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CONTACT INFORMATION ON STATUTORY NOTICES OF DEFICIENCY: Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Service Contact Information on the Face of the Statutory Notice of Deficiency and Include Low Income Taxpayer Clinic Information with Notices Impacting that Population

PROBLEM

Section 1102(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) provides that statutory notices of deficiency (SNODs) “shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”¹ The Conference Report provided further clarification by stating the IRS should publish information on the right to contact Taxpayer Service (TAS) “on” the SNOD, as opposed to “with” the notice.²

A TAS review of the current IRS inventory of SNODs found that the majority do not include the contact information for the local TAS office on the face of the notices and, in several instances, the wrong TAS office is listed. Congress enacted this provision of RRA 98 to ensure that taxpayers are aware of their right to contact the local office of the Taxpayer Advocate Service at a crucial point in their tax controversy. Taxpayers need to know they can talk to someone in their own state who has knowledge of the underlying local economic conditions that might affect the case. When the taxpayer receives a SNOD, the IRS has not actually assessed the additional tax, and the taxpayer still has a limited opportunity to address the issue directly with the IRS or petition the Tax Court. It is also an ideal time for the IRS to inform certain taxpayers about the services provided by low income taxpayer clinics (LITCs), as well as their contact information. While TAS employees can explain to the taxpayer the right to file a petition in the Tax Court, LITC practitioners can assist an eligible taxpayer throughout the tax controversy and represent the taxpayer in court.

EXAMPLE

A taxpayer receives a statutory notice of deficiency (SNOD) proposing a \$3,000 adjustment due to the disallowance of the Earned Income Tax Credit (EITC). The SNOD was mailed with a Notice 1214, *Helpful Contacts for Your Notice of Deficiency*, containing TAS contact information, but it became separated from the SNOD after receipt by the taxpayer. The taxpayer does not agree with the adjustment and has tried to call the IRS to ask what he needs to do to resolve the issue, but his calls never go through to a live assistor. The notice includes language informing the taxpayer of his right to contact TAS, but the taxpayer does not understand that he can seek assistance from the local office of TAS and a low income taxpayer clinic in his county.

1. Pub. L. 105-206, 112 Stat. 703 (1998). The RRA 98 provision amends IRC § 6212(a) to require the additional language on statutory notices of deficiency.
2. H.R. REP. NO. 105-599, at 215 (1998) (Conf. Rep.). Because both RRA 98 and IRC § 6212 address both the right to contact TAS and the contact information together, we believe that the conference report language stating that the information should be on the notice should apply to both.

RECOMMENDATIONS

To bring the IRS inventory of statutory notices of deficiencies (SNODs) into compliance with § 1102(b) of RRA 98 and to inform taxpayers of their right to seek the assistance at the local office of the Taxpayer Advocate Service (TAS) and Low Income Taxpayer Clinics (LITCs), the National Taxpayer Advocate recommends that Congress revise Internal Revenue Code (IRC) § 6212 to require the IRS to do the following:

1. Include language on the face of the SNOD informing the taxpayer of the right to contact a local office of TAS. Such language should also provide the address and phone number of the TAS office aligned with the taxpayer's last known residence.
2. For SNODs determined by the IRS, in consultation with the National Taxpayer Advocate, to have a significant probability of impacting low income taxpayers, include language on the face of the notice describing LITCs and provide a website link that lists contact information for all the LITCs.
3. For SNODs that are certain to impact low income taxpayers (e.g., those proposing to assess the Earned Income Tax Credit), also include in the envelope used to mail the SNOD Publication 4134, Low Income Taxpayer Clinic List, which provides information on the services provided by LITCs and contact information for each clinic.

PRESENT LAW

Section 1102(b) of RRA 98

Section 1102(b) of RRA 98 amended IRC § 6212(a) to provide that SNODs “shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”³ Furthermore, the Conference Report states “The IRS would be required to publish the taxpayer’s right to contact the local Taxpayer Advocate on the statutory notice of deficiency.”⁴

Chief Counsel Opinion

In response to a request for legal opinion by TAS, the IRS Office of Chief Counsel has opined that the IRS complies with § 1102(b) of RRA 98 when it provides Notice 1214 as an insert in the SNOD. Counsel further explained that Notice 1214 was developed by the IRS for the purpose of complying with RRA 98. In fact, the description of the notice on the IRS Forms Repository site includes the following language: “This notice is issued to conform with the IRS restructuring and reform act of 1998 section 1102(b). It was included as an insert with all statutory notices of deficiency (90-Day Letters).” Counsel supported its opinion by stating that the SNOD includes language regarding TAS and Notice 1214 is listed as an enclosure on the SNOD.⁵

