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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 6, 1999

Number: **200010021**
Release Date: 3/10/2000
CC:INTL:Br1
WTA-N-112895-98
UILC: 6091.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ASSISTANCE

MEMORANDUM FOR PAUL J. ROLLI
OP:IN

FROM: W. Edward Williams
Senior Technical Reviewer CC:INTL:Br1

SUBJECT: Filing of Individual Tax Returns with Revenue Service
Representatives

This Technical Assistance responds to your memorandum dated June 22, 1998. Technical Assistance is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

ISSUES:

- (1) May a U.S. citizen residing outside the United States or a non-resident alien file his federal income tax return by mailing it to a Revenue Service Representative (RSR) at a U.S. embassy?
- (2) May a U.S. citizen residing outside the United States or a non-resident alien file his federal income tax return by hand-carrying it to a RSR?
- (3) May a U.S. citizen residing outside the United States or a non-resident alien pay his income tax to a RSR when filing his income tax return?

CONCLUSIONS:

- (1) Under the applicable Treasury Regulations and instructions to the individual income

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tax forms, a U.S. citizen residing outside the United States or a non-resident alien must file his federal income tax returns with the Philadelphia Service Center (PSC). However, the Commissioner has the authority to permit filing in any internal revenue district, including the international district. Under a longstanding internal policy consistent with the Commissioner's authority, RSRs have accepted individual income tax returns they receive by mail, and the Service has considered a return so accepted as filed on the date that the return is stamped as being received by the RSR. If such date is later than the due date, the rules in section 7502(a)(1) regarding postmarks are applied.

(2) For a U.S. citizen residing outside the United States or a non-resident alien, neither the law nor any administrative interpretation precludes hand carrying individual income tax returns to the place indicated for filing the return. The place indicated for filing these individual income tax returns is the PSC. However, the Commissioner has the authority to permit filing in any internal revenue district, and permits such filing at the RSR posts of duty. Because the Commissioner permits filing with the RSRs, and nothing precludes hand-carrying to this place of filing, such taxpayers may hand carry their returns to their RSRs.

(3) When tax is due in connection with a return, it must be paid to the internal revenue officer with whom such return of tax is filed. If a return is properly filed with an RSR consistent with the conclusions in issue 1 and 2 above, tax due in connection with the return must be paid to the RSR at the time of filing.

LAW AND ANALYSIS

Issue 1

Section 6091(a) of the Internal Revenue Code of 1986, as amended (Code) provides the general rule that when not prescribed by the Code, the Secretary will designate the place to file returns, declarations, statements, and other documents. Section 6091(b)(1)(A) provides that with respect to persons other than corporations, tax returns shall be made to the Secretary (1) in the IRS district in which is located the taxpayer's legal residence or principal place of business, or (2) at the IRS service center serving the district specified in (1), above, as prescribed by regulations. However, under section 6091(b)(1)(B), the returns of some taxpayers are excepted from the rule of section 6091(b)(1)(A). Such persons "shall file their returns at such place as the

Secretary may by regulations designate." Section 6091(b)(1)(B). As listed in section 6091(b)(1)(B), these persons are:

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- (i) persons who do not have a legal residence or principal place of business in an IRS district;
- (ii) U.S. citizens whose principal place of abode for the period is outside the United States;
- (iii) persons who claim the benefits of sections 911, 931, or 933 (respectively, relating to (1) citizens or residents of the United States living abroad, (2) income from sources within Guam, American Samoa, or the Northern Mariana Islands, or (3) income from sources within Puerto Rico);
- (iv) nonresident aliens; and
- (v) persons against whom an assessment was made under section 6851(a) or 6852(a) (relating to termination assessments) with respect to the taxable year.

Treas. Reg. section 1.6091-3 provides the regulatory rule for place of filing returns of U.S. citizens residing outside of the United States and nonresident aliens (other than departing aliens), among others. Under Treas. Reg. section 1.6091-3, these income tax returns are to be filed with “the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, or the district director, or the director of the service center, depending on the appropriate officer designated on the return form or in the instructions issued with respect to such form” (See T.D. 6922 (June 16, 1967)).

Thus, pursuant to statutory authority, the regulations provide that returns of citizens residing outside the United States and of nonresident aliens (other than departing aliens) are to be filed as required by the instructions accompanying the tax form in question. In this regard, the instructions for the 1998 Forms 1040, 1040-NR, 2555, and 2555-EZ provide that the returns are to be filed at the Philadelphia Service Center (PSC).

