

TEST OF EMPLOYMENT TAX EARLY REFERRAL PROCEDURES FOR APPEALS

Announcement 96-13

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SECTION 1. SUMMARY

Early referral procedures were published in Rev. Proc. 96-9, 1996-2 I.R.B. 15. This Announcement applies the provisions of the revenue procedure to employment tax issues, as described below, on a one-year test basis.

Taxpayers whose returns are being examined can request early referral of one or more employment tax issue(s) from district compliance functions ("the District") to Appeals. Early referral of the employment tax issue(s) does not alter the District Director's authority to audit the returns of a taxpayer nor limit or expand the District Director's authority to resolve any issues, including the authority in Delegation Order No. 236, 1991-1 C.B. 313.

These procedures are effective for requests for early referral made during the one-year test period beginning on March 18, 1996, the date this announcement is published in the Internal Revenue Bulletin.

SECTION 2. PURPOSE and SCOPE

.01 In general. This Announcement is part of the Internal Revenue

Service's strategy designed to improve employment tax administration for all taxpayers, including those who are small business owners. The purpose of early referral for employment tax issues is to resolve them more expeditiously through simultaneous action by the District and Appeals. This Announcement describes the method by which a taxpayer requests early referral of one or more unagreed employment tax issues from the District to Appeals. A taxpayer may request early referral of any developed, unagreed employment tax issue that is under the jurisdiction of the District Director arising from an audit. The District will continue to develop other issues arising in the audit.

Early referral for employment tax issues is:

- optional;
- initiated by the taxpayer;
- subject to the approval of both the District Director and the Assistant Regional Director of Appeals (ARDA); and

• not limited to Coordinated Examination Program (CEP) taxpayers.

.02 APPROPRIATE ISSUES FOR EARLY REFERRAL. Appropriate issues for early referral include those that if resolved can reasonably be expected to result in a quicker resolution of the entire case; and that both the taxpayer and District Director agree should be referred to Appeals early. Therefore, early referral may not be available for every employment tax issue.

Examples of appropriate employment tax issues for early referral include:

1) Worker Classification Issues, including whether a worker is an employee or independent contractor under the common law; whether a worker is a statutory employee or statutory non-employee; whether Section 530 of the Revenue Act of 1978 applies; whether I.R.C. § 3509 rates are appropriate; and whether the taxpayer qualifies for an interest-free adjustment.

2) Other Issues, including whether certain payments are excepted from the definition of "wages" (e.g., a fringe benefit that would be excludable from the employee's gross income under I.R.C. § 132); and whether certain services are excepted from the definition of "employment."

Because taxes under the Self-Employment Contributions Act (I.R.C.

§§ 1401-1403) are income taxes, rather than employment taxes, issues arising under these sections are not included in this early referral procedure.

SECTION 3. HOW TO REQUEST EARLY REFERRAL

An early referral request must follow the requirements set forth in section 3, **Procedures For Requesting Early Referral**, in Rev. Proc. 96-9. A request for early referral must be submitted in writing by the taxpayer to the case manager. The case manager may suggest that a taxpayer make such a request. For purposes of this announcement, "case manager" includes Compliance, Examination, Collection, and EP/EO group managers. See section 3.02 regarding **Statement of Issues and Position**; section 3.03, **Perjury Statement**; and section 3.04, **Signatures**.

SECTION 4. PROCESSING AN EARLY REFERRAL REQUEST

An early referral request will be processed in the manner described in section 4 of Rev. Proc. 96-9, **Processing An Early Referral Request**. Included in section 4 are: section 4.01, **Approving or Denying the Request for Early Referral**; section 4.02, **Notification of Action**; and section 4.03, **No Appeal**.

SECTION 5. TRANSFERRING THE ISSUE FROM THE DISTRICT TO APPEALS

.01 In general. If an issue is approved for transfer from the District to Appeals, the procedures described in section 5 of Rev. Proc. 96-9 generally will apply. The following specifically apply to employment tax issues:

.02 The District issues an employment tax report. The District will prepare an employment tax report for each approved early referral issue. The report must identify the amount of employment tax(es) in dispute; fully describe the issue(s); and explain the District's position. This report will be sent to the taxpayer.

.03 Taxpayer response to District's report. The taxpayer must respond in writing to the District's report. The response must contain an explanation of the taxpayer's position regarding the issue(s), similar to that which would be provided in an Appeals protest, and

satisfy the declaration and signature requirements in sections 3.03 and 3.04 of Rev. Proc. 96-9.

The taxpayer's response must be submitted to the case manager within 30 days of the date of the report. This 30-day requirement may be extended by the case manager. If the taxpayer's response with respect to an issue is not received within the time provided, the taxpayer's early referral request will be considered withdrawn regarding that particular issue(s) without prejudice to the taxpayer's right to an administrative appeal at a later date. But see section 8 of Rev. Proc. 96-9, **Withdrawal from the Early Referral Process**, regarding withdrawal after Appeals has taken jurisdiction over the early referral issue(s).

.04 Early referral file sent to Appeals. After the taxpayer has responded in writing to the report, the District compliance function will send the early referral file to Appeals. The file should include copies of:

- applicable portions of tax returns and workpapers;
- the approved early referral request;
- the District's report;
- the taxpayer's written response to the report; and
- the District's response to the taxpayer's position, if any.

Appeals has jurisdiction over the issue(s) accepted for early referral. All other issues in the case remain in the District's jurisdiction.

SECTION 6. RESOLVING THE EARLY REFERRAL ISSUE(S)

.01 In general. The taxpayer's written response to the District's report generally serves the same purpose as an Appeals protest. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to early referral issues. See § 601.106 *et seq.* of the Statement of Procedural Rules. See generally section 6 of Rev. Proc. 96-9. The following specifically apply to early referral of employment tax issues:

.02 If agreement of the early referral issue(s) is reached. If an agreement is reached with respect to an early referral issue(s), an agreement Form 2504 or 2504 AD, labelled "Partial Agreement," may be used for factual or non-complex issues that have

no features that affect subsequent years. A closing agreement generally will be prepared for issues where a settlement is complex or affects subsequent years. See I.R.C. § 7121 and also Rev. Proc. 68-16, 1968-1 C.B. 770, which describes the preparation of closing agreements. Appeals will coordinate effects on subsequent years with the District and District Counsel.

.03 If agreement of the early referral issue(s) is not reached. If an agreement is not reached with respect to an early referral issue(s), see section 6.03 of Rev. Proc. 96-9, **Agreement Not Reached**. See also generally, section 7, of Rev. Proc. 96-9, **Effect of Conclusion of Examination**. The following specifically apply to early referral of employment tax issues: If no issues in the case remain unagreed except for an early referral employment tax issue that could not be settled by Appeals and has been returned to the District, no 30-day letter will be issued. Rather, the District will process the case for assessment of tax due from the taxpayer.

SECTION 7. NO USER FEE

There is no user fee for an early referral employment tax request.

SECTION 8. EFFECTIVE DATE

These procedures are effective for requests for early referral made during the one-year test period beginning on March 18, 1996, the date this announcement is published in the Internal Revenue Bulletin.

DRAFTING INFORMATION

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