



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: Senior Technician Reviewer
Procedural Branch
Assistant Chief Counsel (Field Service)

SUBJECT: Whether to Assess
Tax Period:

This Field Service Advice responds to your request for advice dated October 15, 1998. 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.

LEGEND:

X =
Y =
Z =

Year 1 =
Year 2 =
Year 3 =

ISSUE:

Should the Internal Revenue Service assess a liability reported on an amended tax return, if the taxpayer has conditioned assessment of that liability on approval of a claim for another tax year and that latter claim cannot be allowed?

CONCLUSION:

The assessment should not be made, because it was conditioned on the allowance of a claim for refund, and the claim for refund will not be granted.

FACTS:

X, formerly Y, has filed two amended corporate income tax returns. One amended return, for Year 1 of Z, a predecessor of Y, claimed a refund. The other, for Year 2 of Y, showed a payment due. This latter amended return attempted to recharacterize a business reorganization occurring in Year 2. The effect of the recharacterization would be to allow X to carry back a net operating loss of Y for Year 3 to Z for Year 1.

In a letter accompanying the two amended returns, X described the two filings as inextricable, and requested that they be processed simultaneously. X further stated that the ultimate amount due from or owed to the taxpayer should be computed or remitted on a net basis. No payment was included with the filings.

The amended returns were examined, and the recharacterization issue was forwarded to the National Office, which issued technical advice. Consistent with this advice, only limited carrybacks are allowable from Year 3 to Year 1, and the refund claimed for Year 1 is not permissible.¹ X disagrees with the conclusions reached in the technical advice memorandum, as well as how these conclusions are being applied to its claims.

LAW AND ANALYSIS:

In general, the government is authorized to assess the liability shown on an amended tax return. See I.R.C. § 6201(a)(1). In this case, however, X has not authorized an unconditional assessment for Y's Year 2. Rather, X has conditioned assessment and payment of an additional liability for Y's Year 2 on allowance of a claim for refund for Z's Year 1. Because this claim is not permissible, X effectively has not consented to an additional assessment for Y's Year 2.

This case is somewhat similar to Philadelphia & Reading Corp. v. United States, 944 F.2d 1063 (3d Cir. 1991), which involved a waiver of restrictions on assessment (a Form 870). The taxpayer in Philadelphia & Reading Corp., like X, agreed to an additional assessment for one year, subject to certain conditions. The

¹Because the attempted recharacterization was addressed in the technical advice memorandum, we will not discuss it in any detail here.

Internal Revenue Service, however, made the assessment before the conditions were met. The court of appeals held that the assessment was illegal.

In this case, accordingly, no additional assessment should be made for Y's Year 2 based on the amended return filed by X.² If you have any questions please call the branch.

² Of course, the period of limitations for Y's Year 2 must be protected, so that the Service may propose any necessary adjustments.