Notwithstanding section 6091(b)(1) and the regulations thereunder, the Commissioner may permit a return required to be made under the provisions of subtitle A or F of the Code to be filed in any internal revenue district. Section 6091(b)(5) and Treas. Reg section 1.6091-4(a)(1).

ACI is considered an internal revenue district. Treas. Reg. section 301.7701-10 provides that the Assistant Commissioner (International) (ACI) is a district director:

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“[t]he term ‘district director’ means the district director of internal revenue for an internal revenue district. The term also includes the Assistant Commissioner (International).”

ACI’s status as a district is evident in its history. ACI’s predecessor, the Internal Revenue Service Foreign Operations District (FOD), served as the IRS function that “administered the tax laws for foreign-based taxpayers subject to U.S. taxes.” Announcement 82-79, 1982-23 I.R.B. 61 (June 7, 1982). FOD was established in 1982 under the Commissioner’s section 7621 authority to establish internal revenue districts. TDO No. 150-96, 1982-1 C.B. 511 (March 15, 1982). (Emphasis added)¹.

According to the Internal Revenue Manual (IRM) Handbook, “FOD consists of the same operating components as any other district office except for two additional divisions: The Tax Treaty and Technical Services Division, and the Foreign Programs Division.” IRM Handbook 1271(11)81(2).

In 1986, the FOD’s functions were transferred to the newly-established Office of the Assistant Commissioner (International) (ACI) under the Commissioner’s section 7621 authority to establish internal revenue districts. TDO No. 150-01 (February 27, 1986) 1986-1 C.B. 686. (Emphasis added). According to the IRM, ACI

(1)(e) Administers the internal revenue laws and related statutes as they relate to U.S. citizens residing abroad and nonresident aliens deriving income from sources within the United States...[and] (3)...performs Regional and District type functions...

IRM 1132.12. That is, consistent with the transfer of FOD’s functions to ACI, ACI has continued to perform “district-type” functions.

Additional agency documents refer to ACI as an internal revenue district. For example, Document 6209, published as the reference guide, “ADP and IDRS Information – 1996,” describes the IRS document locator number (DLN) system for controlling and locating documents processed at Service Centers (at 4-1). ACI is among the list of district offices assigned a DLN. See “Service Center and District Location Codes” (at 4-5). In addition, ACI is identified as the district with collection jurisdiction over the international “region” (See “Collection” at 11-4).

¹An earlier version of the FOD had been established in 1955 “as a division in the Internal Revenue District, Baltimore,” IRM 11(13)3.(51)(1). The FOD was “reconstituted” in 1982 under the Commissioner’s section 7621 authority to establish internal revenue districts. Id.; See also TDO No. 150-96, 1986-1 C.B. 686 (March 15, 1983).

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According to the IRM, “within each district there are subordinate posts of duty in communities where the workload requires the assignment of personnel.” IRM 1112.42(2). In ACI, RSRs are the subordinate posts of duty.

Section 1271(11)(91) of the IRM Handbook provides “the [FOD, now ACI,] is responsible for Service activities abroad, which are conducted through a network of 15 foreign posts, managed by Revenue Service Representatives (RSRs), who provide the principle contact between the IRS and Americans in foreign countries.”

Additionally, FOD, now ACI,

maintains, through the Foreign Programs Division, a network of 15 foreign posts, managed by Revenue Service Representatives (RSRs), who provide the principal contact between the IRS and Americans living abroad. These posts function, in part, like miniature IRS district offices.

IRM Handbook 1271(11)81(5).

As subordinate posts within ACI, RSRs accept individual tax returns they receive by mail, and the Service has considered a return so accepted as filed as of the date of the postmark of the return. One RSR estimates that this has been the practice for as long as thirty years.

IN Memorandum No. 59-2, dated August 31, 1990, provides instruction on transmitting remittances of tax due received at overseas posts. RSRs follow these procedures when transmitting remittances of tax paid with income tax returns filed at their posts.

The number of tax returns accepted by RSRs is not insubstantial. As an example, during 1996, 1997, and 1998, one RSR processed a total of 20,615 returns and remittances totaling \$245,602,487.98². These numbers do not include extension requests accepted, nor does it include the number of estimated tax returns accepted. Other RSRs also report significant filing activity at their posts.

Thus, under a longstanding internal policy consistent with the Commissioner's authority under section 6091(b)(5) and Treas. Reg. section 6091-4(a)(1), RSRs, as subordinate posts of duty within ACI, have accepted income tax returns of U.S. citizens residing outside the United States and nonresident aliens that are mailed to the RSRs' posts of

²We do not have a breakdown of returns into those mailed and those hand carried. However, information from many RSRs indicate that mailed returns are a significant portion of returns filed at the RSR posts.

