

Rev. Proc. 98-54

SECTION 1. PURPOSE

This revenue procedure provides taxpayers with instructions for entering into an agreement with the Internal Revenue Service under § 6212(d) of the Internal Revenue Code to rescind a notice of deficiency. This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 88-17, 1988-1 C.B. 692.

SECTION 2. BACKGROUND

.01 Section 6212(a) provides that if the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A of title 26 (relating to income taxes), subtitle B (relating to estate, gift, and generation-skipping taxes), or chapters 41, 42, 43, or 44 (relating to certain excise taxes), the Secretary is authorized to send a notice of the deficiency to the taxpayer by certified mail or registered mail.

.02 Section 6212(c)(1) provides, in general, that if the Secretary has mailed to the taxpayer a notice of deficiency as provided in § 6212(a), and the taxpayer files a petition with the Tax Court within the time prescribed in § 6213(a), the Secretary has no right to determine any additional deficiency, except in the case of fraud, and except as provided in § 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in § 6213(b)(1) (relating to mathematical or clerical errors), in § 6851 or 6852 (relating to termination assessments), or in § 6861(c) (relating to jeopardy assessments).

.03 Section 6213(a) states that within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in § 6212 is mailed, the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as provided in § 6851, 6852, or 6861, no assessment of a deficiency and no levy or proceeding in court for its collection can be made, begun, or prosecuted until

the notice has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day restriction period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Under § 6213(d), a taxpayer may waive these restrictions at any time.

.04 Section 6501 provides generally that the amount of any tax imposed by title 26 must be assessed within 3 years after the return was filed. Section 6503(a) provides that the running of the period of limitations in § 6501 is suspended (after the mailing of a notice under § 6212(a)) for the period during which the Secretary is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for 60 days thereafter.

.05(1) Section 6212(d) provides that the Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded is not treated as a notice of deficiency for purposes of § 6212(c)(1) (relating to further deficiency letters restricted), § 6213(a) (relating to restrictions applicable to deficiencies and petition to Tax Court), and § 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer has no right to file a petition with the Tax Court based on the notice.

(2) The Technical and Miscellaneous Revenue Act of 1988 (Act), § 1015(m), 1988-3 C.B. 232, amended § 6212(d) by adding the following sentence: "Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding." This amendment is effective for notices of deficiency issued on or after January 1, 1986.

(3) The House Report accompanying the Act provides the following example to illustrate the operation of the final sentence of § 6212(d):

[A]ssume that six months remain to run on the statute of limitations with respect to a return when the IRS issues a statutory notice of deficiency. Issuance of this notice suspends the statute of limitations. If the IRS and the taxpayer agree to rescind the statutory notice, then as of the date

the notice is rescinded, the statute of limitations again begins to run and (in this example) six months remains [sic] until the statute expires.

H.R. Rep. No. 795, 100th Cong., 2d Sess. 364 (1988).

SECTION 3. SIGNIFICANT CHANGES AND CLARIFICATIONS TO REV. PROC. 88-17

.01 Section 3.05(1) of Rev. Proc. 88-17 provides, in part, that the Service will not rescind a notice of deficiency if, on the date of rescission, the period of limitations on assessment would have expired but for the issuance of the notice of deficiency. This provision is deleted as a result of the 1988 amendment to § 6212(d), which clarifies that a notice of deficiency that is subsequently rescinded suspends the period of limitations until the date of its rescission. See section 4.05(1) of this revenue procedure.

.02 Section 3.05(4) of Rev. Proc. 88-17 provides that the Service will not rescind a notice of deficiency if, prior to the issuance of the notice of deficiency, the taxpayer and the Service have executed a Form 872-A, Special Consent to Extend the Time to Assess Tax, covering any of the tax years in the notice of deficiency. This provision is modified to permit rescission, provided the taxpayer and the Service execute another Form 872-A prior to rescission). See section 4.05(4) of this revenue procedure.

.03 Section 4.03 of Rev. Proc. 88-17 is clarified to provide that the Service may initiate rescission of a notice of deficiency). See section 5.03 of this revenue procedure.

.04 In lieu of using a Form 8626, Agreement to Rescind Notice of Deficiency, the use of an alternative document is authorized for rescission of a notice of deficiency). See section 5.06 of this revenue procedure.

SECTION 4. SCOPE AND OBJECTIVE

.01 This revenue procedure applies to agreements to rescind a notice of deficiency mailed to a taxpayer pursuant to § 6212(a). This procedure does not apply to a Notice of Final Partnership Administrative Adjustment (FPAA) or to a Notice

of Final S Corporation Administrative Adjustment (FSAA).

.02 Whether a notice of deficiency will be rescinded is discretionary on the part of the Secretary. A notice of deficiency may only be rescinded with the consent of the taxpayer.

.03 If a notice of deficiency is rescinded, it is generally treated as if it never existed. Limitations regarding credits, refunds, and assessments relating to the rescinded notice are void and the rights and obligations of the parties that existed prior to the issuance of the notice of deficiency are reinstated. The rescinded notice does, however, suspend the running of the period of limitations under § 6503 for the period during which the notice is outstanding. The Commissioner or the Commissioner's delegate may issue a later notice of deficiency in an amount that exceeds, is the same as, or is less than the amount in the rescinded notice of deficiency. The taxpayer may exercise all administrative and statutory appeal rights from a reissued notice of deficiency, but cannot petition the Tax Court from a rescinded notice of deficiency.

