



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 AREA COUNSEL, SB/SE, AREA 5
CC:SB:5

FROM: Peter K. Reilly
Special Counsel (Tax Practice & Procedure)
Administrative Provisions & Judicial Practice

SUBJECT: Statute of Limitations for Assessing Costs Under Section
6673(b)(2)

This Chief Counsel Advice responds to your memorandum dated October 29, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

T =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
a =

ISSUE

Can the Internal Revenue Service (Service) currently assess pursuant to the provisions of I.R.C. § 6673(b)(2) the costs awarded against the taxpayer by the federal district court.

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CONCLUSION

The costs awarded by the federal district court may be currently assessed pursuant to the provisions of I.R.C. § 6673(b)(2).

FACTS

T filed a Form 941 on Date 2 for the quarter ending Date 1. The Service assessed a section 6651(a)(1) late filing penalty. T paid the penalty and then filed a claim for refund. After the claim for refund was denied, T brought suit for a refund. A federal district court dismissed the refund suit and then awarded the United States \$a in costs associated with depositions taken on Date 3. The judgment was entered on Date 4 and the bill of costs was filed on Date 5. In accordance with section 6673(b)(2), the Service now seeks to assess the \$a in costs against T.

LAW AND ANALYSIS

Section 6673 sets out the general provision under the Code providing for sanctions and costs awarded by various courts which handle tax matters. Subsection 6673(b)(2) is titled "Collection of sanctions and costs" and provides that:

[i]n any civil proceeding before any court (other than the Tax Court) which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, any monetary sanctions, penalties, or costs awarded by the court to the United States may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

(Emphasis added.)

As the language of the statute makes clear, the Service can use either the collection mechanisms set out in Title 26 or the regular methods available for execution of judgments. The Service here wishes to assess the costs awarded by the district court so that it can use the appropriate provisions under Title 26 to collect. You have raised the issue of whether the Service is now barred from assessing the costs awarded by the district court.

While section 6673(b)(2) authorizes the Service to assess costs awarded by a district court, neither the Code nor the Treasury Regulations set forth a statute of limitations for the assessment of these costs. Section 6501 sets out the statute of limitations on assessment and collection with respect to taxes imposed by Title 26. Section 6501(a) sets out the general rule that the amount of any tax imposed by Title 26 shall be assessed within 3 years after the return is filed. Section 6511 sets

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out the limitations periods for claims for credit or refund. Except for some limited circumstances (see section 6501(a)(4) and section 6511(c) for filing extensions to extend the time to assess and file refund claims), sections 6501(a) and 6511 act independently and provide two unrelated separate regimes for limitations periods for assessment and refund claims, respectively. The filing of a refund suit simply does not toll the statute of limitations on assessment.

In many instances, the statute of limitations on assessment for the year or period before the court in refund litigation has long expired before any judgment is entered. It is a rule of statutory construction that the courts will not assume that Congress intended a statute to create odd or absurd results. United States v. X-Citement Video, Inc., 513 U.S. 64, 69-70 (1994); Public Citizen v. Department of Justice, 491 U.S. 440, 453-455 (1989); Rucker v. Davis, 237 F.3d 1113, 1119 (9th Cir. 2000); Turner v. Davis, Gillenwater & Lynch, 4 F.3d 1556, 1564 (10th Cir. 1993). To read section 6501(a) as a limit for the time period within which to assess costs would create absurd results and in many instances, render section 6673(b)(2) meaningless.

Furthermore, the application of section 6501(a) depends upon the filing of a return to begin the running of the limitations period. In the present situation, the costs to be assessed under the authority of section 6673(b)(2) are not reported on any document filed by T let alone on a tax return filed by T. Further, the costs are neither related to nor based on a tax return filed by T. Thus, there is no return of tax to trigger the running of the statute of limitations prescribed by section 6501.

When Congress amended section 6673 in 1989, it changed the term “damages” to “penalties.” In explaining the reasons for the change, the House of Representatives Budget Committee noted that the change “permits these sanctions, penalties, and costs, when awarded by one of these other courts, to be collected in the same manner as if they were awarded by the Tax Court.” (Emphasis added.) H.R. Rep. No. 101-247, at 1400. This statement indicates that the purpose of section 6673(b)(2) is to allow the collection of sanctions, penalties and costs through the provisions of Title 26.¹ Logic dictates that section 6673(b)(2) was enacted to allow the Service to collect costs in the same as a tax and that the reference to

¹ Section 6671(a) sets out the rules for application for “Subchapter B—Assessable Penalties,” and covers sections 6671 through 6724. Section 6671(a) states that “[t]he penalties . . . provided by this subchapter shall be paid upon notice and demand . . . and shall be assessed and collected in the same manner as taxes.” Moreover, the legislative history for section 6673 contains a reference to section 6671(a). See H.R. Rep. No. 101-247, at 1400. Thus, any costs awarded by a district court which the Service has authority to assess in accordance with section 6673(b)(2) should be assessed and collected in the same manner as taxes.

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assessment in the statute is merely to advise that the amount must be assessed before it can be collected.

Underlying a statute of limitations analysis is the generally applicable principle enunciated by the Supreme Court that, in applying limitations provisions, “[s]tatutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government.” Badaracco v. Commissioner, 464 U.S. 386, 391 (1984) (quoting E.I. du Pont de Nemours & Co. v. Davis, 264 U.S. 456, 462 (1924)). Statutes of limitations on assessment of tax are no exception. Lucia v. United States, 474 F.2d 565, 570 (5th Cir. 1973).

It can be argued that costs can be assessed under section 6673(b)(2) at any time. It is a well-established principle of law that the government is not subject to statutes of limitations unless Congress explicitly provides otherwise. Agbanc, Ltd. v. United States, 707 F.Supp. 423, 426 (D. Ariz. 1988) (citing United States v. Tri-No Enterprises, Inc., 819 F.2d 154, 158 (7th Cir. 1987); United States v. Podell, 572 F.2d 31, 35 n.7 (2d Cir. 1978)). Thus, “[i]f an act creating a governmental right of action contains no limitations period, and no general statute of limitations applies, the government may seek recovery under the act at any time.” Agbanc, Ltd., 707 F.Supp. at 426 (citing United States v. City of Palm Beach Gardens, 635 F.2d 337, 341 (5th Cir. 1981), cert. denied, 454 U.S. 1081 (1981)).

We think, however, that the safest approach is to assess the costs prior to the judgment expiring by operation of law. Fed. R. Civ. P. 69(a) makes applicable state procedural rules for the enforcement of judgments (“except that any statute of the United States governs to the extent that it is applicable”). Anderson v. Tucker, 68 F.R.D. 461 (D. Conn. 1975).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

None.

Please call if you have any further questions.