

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2002-040

October 15, 2002

Handling Statute of Limitations
On Assessment Issues In
Subject: Tax Court Cases
Upon Incorporation
Cancellation Date: into the CCDM

Purpose

The purpose of this Notice is to provide guidance to Chief Counsel attorneys with respect to the handling of Tax Court cases 1) where it appears that the statute of limitations on assessment has expired and 2) where the Tax Court's opinion forecloses reliance on an exception to the general three year statute of limitations on assessment found in I.R.C. § 6501(a).

Discussion

T.C. Rule 39 and Tax Court jurisprudence require that a taxpayer must raise the affirmative defense that the statute of limitations on assessment has expired in the taxpayer's pleadings. Failure to do so results in the waiver of that defense. Adler v. Commissioner, 85 T.C. 535 (1985); Long v. Commissioner, 71 T.C. 1 (1978); Groetzinger v. Commissioner, 69 T.C. 309 (1977); Robinson v. Commissioner, 12 T.C. 246 (1949), aff'd, 181 F.2d 17 (5th Cir. 1950).

While the ABA Model Rules of Professional Conduct may not explicitly require Chief Counsel attorneys to disclose that it appears that the statute of limitations on assessment has expired, it has been the longstanding policy of the Office of Chief Counsel that attorneys should nonetheless notify the taxpayer or opposing counsel of the possible expiration of the statute of limitations on assessment.

In situations where the Chief Counsel attorney is relying on one of the exceptions to the general limitations rule found in section 6501(a) and the Tax Court issues an opinion that undermines the factual basis for the exception, the Chief Counsel attorney handling the matter should contact Branch 3 of Administration Provision & Judicial Practice for guidance on how to proceed with the case.

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