

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel **Notice**

+ ,

CC-2003-028

• -

August 15, 2003

Upon Incorporation

Subject: Motions to Strike Cancellation Date: Into the CCDM

This Notice clarifies existing CCDM procedures with respect to the filing of motions to strike when petitions are partly defective.

In some cases, a petition dealing with multiple tax years fails to state a claim upon which relief can be granted for some but not all of the years at issue. Current CCDM 35.4.12.2 may be read to recommend that a motion to strike be filed in such a situation prior to the filing of the answer. The Tax Court advises that motions to strike should not be filed within the 45-day period of T. C. Rule 36(a). Instead, the answer should be filed and, once the case is at issue, a motion for partial summary judgment for those years which fail to state a justiciable claim should be filed.

Questions about the provisions of this Notice may be referred to Richard Charles Grosenick at (202) 622-7860.

/s/
DEBORAH A. BUTLER
Associate Chief Counsel
(Procedure and Administration)

Filing Instructions: Binders _____ Master Sets: NO RO _____
NO: Circulate _____ Distribute to: All Personnel _____ Attorneys In: all divisions _____
RO: Circulate _____ Distribute to: All Personnel _____ Attorneys In: all divisions _____
Other: National FOIA Reading Room _____
Electronic Filename: CC-2003-028.pdf Original signed copy in: CC:FM:PM:P