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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DISTRICT COUNSEL
SOUTH TEXAS DISTRICT
CC:CT:DAL:AUS

FROM: George J. Blaine
Chief, Branch 1
CC:PA:APJP

SUBJECT: Significant Service Center Advice
Prisoner EINs

This responds to your request for advice, dated May 11, 2000. The Service Center has asked about the authority to deny issuing Employer Identification Numbers ("EINs") to prisoners in .

ISSUE

Under what circumstances should the Internal Revenue Service ("Service") issue EINs to prisoners?

CONCLUSION

The Service should issue EINs to individuals who have a legitimate tax filing purpose. An individual's status as a prisoner does not necessarily preclude the Service from issuing an EIN to such an individual under appropriate circumstances. For example, a prisoner may have a legitimate need for an EIN if he were the trustee of a trust or a general partner in a partnership. Under these circumstances, the Service should issue an EIN after the individual provides clear information evidencing a legitimate tax filing purpose.

FACTS



DISCUSSION

Law

Section 6011(a) of the Internal Revenue Code (the Code) provides, in part, that every person required to make a return or statement shall include therein the information required by the forms or regulations.

Section 6109(a)(1) provides that when required by regulations prescribed by the Secretary, any person required under the authority of title 26 to make a return, statement, or other document must include in the return, statement, or other document the identifying number prescribed for securing proper identification of such person.

Section 6109(c) provides that for purposes of section 6109, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

Section 6109(d) provides that generally the social security number ("SSN") is the proper identifying number for an individual. Section 301.6109-1(a)(1)(ii)(C) of the Regulations on Procedure and Administration provides that an EIN is the proper identifying number for nonindividuals, including trusts, partnerships, or corporations.

Section 301.6109-1(d)(2)(i) provides that any person required to furnish an EIN must apply for one on Form SS-4. The Form SS-4, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions and relevant regulations, and must set forth fully and clearly the requested data. The Service uses the information requested on the Form SS-4 to determine whether an individual needs an EIN for legitimate tax filing purposes.

Purpose of Statute

Generally, EINs are issued to individuals for certain business purposes. Although the Service routinely issues EINs to a variety of business entities and individuals engaged in business, if such an entity or individual does not provide clear information concerning its business activity, as required by section 301.6109-1(d)(2) of the regulations, the Service does not have to issue an EIN. Moreover, the Service does not have to issue an EIN when the Service has identified the Form SS-4 as one that will function as part of a tax evasion scheme. EINs are used to maintain an accurate account for the tax transactions of a taxpayer. S. Rep. No. 1102, 87th Cong., 1st Sess. 2, 1961-2 C.B. 475, 476. These transactions are reported on returns and other documents. An EIN should not be issued when it will be used by an individual to facilitate the misreporting of such transactions. Again, the Service needs to evaluate the information provided by the taxpayer on the Form SS-4 to determine whether the individual is requesting the EIN for legitimate tax filing purposes.

Strategy Regarding EIN Issuance

According to the facts you provided, the individuals requesting EINs from Service Center are prisoners who have not demonstrated a legitimate tax filing purpose. [REDACTED]

The Service has the authority to refuse to issue an EIN to any taxpayer if the Service determines that the taxpayer has not demonstrated a legitimate tax filing purpose by fully or correctly completing the Form SS-4. [REDACTED]

[REDACTED] Service may refuse to issue an EIN, or withdraw a temporarily assigned EIN, if the Service does not receive the requisite Form SS-4 documentation. Further, if the Service has reason to believe that an applicant will be using the identifying number for fraudulent tax filing schemes, then the Service is not required to issue an EIN to such individual.

However, a prisoner may need an EIN for a legitimate tax filing purpose. Under such circumstances, if the prisoner provides satisfactory evidence that he or she has a legitimate tax filing purpose, the Service should issue an EIN to such individual. The Service should not refuse to issue an EIN to an individual solely because of the individual's status as a prisoner.

If you have any further questions regarding this matter, please contact Elizabeth Kaye at (202) 622-4910.