

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: June 24, 2004

to: Wilton A. Baker

from: Susan L. Hartford, Assistant to the Branch Chief, Administrative Provisions & Judicial Practice, Branch 2
(Procedure & Administration)

subject: Taxpayer

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

Taxpayer's Representative =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

ISSUE

Whether a hand-delivered Letter 569 (DO)(Claim Disallowance Letter) commences the two-year period of limitations within which to bring a refund suit in Federal Court under section 6532.

FACTS

For Year 1, Taxpayer filed a timely claim for refund on an amended return. Subsequently, the Service examined Taxpayer's income tax returns for Year 1. The

resulting revenue agent report was hand delivered to Taxpayer and included a form letter (Letter 569(DO)(Rev. 9-2000)) dated Date 1. The letter provided that the claim for refund was examined and fully disallowed. Taxpayer filed a protest and the case is currently before Appeals.

Taxpayer's Representative proposed that _____ and the Service extend the time to bring suit on its claim by executing a Form 907, Agreement to Extend the Time to Bring Suit. The appeals officer was amenable to this suggestion.

On Date 2, the local Chief Counsel office advised the appeals officer that a Form 907 was not the proper vehicle to extend the time to bring suit in this case, citing the holding in Rev. Rul. 56-381, 1956-2 C.B. 953 ("a notification letter rejecting the taxpayer's claim, not sent by registered mail, will not invoke the two-year period for filing suit . . .").

Taxpayer's Representative was concerned about cases in which the Department of Justice had had refund suits dismissed even though no notice has been sent by certified or registered mail. Finkelstein v. United States, 943 F.Supp. 425 (D.N.J. 1996); Fellouzis v. United States, 94-2 U.S.T.C. ¶ 50,609 (M.D.Fla. 1994).

Taxpayer and the Service executed a Form 907 on Date 3, and Date 4, respectively, extending the time to bring suit until Date 5. A sentence was added to the first paragraph of the Form 907 providing that "It is agreed between the parties that this agreement shall be binding regardless of whether the notice of claim disallowance was delivered by certified or registered mail as referenced in the prior sentence." Under the column entitled "Date Notice of Disallowance Mailed or Waiver Filed" the following was typed: L569 dated Date 1.

Recently, Taxpayer's Representative contacted the appeals officer to execute another Form 907 to extend the time within which to bring suit to Date 6.

LAW AND ANALYSIS

The Service should not treat the Letter 569, dated Date 1, as a notice of disallowance.

Section 6532(a)(1) provides that "[n]o suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of *mailing by certified mail or registered mail* by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates." (emphasis added).

Typically, when the Service sends a notice of disallowance, it uses a form letter that expressly states it is the taxpayer's legal notice that the claim has been disallowed or partially disallowed. Each letter also provides that, if the taxpayer wishes to start legal action to recover any of the tax or other amounts disallowed, a suit for refund must be

filed with the United States District Court or the United States Court of Federal Claims. Each letter further provides that, unless the taxpayer has signed Form 2297, Waiver of Statutory Notice of Claim Disallowance, the law permits the taxpayer to file such suit within two years from the mailing date of "this letter." These letters include Letters 905(DO) and 906(DO). See IRM 4.5.3.14.4.

Letter 569(D) is not one of the form letters that the IRM directs to be used to disallow a refund claim. The letter identifies the taxpayer, kind of tax, the tax period, amount of the claim, the date the claim was received, and the ending date of the tax period to which the claim relates. The letter provides that the Service examined the claim and proposes a full disallowance. We believe that such a letter does not qualify as a notice of claim disallowance. Rather than informing the Taxpayer that it may file suit in the United States District Court or United States Court of Federal Claims, the letter suggests that the taxpayer could contact the Service to discuss the proposed disallowance. We believe that such a letter is too equivocal and uncertain to qualify as a notice of claim disallowance.

The taxpayer and the Secretary may agree to extend the 2-year period within which the taxpayer must file suit. See IRC § 6532(a)(2). Section 6532(a)(3) further provides that "[i]f any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed." The waiver must contain the type of tax and the taxable period covered by the claim for refund, the amount of the claim, the amount of the claim disallowed, and a statement that the taxpayer agrees the filing of the waiver will commence the running of the 2 year period. See Treas. Reg. § 301.6532-2(c). Generally, Form 2297, Waiver of Statutory Notification of Claim Disallowance, is used for this purpose.

Although Taxpayer did not sign Form 2297, the Form 907, executed by Taxpayer on Date 3, with the additional language may constitute a waiver of the mailing of a notice of disallowance. Thus, if Taxpayer wishes to execute another Form 907 to extend the time to bring a refund suit to Date 6, we have no objection to treating the Form 907 as a waiver. Consequently, the 2-year period began on Date 3. The new Form 907 should clearly specify that a waiver of the notice of claim disallowance requirement was executed on Form 907 signed by Taxpayer on Date 3. If you need assistance in preparing the Form 907, please contact our office for guidance.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4940 if you have any further questions.