

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200448045**

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CC:PA:APJP:B02: NMGalib

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UILC: 6201.00-00, 6201.03-00

date: July 08, 2004

to: Associate Area Counsel (Cleveland)
(Small Business/Self-Employed)
CC:SB:4

from: Carol P. Nachman
Special Counsel, Administrative Provisions & Judicial Practice
(Procedure & Administration)
CC:PA:APJP

subject: Advisory Opinion on Collection of Taxes

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

We have reviewed the proposed memorandum entitled "Advisory Opinion on Collection of Taxes" and generally concur with your conclusion that I.R.C. § 6201(a)(3) allows the overstated withholding credits to be assessed using the math error procedures of I.R.C. § 6213(b). To reflect that the withholding credits are assessed in the same manner, but are not themselves math errors, we recommend reworking the concluding paragraph on page 5 to read:

[REDACTED]

In addition, for the unlimited statute of limitations under I.R.C. § 6501(c)(1) to apply, the taxpayer must have had an "intent to evade tax." Although the taxpayer's conviction under I.R.C. § 7206(1) conclusively establishes that the taxpayer filed a false return, it does not conclusively establish that the taxpayer had the requisite intent to evade tax. See, e.g., Wright v. Commissioner, 84 T.C. 636 (1985). We request that you contact this office if the taxpayer claims that the facts in this case, and the conviction under I.R.C. § 7206(1), are not sufficient to establish an intent to evade tax.

Please call 202 622-4940 if you have any further questions.