



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR Jeffrey Johnson, IFASP Specialist
Office of the Assistant Commissioner, International

FROM: Elizabeth G. Beck, Senior Technical Reviewer, CC:INTL:BR6

SUBJECT: I.R.C. § 6501(c)(8)

This Technical Assistance responds to your memorandum dated January 18, 2000, requesting advice on the application of I.R.C. § 6501(c)(8). Technical Assistance does not relate to a specific case and is not binding on Examination or Appeals. This document is not to be used or cited as precedent.

Your questions are as follows:

Question 1:

Does the statutory extension of the statute of limitations provided by section 6501(c)(8) of the Internal Revenue Code (the Code) apply only with respect to the information required to be reported under the listed Code sections (6038, 6038A, 6038B, 6046, 6046A, and 6048), or does it apply to the entire income tax return?

For example, assume that on March 15, 2000, a taxpayer timely files Form 1120 for calendar year 1999 but fails to attach Form 5472 as required by Treas. Reg. § 1.6038A-2(a). On February 15, 2001, during examination, the taxpayer submits Form 5472, reporting in Part IV several 1999 transactions with foreign related parties. In September 2003, Examination discovers an error in the taxpayer's 1999 deductions for depreciation on assets unrelated to any of the transactions reportable on Form 5472. Assuming no other adjustment to the statute of limitations under section 6501 occurs:

- a. Has the Service lost its right to assert any deficiency attributable to the depreciation after March 15, 2003, the expiration of the period of limitations without regard to section 6501(c)(8), or has section 6501(c)(8) operated to extend the period to February 15, 2004, the date three years after submission of the required Form 5472 information?

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- b. Is the result different if Part IV of Form 5472 was not required to be completed because all reportable transactions were with domestic related parties?

Discussion:

Section 6501(c)(8) of the Code provides as follows:

(8) FAILURE TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS.—In the case of any information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any event or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported.

The Senate Finance Committee states in its explanation of this provision:

[I]n the case of a failure to report required information with respect to a foreign corporation, partnership, or trust, the statute of limitations with respect to any event or period to which such information relates [shall] not expire before the date that is three years after the date on which such information is provided.

Staff of Senate Comm. on Finance, 105th Cong., 1st Sess., Revenue Reconciliation Act of 1997 (as Reported by the Committee on Finance), S. Rep. No. 105-33, at 210 (June 20, 1997).

The application of section 6501(c)(8) was clarified in January 2000. In response to public comments on proposed regulations under section 6038 relating to foreign corporations and foreign partnerships, the preamble to final regulations under sections 6038 and 6038B stated:

The IRS and Treasury wish to clarify that if a U.S. person fails to comply with sections 6038, 6038B, or 6046A, the extended statute of limitations provided by section 6501(c)(8) shall apply only to the tax consequences related to the information required to be reported under the relevant reporting section and not to all transactions within the U.S. person's tax year at issue. For example, if a U.S. person with a calendar tax year fails to comply with section 6038 for a controlled foreign partnership's 2001 calendar tax year, section 6501(c)(8) will only extend the statute of limitations applicable to the U.S. person's tax year with respect to any tax consequences associated with the

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U.S. person's interest in the foreign partnership during the partnership's 2001 tax year.

T.D. 8850, 2000-2 I.R.B. 265, 268. Though the above comments do not specifically address the reporting requirements under sections 6038A, 6046, and 6048, section 6501(c)(8) should be applied in a consistent manner to all the listed code sections (that is, sections 6038, 6038A, 6038B, 6046, 6046A, and 6048).

Accordingly, section 6501(c)(8) keeps the assessment period open beyond the normal three-year period of limitations only for the tax imposed with respect to any event or period to which information required to be furnished to the Service relates. Therefore, the extension of the statute of limitations does not apply to the entire income tax return.

With respect to Form 5472, section 6038A(b) grants the Secretary authority to prescribe by regulations the information which must be furnished under section 6038A(a) by "reporting corporations." Pursuant to this grant of regulatory authority, Treas. Reg. § 1.6038A-2 specifically identifies the information required to be furnished, as well as the manner in which such information is to be presented. Specifically, Treas. Reg. §§ 1.6038A-1(b) and 1.6038A-2(a)(1) require a reporting corporation to furnish the information required by section 6038A(a) and described in section 1.6038A-2 by filing an annual information return (Form 5472) with its applicable income tax return.

In your example, if the taxpayer timely files Form 1120 for its 1999 taxable year on March 15, 2000, but waits until February 15, 2001, to submit an untimely, but complete, Form 5472 for its 1999 taxable year, the statute of limitations will be extended only with respect to the tax affected by items required to be reported on Form 5472. The statute on the assessment of tax affected by those items will begin to run on February 15, 2001, which is the date the required information was furnished to the Service.

With respect to the error in taxpayer's 1999 deductions for depreciation on assets unrelated to transactions reportable on Form 5472, section 6501(c)(8) does not extend the statute of limitations on the assessment of tax affected by these items beyond March 15, 2003, because the information is not required to be reported on Form 5472. The filing of the Form 5472 will not operate to extend the statute of limitations until February 15, 2004, the date three years after the submission of the required Form 5472 information.

This result would not change simply because Part IV ("Monetary Transactions Between Reporting Corporations and Foreign Related Party") of Form 5472 was not required to be completed since all reportable transactions were with domestic related parties. A reporting corporation under section 6038A must provide

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information on a Form 5472 if it had reportable transactions with a domestic related party as well as with a foreign related party. Treas. Reg. §§ 1.6038A-2(b)(1), 1.6038-2(b)(2), and 1.6038-2(f)(2); but see Treas. Reg. § 1.6038A-2(f)(3) (limited exception where information required by sections 6038 and 6038A is contained in a return of information on Form 5471).