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duty. The Service has considered a return so accepted as filed as of the date of the postmark of the return.

Issue 2

Absent legal or administrative restrictions, a taxpayer may hand carry its return to the place for filing the return. Prior to the amendment of section 6091 in 1966, the Code did not contain a rule for hand carrying returns. Nevertheless, it was understood that a taxpayer could hand carry his or her income tax return to the office at which the taxpayer could otherwise properly file his or her return, at that time the internal revenue district office serving the taxpayer. This ability to hand carry returns was acknowledged in the legislative history to the 1966 amendments to section 6091, which noted that “a taxpayer who desires to file his return in person [could] continue to so do as at present by hand carrying it to his local Internal Revenue Service office.” S. REP. NO. 1625, 89th Cong., 2d Sess. 805 (1966) Thus, when no restriction has been placed on the ability to hand carry returns under the law, regulations, or administrative practice, the assumption in the past has been that a taxpayer may hand carry a return to the place identified for filing the return.

Neither the Code nor the regulations provide guidance with respect to hand carrying income tax returns of U.S. citizens residing outside the United States and nonresident aliens.

In 1966, the section 6091 was amended to address hand carried returns with respect to certain taxpayers. In that year, Congress amended section 6091 to effectuate a change from local filing to filing with regional service centers. S. REP. NO. 1625 803-05. Section 6091(b)(4) was enacted contemporaneously to change the place of filing from the service centers to the local internal revenue district offices if a return was filed by hand carrying. However, the 1966 amendments to section 6091 did not specify the place for filing returns of U.S. citizens residing outside the United States and nonresident aliens; instead, section 6091(b)(1)(B) said that the place of filing such returns would be determined under regulations. Section 6091(b)(4), relating to certain hand carried returns, by its terms, did not apply to returns of U.S. citizens residing outside the United States or nonresident aliens; the place for filing such returns would be determined by regulations and there was no need to provide a different place for hand carrying in the statute.

Similarly, the regulations under section 6091(b)(1)(B) provide no guidance with respect to hand carrying returns of U.S. citizens residing outside the United States and nonresident aliens. Treas. Reg. section 1.6091-3 provides that the returns of U.S. citizens residing outside the United States and those of any nonresident alien “shall be

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filed with the Director of International Operations...or the district director, or the director of the service center, depending on the appropriate officer designated on the return form or in the instructions issued with respect to such form.” Treas. Reg. section 1.6091-3 does not address hand-carried returns. Section 6091(b)(4) and Treas. Reg. section 1.6091-2(d)(1), which determine the place of filing hand carried return for certain taxpayers do not, by their terms, apply to U.S. citizens residing outside of the United States and nonresident aliens.

The lack of guidance with respect to hand carried returns of U.S. citizens residing outside of the United States and nonresident aliens has the effect of making the proper place for hand carrying these returns anyplace they can otherwise be filed. Because U.S. citizens residing outside the United States and nonresident aliens may file income tax returns with RSRs, as discussed in Issue 1, such taxpayers may hand-carry their returns to RSRs for filing.

Issue 3

Code section 6151 requires that payment of tax be made “to the internal revenue officer with whom the return is filed and at the time and place fixed for filing.” See Code section 6151 and Treas. Reg. section 1.6151-1.

As discussed in Issues 1 and 2, income tax returns of U.S. citizens residing outside the United States and nonresident aliens may be mailed or hand carried to their RSRs. Payment of any tax due with the return must be made to the RSR with the mailed or hand carried return.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

Although the Commissioner permits filing certain returns with the RSR, neither the statutory language, nor the regulations, nor the instructions to the relevant forms give any indication of this possibility. Similarly, in researching this issue, we discovered that, although section 6091(b)(4) appears to indicate the proper place for domestic taxpayers to hand carry their returns, hand carried returns are accepted in any district office, regardless of the residence of the taxpayer. Thus, consistent with good customer service, the Commissioner appears to be permitting hand carrying to different internal revenue districts to a much greater extent than is currently recognized in the statute, regulations and instructions to forms.

Some of the regulations under section 6091 need to be updated to reflect organizational changes in recent years, and will need to be updated to conform to the

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changes in IRS structure in the near future. When updating the regulations, the Service should consider how to encourage filing in the most efficient manner, consistent with the legislative history of the 1966 changes to section 6091, but also reflect the current flexibility in filing options.

In addition, we recommend that the regulations under section 6091 that apply to taxes other than the income tax be reviewed for consistency and currentness.

If you have any further questions, please call CC:INTL:Br1 at (202) 622-3880.