.04 Except as provided in section 4.05 of this revenue procedure, a notice of deficiency may be rescinded for the following reasons:

(1) The notice was issued as a result of an administrative error: for example, the notice was issued (a) to the wrong taxpayer, (b) for the wrong tax period, or (c) without considering a properly executed Form 872, Consent to Extend the Time to Assess Tax, or Form 872-A;

(2) The taxpayer submits information establishing the actual tax due is less than the amount shown in the notice; or

(3) The taxpayer specifically requests a conference with the appropriate Appeals office for the purpose of entering into settlement negotiations. However, the notice may be rescinded only if the appropriate Appeals office first decides that the case is susceptible to agreement.

.05 The Service will not rescind a notice of deficiency under the following circumstances:

(1) On the date of the rescission, 90 days or less would remain before the expiration date of the period of limitations on assessment. However, a notice of deficiency may be rescinded in these circumstances if, before the rescission, the tax-

payer and the Service execute a consent to extend the period of limitations on Form 872 or Form 872-A;

(2) The 90-day or 150-day restriction period under § 6213(a) has expired without the taxpayer filing a petition with the Tax Court;

(3) The taxpayer has filed a petition with the Tax Court; or

(4) The taxpayer and the Service, prior to the issuance of the notice of deficiency, have executed a Form 872-A covering any of the tax years in the notice of deficiency. A notice of deficiency may be rescinded in this situation, however, if prior to rescinding the notice of deficiency the taxpayer and the Service execute a new Form 872-A covering the same tax years as the earlier Form 872-A.

SECTION 5. PROCEDURE

.01 Taxpayers that wish to have a notice of deficiency rescinded should contact the person/office listed on the notice and request Form 8626. Taxpayers that wish an Appeals conference (see section 4.04(3) of this revenue procedure) should contact the person/office listed on the notice to find out how to contact the appropriate Appeals Office.

.02 A request to rescind a notice of deficiency should be made by the taxpayer as soon as possible after receipt of the notice because a notice will not be rescinded after the 90-day or 150-day restriction period under § 6213(a) has expired.

.03 If the Service determines that a notice of deficiency should be rescinded, the Service will send Form 8626 to the taxpayer requesting the taxpayer's written consent to rescind. If appropriate, Form 872 or Form 872-A will also be sent for the taxpayer's signature. If the taxpayer agrees to the rescission of the notice of deficiency, the signed Form 8626 (and Form 872 or Form 872-A if appropriate) must be returned to the office that sent the Form 8626 as soon as possible, prior to the expiration of the applicable 90-day or 150-day restriction period. After the Form 8626 is returned by the taxpayer and signed on behalf of the Commissioner, a copy will be sent to the taxpayer (and/or the taxpayer's authorized representative(s)). The effective date of the rescission agreement is the date on which the Commissioner's delegate signs Form 8626.

.04 If the notice of deficiency was issued to a husband and wife jointly, Form 8626 and, if appropriate, Form 872 or Form 872-A, must be signed by both the husband and wife, or their authorized representative(s). If Form 8626 and/or Form 872 or Form 872-A is signed by a representative, and a power of attorney has not previously been filed, the power of attorney must be included with Form 8626.

.05 Form 8626 must cover the same tax period(s) as the notice of deficiency to which it relates and must reflect the same tax deficiency and penalties as the notice of deficiency.

.06 Although use of Form 8626 is preferred, a document that reflects agreement by the taxpayer and the Service to rescind the notice of deficiency, pursuant to § 6212(d), may be used in lieu of Form 8626. Such a document will not be effective unless it contains the following:

(1) a statement that the taxpayer and the Commissioner's delegate agree to rescind the notice of deficiency;

(2) identification of the notice of deficiency, including the date it was issued, the type of tax, the tax period(s), and the amount(s) of the deficiency or deficiencies and any penalties;

(3) representations that the period of limitations on assessment has not expired and that the taxpayers have not petitioned the Tax Court;

(4) an agreement that the effect of the rescission is to return the parties to the rights and obligations existing immediately prior to the issuance of the rescinded notice of deficiency, including the right of the Service to issue a later notice of deficiency, for any amount, and the right of the taxpayer then to appeal to the Tax Court; and

(5) the signatures (on the same document) of both the Commissioner's delegate and the taxpayer (or the taxpayer's representative). If the document is signed by the taxpayer's representative, and a power of attorney has not previously been filed, the power of attorney must be included with the document.

.07 A properly executed Form 8626 (or a document as provided in section 5.06 of this revenue procedure) is the only way that a notice of deficiency may be rescinded.

.08 If the Service does not agree that the notice of deficiency should be rescinded, the taxpayer will be so notified in writing, and the notice of deficiency will remain in effect. If the taxpayer wishes to file a petition with the Tax Court, the taxpayer must file the petition within the applicable 90-day or 150-day restriction period, which may not be extended.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 88-17, 1988-1 C.B. 692, is clarified, modified, and superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective with respect to notices of deficiency issued on or after January 1, 1986.

DRAFTING INFORMATION

The principal author of this revenue procedure is Catherine A. Prohofsky of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Andrew Irving on (202) 622-4930 (not a toll-free call).