

Rev. Proc. 2005-32

SECTION 1. PURPOSE

The purpose of this revenue procedure is to amplify, update, and restate Rev. Proc. 94-68, 1994-2 C.B. 803, which provides Internal Revenue Service procedures with respect to the reopening of examinations under section 7605(b) of the Internal Revenue Code. This revenue procedure also describes when a case is deemed closed after examination by the Service, describes, by category, a non-exclusive list of contacts with taxpayers and other actions by the Service that are not examinations, inspections, or reopenings of closed cases, explains when a closed case may be reopened to make an adjustment unfavorable to the taxpayer, and explains who within the Service must approve a reopening.

SECTION 2. SIGNIFICANT CHANGES

.01 Examples in Rev. Proc. 94-68 of contacts by the Service with taxpayers or other actions taken with respect to taxpayers that are not examinations, inspections, or reopenings have been categorized under four non-exclusive categories.

.02 A new section 4.01(4) is added to define a closed case when dealing with classification or qualification cases subject to section 7428.

.03 A new section 4.01(5) is added to define a closed case when dealing with Tax Equity and Fiscal Responsibility Act (TEFRA) partnership cases.

.04 A new section 4.02 is added to define a reopening of a closed case.

.05 Section 4.02, *Examinations, Inspections, and Reopenings*, of Rev. Proc. 94-68 has been redesignated and renamed as section 4.03, *Taxpayer contacts and other actions that are not examinations, inspections, or reopenings*.

.06 Section 4.03(1)(d)(ii)(B) includes new items that provide that a contact with a taxpayer to request the taxpayer file a required tax return, to explain the criteria for perfecting a filed but imperfect tax return, or to request the taxpayer perfect a filed tax

return, is not an examination, inspection, or reopening.

.07 Section 4.03(2)(d) adds the Industry Issue Resolution program as a new item to the examples of voluntary programs for selective issue resolution that are not examinations, inspections, or reopenings.

.08 Section 4.03(4) includes a new example providing that a contact with a taxpayer for the purpose of investigating a possible violation of title 31 of the United States Code is not an examination, inspection, or reopening for any purpose under title 26.

.09 New section 4.03(4)(b) is added to provide that a contact with any person for the purpose of determining whether that person is required to maintain a list under section 6112, or to inspect the list required to be maintained under section 6112, or to verify the accuracy of, or the need for, disclosure of a reportable transaction as required by section 6111 (or registration of a tax shelter as required by former section 6111) is not an examination, inspection, or reopening with respect to any other party.

.10 New section 5.02 provides that an examination of a tax return following a prior examination of the same taxpayer for the same taxable period that was limited to one or more transactions with significant potential for abuse satisfies the criteria for reopening of a case closed after examination.

SECTION 3. SCOPE

This revenue procedure applies to all examinations, inspections of books of account, and reopenings of cases closed after examination, regardless of taxpayer or type of tax, but does not extend to cases beyond the jurisdiction of the highest level field official with ultimate authority over the case, presently the Area Director for Compliance or the Industry Director. It does not apply to cases closed after consideration by Appeals or any functional component of the Office of Chief Counsel.

The categories and examples in section 4.03 below of contacts with taxpayers and other actions taken by the Service with respect to taxpayers that are not examinations, inspections, or reopenings are not intended to be, and should not be construed as, exhaustive, exclusive, or limitative. Thus, a contact with, or other action in relation to, a taxpayer may be other than

an examination, inspection, or reopening even though it may not be listed as an example or may be outside of a category described in this revenue procedure.

SECTION 4. DEFINITIONS

.01 *Closed case.*

(1) For purposes of this revenue procedure, an agreed case is closed after examination when the Service notifies the taxpayer in writing after a conference, if any, of adjustments to the taxpayer's liability or acceptance of the taxpayer's tax return or exempt status without change. A case involving a refund or credit in excess of the statutory sum that is subject to review by the Joint Committee on Taxation, pursuant to section 6405, is not a closed case until Joint Committee review procedures and any necessary follow-up are complete. Also, in a fully agreed case in which the taxpayer and the Service have entered into a closing agreement, as described in section 7121, following examination, the case is not a closed case until the closing agreement is signed by an appropriate Service official.