Validity of the SNOD

In *John C. Hom & Associates, Inc. v. Commissioner*, the Tax Court addressed the validity of the SNOD when it does not include all the information required by RRA 98. Specifically, the taxpayer argued that the SNOD was invalid for failing to include the address and telephone number of the local office of

3 Pub. L. 105-206, § 1102(b) 112 Stat. 685, 703 (1998). The RRA 98 provision amends IRC § 6212(a) to require the additional language on statutory notices of deficiency.

4 H.R. REP. No. 105-599, at 215 (1998) (Conf. Rep.).

5 Email from the Office of the Special Counsel to the National Taxpayer Advocate to a TAS Senior Attorney-Advisor (Nov. 20, 2014).

the National Taxpayer Advocate and that inclusion of a web page link is inadequate compliance with IRC § 6212. The court held that the SNOD was valid and complied with IRC § 6212 despite including only the web link.⁶ Note that this opinion only addressed the validity of the SNOD for jurisdictional purposes. The opinion did not address whether the IRS actually complied with RRA 98 by only including the Web page link on the face of the notice.⁷

IRC § 7526

IRC § 7526 created the LITC program and authorizes the IRS to award matching grants of up to \$100,000 per year to qualifying clinics. Such clinics cannot charge more than a nominal fee for services (except for reimbursement of actual costs incurred). They must represent low income taxpayers involved in controversies with the IRS and provide education and outreach on the rights and responsibilities of U.S. taxpayers who speak English as a second language. LITCs are generally legal aid or legal services organizations: clinics at accredited law, business, or accounting schools, and other not-for-profit organizations that provide services to the poor.

REASONS FOR CHANGE

Inclusion of TAS Information on the Face of the SNOD

The taxpayer's receipt of a SNOD is a critical point in the audit or appeals process. The taxpayer needs information about what he or she must do to protect the right to an independent review of the proposed deficiency prior to assessment. The SNOD is a pre-assessment document, which means the taxpayer may still have the opportunity resolve the issue before going to the Tax Court.

TAS reviewed the inventory of SNOD templates and notices and found 11 of 17 current ones failed to comply with the requirements in RRA 98. Of the 11 SNODs that failed, eight included, as an insert or stuffer in the envelope with the SNOD, Notice 1214, *Helpful Contacts for Your Notice of Deficiency*, which has the addresses and phone numbers of the local TAS offices.⁸ In addition, two included the information on the face of the notice but only auto-populated one particular TAS office rather than one near the taxpayer.⁹ Finally, one notice included as a stuffer Publication 3953, which includes information about TAS.¹⁰ While the Tax Court has held the SNOD is still valid with the language required by IRC § 6212(a), it is our position that the failure of the IRS to strictly comply with the RRA 98 requirements harms taxpayers.¹¹

6 140 T.C. 210 (2013), *appeal docketed*, No. 13-72684 (9th Cir. July 31, 2013).

7 See also *Comm'r v. Forest Glen Creamery Co.*, 98 F.2d 968, 971 (7th Cir. 1938) (holding that documents with the notice must be considered when determining if the taxpayer was misled by errors for notice validity purposes).

8 The following SNODs include Notice 1214 as a stuffer: CP 3219N, Letter 531A, Letter 531B, Letter 531C, Letter 531J, Letter 902 (DO), Letter 902-T, and Letter 1384 (SC).

9 CP 3219A, *Notice of Deficiency – AUR IMF*, auto-populates the notice with the TAS Austin, Texas office information. Letter 3219C auto-populates the Atlanta, Georgia office information on every notice issued.

10 Letter 3523, *Notice of Determination of Worker Classification* (NDWC), is not technically a statutory notice of deficiency, but we added this letter to the list because it is similar to a SNOD in that it provides the taxpayer the right to petition Tax Court to contest a proposed assessment of tax. It is the statutory notice for employment tax when there is a controversy involving worker classification or § 530. TAS contact information is included in Publication 3953, *Q&A's About Tax Court Proceedings for Determination of Employment Status Under IRC Section 7436*, which is sent along with Letter 3523. See IRS response to TAS information request (July 31, 2014). For more detail on the SNODs reviewed by TAS, see Most Serious Problem: *Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*, *supra*.

