1317 (9<sup>th</sup> Cir. 1977); DeWelles v. U.S., 378 F.2d 37 (9<sup>th</sup> Cir.), cert. denied, 389 U.S. 996 (1967); Alta Sierra Vista, Inc. v. Comr., 62 T.C. 367 (1974), aff'd mem., 538 F.2d 334 (9<sup>th</sup> Cir. 1976); Lifter v. Comr., 59 T.C. 818 (1973).

The Service must be able to prove, however, that the notice was mailed to the taxpayer's last known address and the existence of the notice. See e.g. Pietanza v. Comr., 92 T.C. 729 (1989), aff'd mem., 935 F.2d 1282 (3<sup>rd</sup> Cir. 1991).

The fact that the Service must prove that the notice "was mailed" to the last known address clearly means that there must be sufficient postage on the document for it to reach its destination.<sup>2</sup> Since one of the notices was returned marked "insufficient postage," the Service should immediately mail the notice of deficiency with sufficient postage in order for the notice to meet the requirements of a valid notice.<sup>3</sup>

You have also inquired regarding the application of § 3201(d) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 (1998) (RRA 98) to the above facts.

I.R.C. § 6013 permits a husband and wife to file one joint income tax return. I.R.C. § 6013(d)(3) provides that if a joint return is made, the tax shall be computed on the aggregate income, and the liability with respect to the tax shall be joint and several. I.R.C. § 6212(b)(2) provides that in the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have

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<sup>2</sup>Black's Law Dictionary 952 (6<sup>th</sup> ed. 1990) defines mailed as a "letter, package, or other mailable matter is 'mailed' when it is properly addressed, stamped with the proper postage, and deposited in a proper place for receipt of mail". See also Texas Cas. Ins. Co. v. McDonald, 269 S.W.2d 456, 457 (5<sup>th</sup> Cir. 1954).

<sup>3</sup>We are assuming for purposes of this Field Service Advice that the statutory notices were mailed to each taxpayer at their last known address and that the Service has not received a clear and concise notification of a separate address for either spouse. See Rev. Proc. 90-18, 1990-1 C.B. 491.

been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

However, RRA 98 added § 3201(d) a nonCode provision into law which states in its entirety:

SEPARATE NOTICE TO EACH FILER. -- The Secretary of the Treasury shall, wherever practicable, send any notice relating to a joint return under section 6013 of the Internal Revenue Code of 1986 separately to each individual filing the joint return.

In this case, the examiner sent statutory notices of deficiency to each spouse at their last known address. However, since the notice sent to one spouse was returned for insufficient postage, and therefore is invalid, in order to comply with I.R.C. § 6212 and RRA 98 § 3201(d), this notice must be remailed with the correct postage to the taxpayer.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

In order for a statutory notice to be valid, it must be mailed certified or registered mail (with sufficient postage) to each taxpayer's last known address.

Please call if you have any further questions.