(2) An unagreed income, estate, gift, or chapters 41 through 44 excise tax case, or a worker classification or plan qualification case subject to section 7436 or section 7476, is closed after examination when the period for filing a petition with the United States Tax Court, as specified in the statutory notice of deficiency or notice of determination issued to the taxpayer, expires with no petition filed.

(3) An unagreed excise tax case not subject to the deficiency procedures of sections 6211 through 6215 or an employment tax case not subject to the determination of employment status procedures of section 7436 is closed after examination when the period specified in the preliminary letter for requesting a hearing with Appeals expires and no request has been made.

(4) An unagreed classification or qualification case subject to section 7428 is closed after examination when the period expires for bringing an action in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia, and no action has been filed.

(5) An unagreed TEFRA partnership case is closed when the period for bringing an action in the United States Tax Court, a

district court, or the United States Court of Federal Claims with respect to a Notice of Final Partnership Administrative Adjustment (FPAA) expires and no action has been filed. A TEFRA partnership case is an agreed case and is closed as an agreed case only if all partners have signed settlement agreements or a no-change letter has been issued to the Tax Matters Partner. A no-change FPAA alone does not signify an agreed case.

.02 *Reopening*. A reopening of a closed case involves an examination of a taxpayer's liability that may result in an adjustment to liability unfavorable to the taxpayer for the same taxable period as the closed case, with exceptions, some of which are noted below. The Service's review, including an inspection of books of account, of a taxpayer's claim for a refund on an amended excise or income tax return, as well as the Service's review of a Form 843, *Claim for Refund and Request for Abatement*, claiming a refund for an overpayment reported on a return, is not a reopening.

.03 *Taxpayer contacts and other actions that are not examinations, inspections, or reopenings*. In addition to the exception provided in § 301.7605-1(h) of the Procedural and Administrative Regulations, listed below are four categories of contacts the Service makes with taxpayers and certain other actions taken by the Service that are not examinations, inspections, or reopenings.

(1) In the first category are narrow, limited contacts or communications between the Service and a taxpayer that do not involve the Service inspecting the taxpayer's books of account:

(a) looking at a tax return;

(b) matching information on a tax return with, or preparing a missing return from, other records or information items that are already in the Service's possession; or

(c) considering any records the taxpayer voluntarily provides to the Service to explain an apparent error on a tax return or to explain a discrepancy between either a filed tax return or a substitute for return and information from third parties that is or may be used for the matching described in (b).

(d) The following examples, illustrative of this category 4.03(1), are not examinations, inspections, or reopenings:

(i) a contact with a Coordinated Industry Case (CIC) taxpayer requesting the written statements provided for in Rev. Proc. 94-69, 1994-2 C.B. 804 (or successor revenue procedure), or notifying a taxpayer that the taxpayer no longer qualifies for the CIC program;

(ii) a contact with a taxpayer to:

(A) correct mathematical or clerical errors;

(B) request the taxpayer file a tax return, or if a tax return is incomplete, to explain the criteria for perfecting the tax return, or to solicit the taxpayer's perfection of the tax return; or

(C) verify a discrepancy between the taxpayer's tax return and an information return, or between a tax return and information otherwise in the Service's possession; and

(iii) adjustments resulting from:

(A) an unallowable item;

(B) a discrepancy between a filed tax return and information received from a third party or a federal or state governmental databank; or

(C) an information-return matching program, or other correction programs operated by Internal Revenue Service Centers or Campuses.