11 *John C. Hom & Associates, Inc. v. Comm'r*, 140 T.C. 210 (2013), *appeal docketed*, No. 13-72684 (9th Cir. July 31, 2014).

Congress was very clear that it did not want the IRS to merely give out a national contact number for the Taxpayer Advocate Service. Instead, by requiring the National Taxpayer Advocate to ensure that the phone numbers of the local offices are published, Congress specifically wanted taxpayers to know how to seek assistance from the nearest Local Taxpayer Advocate (LTA) office.¹² The Conference Report gave further clarification by stating that the IRS should publish the right to contact the local office of TAS “on” as opposed to “with” the SNOD.¹³

The IRS Office of Chief Counsel has informally opined that by inserting Notice 1214 into the SNOD envelope, the IRS has complied with the requirements of RRA 98 regarding local contact information. We vigorously disagree with Counsel’s legal reasoning in its opinion. Because of the fundamental disagreement as to what is necessary to satisfy the requirements of RRA 98, Congress should make clear what the IRS is required to do to adequately inform certain taxpayers of their right to seek assistance from the local office of TAS or an LITC.¹⁴

This recommendation does not address the validity of the SNOD for Tax Court jurisdictional purposes. As the Tax Court noted in *Hom*, inclusion of a mere link to a website providing TAS information is enough to give the SNOD validity for purposes of the current language of IRC § 6212. However, we are proposing that Congress revise the language of the statute to make it consistent with the intent of § 1102(b) of RRA 98. Just because a SNOD is valid for Tax Court jurisdictional purposes does not mean that the IRS is in compliance with RRA 98 when it issues a SNOD without adequate language to inform the taxpayer of the right to seek assistance from a local office of TAS.

Finally, the provision of local TAS contact information in this proposed manner furthers the taxpayers’ *right to a fair and just tax system*. The Taxpayer Bill of Rights specifically defines this right by providing that taxpayers have the right to seek assistance from TAS if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. Therefore, by not clearly providing local address and telephone contact information for TAS on the SNOD as required by RRA 98, the IRS is infringing on the taxpayers’ rights.

Inclusion of LITC Information on the Face of and as an Insert to the SNOD

Certain taxpayers could benefit from seeking assistance from an LITC at the point in the tax controversy when they receive the SNOD. LITCs represent low income individuals and their services are free or low cost for eligible taxpayers. LITCS assist taxpayers in disputes with the IRS, including audits, appeals, collection matters, and federal tax litigation. They can also help taxpayers respond to IRS notices and correct account problems. LITCs also provide education for low income taxpayers and taxpayers who speak English as a second language (ESL) about their taxpayer rights and responsibilities.¹⁵ There are currently 131 LITCs.¹⁶ In 2013, LITCs represented almost 21,000 taxpayers in over 18,000 cases and provided

12 Pub. L. 105-206, § 1102(a), 112 Stat. 701 (1998) (adding IRC § 7803(c)(2)(C)(iii), which requires the National Taxpayer Advocate to ensure that the local telephone number for each local TAS office is published and available to taxpayers in that local area).

13 H.R. REP. No. 105-599, at 215 (1998) (Conf. Rep.).

14 Email from Office of the Special Counsel to the National Taxpayer Advocate to a TAS Senior Attorney Advisor (Nov. 20, 2014).

15 IRC § 7526. LITCs, their employees, and their volunteers are independent from the IRS but receive some of their funding from the IRS through the LITC grant program. Each clinic determines whether prospective clients meet income guidelines and other criteria before agreeing to represent them. See <http://www.taxpayeradvocate.irs.gov/Tax-Professionals/Low-Income-Taxpayer-Clinics>.

