



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 Acting Associate District Counsel CC:

FROM: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EBO

SUBJECT: _____ v. Commissioner (Docket No.
Employment)

This Field Service Advice responds to your memorandum dated January 13, 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.

LEGEND:

Taxpayer =
Date 1 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =

ISSUE: Whether a stipulated decision document in a Tax Court employment status proceeding under section 7436 of the Internal Revenue Code of 1986 may contain settlement terms identifying the agreed amount of taxpayer's employment tax liability in stipulations appearing below the Tax Court judge's signature in the stipulated decision document.

CONCLUSION: A stipulated decision document in a Tax Court employment status proceeding under Code section 7436 should not contain settlement terms in stipulations appearing below the Tax Court judge's signature in the stipulated decision document. Instead, a closing agreement should be used to memorialize the terms of a settlement in an employment status case.

FACTS:

On Date 1, the Commissioner issued a Notice of Determination Concerning Worker Classification under Section 7436, for all quarters of years 1 through 3 and the first quarter of year 4. The taxpayer and Appeals Office have been able to reach a settlement concerning the status of taxpayer's workers, the taxpayer's eligibility for

treatment under section 530 of the Revenue Act of 1978, and the taxpayer's liability for employment taxes during the taxable periods at issue.

District Counsel wishes to include the terms of the settlement agreement (including the amount of the taxpayer's employment tax liability for the taxable periods at issue) in stipulations that appear below the signature line of the Tax Court judge in the stipulated decision document.

LAW AND ANALYSIS:

Section 7436 was added to the Internal Revenue Code of 1986 by section 1454(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (effective August 5, 1997). Section 7436 provides a taxpayer who has been the subject of an employment tax audit certain Tax Court review rights concerning two determinations by the Internal Revenue Service: (1) whether the taxpayer's workers are employees; and (2) whether the taxpayer is entitled to treatment under section 530 of the Revenue Act of 1978.

Since enactment of section 7436, the practice of Branch Two of the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations) in employment status cases has consistently been: (1) to remove from the decision document any settlement terms beyond the court's jurisdiction that are memorialized in stipulations contained below the judge's signature line; and (2) to advise District Counsel to enter a closing agreement with the taxpayer that memorializes the settlement terms. This practice was begun at a time when many taxpayers included in their petitions for redetermination of employment status under Code section 7436 a request for the Tax Court to establish the amount of the employment tax liability that would result from the Tax Court's determinations whether the workers were employees and whether the taxpayer was entitled to section 530 treatment. Accordingly, Chief Counsel was regularly filing motions to dismiss (in part) for lack of jurisdiction that portion of the petition in which the taxpayer sought a determination of the amount of the taxpayer's employment taxes. In order to avoid confusion, we decided that notwithstanding agreement between the parties, we would not include in the stipulated decision document any provisions that would be beyond the Tax Court's jurisdiction in such cases.

In your request for advice, you assert that if the amount of employment tax upon which the parties have agreed is included in the decision document below the judge's signature, issues regarding the scope of the Tax Court's jurisdiction are no longer implicated. We assume you are referring to the Tax Court's holding that it lacks jurisdiction to determine the amount of a taxpayer's employment taxes in an employment status proceeding under Code section 7436. Henry Randolph Consulting v. Commissioner, 112 T.C. 1, 30 (1999) (concluding that Tax Court may not determine the amount of taxpayer's liability for employment tax because section

7436(a) conferred jurisdiction only to determine whether the workers are employees and whether the taxpayer is entitled to section 530 treatment). We agree that Henry Randolph Consulting makes clear that no amount of tax can appear above the judge's signature in a decision document. Yet, with only two decisions so far that address employment status proceedings, we are unwilling to discontinue our practice of placing before the Tax Court only matters that are clearly within its jurisdiction.

Although we initially established the practice of not using stipulations in an employment status decision document because the parameters of the court's jurisdiction were not yet established, there is another benefit in requiring settlements of employment status cases to be memorialized in a formal closing agreement. Many settlements of employment status cases contain terms regarding a taxpayer's future compliance with respect to its classification of workers. A closing agreement described in section 7121 of the Internal Revenue Code of 1986 is a binding agreement that can be enforced against the taxpayer without having to resort to principles of equitable estoppel. See Botany Worsted Mills v. United States, 278 U.S. 282, 288-289 (1929) (distinguishing between formal and informal agreements); Whitney v. United States, 816 F.2d 896, 898 (9th Cir. 1987) (equitable estoppel may prevent taxpayers from setting aside informal settlement agreements); see generally Martin M. Lore and L. Paige Marvel, *Taxpayer's Rights to Refund Claims After Administrative Settlements with IRS*, 72 J. TAX'N 290 (May 1990) (discussing the various courts' legal standards used in setting aside informal settlement agreements).

Accordingly, after careful consideration of your request, we have decided that in employment status proceedings, we will continue our practice of requiring settlement agreements that contain terms beyond the Tax Court's jurisdiction to be memorialized in a formal closing agreement rather than in the decision document.

Please call if you have any further questions.

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