(2) In the second category are Service-administered programs for selective issue resolution that are open to the voluntary participation of taxpayers, and which invite the Service's involvement with respect to one or more taxable periods earlier than otherwise under the Service's normal audit procedures. The following are examples of these Service-administered programs:

(a) accelerated issue resolution;

(b) the Advance Pricing Agreement program;

(c) the Pre-Filing Agreement program; and

(d) the Industry Issue Resolution program.

(3) The third category consists of reconsiderations (and resulting adjustments to liability) of a taxable period previously examined or adjusted when those reconsiderations arise from and are affected by the treatment of, or a position taken with respect to, tax return items or transactions by the same taxpayer in a different (usually later) taxable period, or by a related taxpayer in any taxable period. Cases in this

category 4.03(3) are not reopenings. Examples include adjustments for:

(a) a correction under section 1311;

(b) a change to an item carried back that affects liability for the carryback year; and

(c) a gain under section 1033 on the involuntary conversion of property.

(4) A fourth category consists of contacts, compliance checks, examinations, or investigations of a taxpayer or a third party for one purpose, tax, or period (even if a dual purpose is present at the outset) that result in the Service obtaining information relevant or useful for a different purpose, tax, or period that may later either be matched with a return under the circumstances described in section 4.03(1) or may lead the Service to later open an examination or inspection for that different purpose, tax, or period. For example, a contact with a taxpayer, including an inspection of the taxpayer's books of account, for the purpose of investigating a possible violation of title 31 is not an examination, inspection, or reopening for any purpose under title 26. Other examples include:

(a) a contact by a Tax Exempt and Government Entities (TE/GE) agent with the employer sponsor of a deferred compensation plan, or with an organization treating itself as tax-exempt, to investigate the plan's compliance with Code requirements or the organization's exempt status under the Code. This contact, and any follow-up information matching, is not an income tax examination, inspection, or reopening with respect to the employer, its employees, any plan beneficiaries, or any other third parties that may have a transactional relationship to the exempt organization (such as the organization's employees, independent contractors, taxable subsidiaries, or sellers of property to the exempt organization); and

(b) a contact with or action taken with respect to any person for the purpose of determining whether that person is required to maintain a list under section 6112(a), or to inspect the list required to be maintained under section 6112(a), or to verify the accuracy of, or the need for, disclosure of a reportable transaction as required by section 6111 (or registration of a tax shelter as required by former section 6111). This contact or other action is not an examination, inspection, or reopening with respect to any other party.

SECTION 5. REOPENING CLOSED CASES

.01 *General circumstances permitting reopening.* The Service will not reopen a case closed after examination to make an adjustment to liability unfavorable to the taxpayer unless:

(1) there is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of material fact;

(2) the closed case involved a clearly-defined, substantial error based on an established Service position existing at the time of the examination; or

(3) other circumstances exist indicating that a failure to reopen the case would be a serious administrative omission.

.02 *Other circumstances permitting reopening.* Under section 5.01(3) of this revenue procedure, other circumstances indicating that a failure to reopen a case would be a serious administrative omission include cases with items or transac-

tions that present significant potential for abuse for which a limited examination was performed. If the Service conducted and closed an examination that was limited to one or more tax return items or transactions with significant potential for abuse, and the Service later determines that other tax return items or transactions for the same taxpayer and the same taxable period also merit examination, the examination may be reopened. Items or transactions with significant potential for abuse may include reportable transactions within the meaning of § 1.6011-4(b). In these circumstances, a subsequent examination by the Service of other tax return items for the same taxpayer and the same taxable year is not an unnecessary examination under section 7605(b) and the failure to reopen such cases would be a serious administrative omission.

.03 *Approval.* All reopenings must be approved by, and all notices of an additional inspection of a taxpayer's books

of account must be signed by, an official listed in Commissioner Delegation Order Number 57 (or successor order) for cases under his or her jurisdiction.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 94-68 is modified and superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on May 20, 2005.

DRAFTING INFORMATION

The principal author of this revenue procedure is Stuart Murray of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Stuart Murray at (202) 622-3630 (not a toll-free call).