16 See IRS Publication 4134, *Low Income Taxpayer Clinic List* (Jan. 2014) (listing 133 clinics, but two subsequently withdrew from the program).

consultation and advice to over 25,000 additional taxpayers.¹⁷ A clinic practitioner could ensure that the taxpayer is aware of the available options at the time the IRS issues the SNOD. Most importantly, the taxpayer can receive assistance in filing a timely petition with the Tax Court, if necessary.¹⁸

The provision of a description of LITCs and a website link to a list of all LITCs on the face of those SNODs likely to impact low income taxpayers will ensure that these taxpayers have sufficient information if they choose to seek the assistance of an LITC.¹⁹ For those SNODs that by definition impact this taxpayer population—for example, those proposing to assess the EITC, it is important to also include the contact information as an insert. The provision of the LITC information in the proposed manner also furthers the taxpayers’ *right to retain representation*. The Taxpayer Bill of Rights specifically defines this right by including the following language: “Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.”²⁰

EXPLANATION OF RECOMMENDATION

To ensure that the IRS adequately informs taxpayers of their right to contact the local office of the Taxpayer Advocate Service, the National Taxpayer Advocate recommends that Congress include language in IRC § 6212 explicitly directing the IRS to place the address and phone number of the TAS office closest to the taxpayer’s address in a prominent manner on the face of the SNOD. The revision of the provision would first provide that the IRS must place on the face of the SNOD language informing the taxpayer about the right to contact the local office of TAS. The revision would also direct the IRS to place on the face of the SNOD the address and phone number for the TAS office aligned with the zip code of the taxpayer’s last known address.

In addition, Congress should revise IRC § 6212 to require the IRS to include on the face of those SNODs determined to have a chance of impacting low income taxpayers language describing LITCs and provide a website link for the contact information.²¹ The IRS would select the SNODs most likely to impact low income taxpayers in consultation with the National Taxpayer Advocate. For example, SNODs for tax deficiencies related to the EITC, Premium Tax Credit (PTC), Automated Underreporter (AUR), and Automated Substitute for Return (ASFR) are likely to impact low income taxpayers.

For those SNODs that include deficiencies that, by definition, will impact low income taxpayers, the IRS should also include in the SNOD envelope an insert with information describing the services provided by LITCs as well as the addresses and phone numbers of such clinics. The IRS shall determine those SNODs certain to impact low income taxpayers in consultation with the National Taxpayer Advocate. For example, SNODs with deficiencies for EITC and PTC should include such inserts because the income and subject matter of these deficiencies indicate that the taxpayers may be eligible for LITC assistance.

17 In 2013, the LITCs represented 20,972 taxpayers in 18,144 cases and provided consultation and advice to 25,179 additional taxpayers. TAS LITC Program Office (Dec. 5, 2014); for more data which illustrates how LITCs help low income taxpayers, see IRS Publication 5066, *Low Income Taxpayer Clinics Program Report 3*, 9, 12 (Dec. 2014).

18 IRC § 7526.

19 We are not suggesting that the IRS include a specific LITC located in the taxpayer’s geographic area on the face of the SNOD because the IRS is precluded from doing so. See National Taxpayer Advocate 2007 Annual Report to Congress 551-53 (Additional Legislative Recommendation: *Referral to Low Income Taxpayer Clinics*).

20 For more information on the Taxpayer Bill of Rights, see <http://www.taxpayeradvocate.irs.gov/about-tas/taxpayer-rights#rights>.

21 For example, the IRS could provide a link to the LITC page on <http://www.irs.gov/advocate> or a link to IRS Publication 4134, *Low Income Taxpayer Clinic List*.

IRS Pub. 4134, *Low Income Taxpayer Clinic List*, is a four-page document providing:

- A brief description of the services provided by LITCs and taxpayer eligibility to receive such services;
- Clinic locations by geographic area;
- Phone numbers;
- The type of clinic; and
- The languages served at each clinic.

The list of clinics is updated annually. IRS could use the periodically updated version of Publication 4134 as an insert to the SNOD. Because Publication 4134 is a specific purpose publication, it is less likely to be thrown out than a general use document, especially if targeted to the appropriate population.²² Note that Publication 4134 is not included in the envelope with all SNODs. We are mindful of the IRS interest in minimizing postage costs.²³ However, informing the targeted population of their rights is money appropriately spent.

22 Treasury's Go Direct campaign, which began in 2005, found that inserts can be effective if they include a clear message and strong visual graphic tailored specifically to each target audience. Information Provided by Weber Shandwick to TAS (Oct. 10, 2014).

23 The IRS Printing and Postage Budget Reduction Implementation Team proposed the elimination of all non-mandatory inserts in all correspondences. IRS Media & Publications, *PPBR Proposals Approved for Implementation* (Sept. 2010).