Question 2:

For purposes of the monetary penalty under Code section 6038A(d), Treas. Reg. § 1.6038A-4(1)(a) states that the filing of a “substantially incomplete” Form 5472 constitutes a failure to file Form 5472. Does the “substantially incomplete” standard also apply for purposes of section 6501(c)(8)? For example, assume the taxpayer has \$400,000 of reportable transactions but reports only transactions totaling \$250,000 on Form 5472.

- a. If the Form 5472 is found to be “substantially incomplete,” does section 6501(c)(8) hold open the statute of limitations on assessment with respect to \$400,000 or \$150,000?
- b. If the Form 5472 is accepted as complete enough to preclude the monetary penalty, may the Service nevertheless apply section 6501(c)(8) with respect to the \$150,000 of omitted transactions?

Discussion:

Section 6501(c)(8) expressly refers to the “information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048.” These Code sections, together with their related regulations, identify specific reportable information and the manner in which that information is reported to the Service. Upon a taxpayer’s failure to report as required by the enumerated Code sections, section 6501(c)(8) itself provides for a specific consequence — an extension of the time for assessment. This section does not provide any independent reporting requirements, nor does it make any provision regarding the manner of reporting. Accordingly, for the purposes of section 6501(c)(8), whether a taxpayer has failed to report required information under one of the enumerated Code sections should be evaluated using the standard established by the particular section and the applicable regulations. In other words, section 6501(c)(8) will only be triggered where the taxpayer has failed to report pursuant to one of the listed Code sections.

Treas. Reg. § 1.6038A-4(a)(1) provides that the filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. There is nothing in this provision or elsewhere in the section 6038A regulations that states or implies that the

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provision applies solely for purposes of the section 6038A(d) monetary penalty. We believe this language would also apply for purposes of section 6501(c)(8). Section 6501(c)(8) is implicated when there is a failure to furnish “information which is required to be reported” under the enumerated Code sections. The filing of a substantially incomplete Form 5472 is deemed a failure to furnish any of the information required by section 6038A. See Treas. Reg. § 1.6038A-2 (a reporting corporation shall furnish the information required by section 6038A by making an annual information return on Form 5472). Accordingly, where a substantially incomplete Form 5472 is filed, section 6501(c)(8) applies as if Form 5472 had not been filed.

In your example, a taxpayer has \$400,000 of reportable transactions but only reports transactions totaling \$250,000 on Form 5472. Where the Form 5472 is considered to be “substantially incomplete” and thus a failure to furnish information, the period of limitations on assessment is extended under section 6501(c)(8) to three years after the date the information is furnished by filing the required Form 5472. Under the facts in your example, the extension of the statute of limitations would apply with regard to the assessment of tax affected by the entire \$400,000 of reportable transactions.

We wish to emphasize that a Form 5472 which reports only \$250,000 of a total of \$400,000 of reportable transactions might well be considered “substantially incomplete.” If, however, for the limited purposes of the present example, such a Form 5472 is determined to be sufficiently complete to constitute a filing of the Form 5472 under Treas. Reg. § 1.6038A-4(a)(1), the statute of limitations on assessment is not extended beyond three years from the date of filing of the Form 5472 under section 6501(c)(8) with respect to any event or period to which the required information that was in fact furnished relates. In other words, the statute of limitations is not extended beyond three years with regard to the assessment of tax affected by items reported on the Form 5472 or, in your example, the \$250,000 of reported transactions. But if the taxpayer has nevertheless failed to report all of the required information as in your example (here, \$150,000 of reportable transactions), section 6501(c)(8) would apply as if Form 5472 had not been filed with respect to this information, and the period of limitations would accordingly be extended to three years after the date the information is furnished with respect to the assessment of tax affected by the unreported \$150,000 of reportable transactions. This is because, by failing to report reportable transactions, the taxpayer has not, in fact, reported some of the information “required to be reported to the Secretary under section ... 6038A” within the meaning of section 6501(c)(8).

Question 3:

Does “the information required to be reported” under section 6501(c)(8) as it applies to section 6038A include submissions other than Form 5472, e.g.,

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Information Document Requests (IDR's), authorizations of agency under section 6038A(e)(1), and information subject to summons under section 6038A(e)(2)?

Discussion:

With respect to “the information required to be reported” under section 6038A, section 6038A(b) and Treas. Reg. §1.6038-2 specifically identify the information which must be reported by section 6038A reporting corporations on an annual information return (Form 5472). Submissions other than Form 5472, such as IDR's, authorizations of agency under section 6038A(e)(1), or information subject to summons under section 6038A(e)(2), fall outside the scope of section 6038A(b), and are distinguishable from those which concern information reporting on Form 5472.

An IDR is a written request for information — i.e., documents and testimony — relating to an examination of a taxpayer, issued by Examination to the taxpayer under the authority of section 6001. See Treas. Reg. §§ 1.6001-1(d), 1.6038A-3(a). Section 6001 specifically empowers the Service to require any person, by notice, to render such information as the Service deems sufficient to show whether such person is liable for tax. Under the section 6038A regulations, a reporting corporation must maintain records as described in Treas. Reg. § 1.6038A-3. Thus, an IDR seeks information required to be maintained by a taxpayer but not necessarily filed with the Service, and seeks that information during an examination. This is different from the Form 5472 information to be filed by a reporting corporation with the Service on or before the due date (with extensions) of its tax return for that taxable year. Treas. Reg. § 1.6038A-2(d).

An authorization of agency is also different. It is likewise a means to obtain information, but not, in itself, “information.” In other words, an authorization of agency is simply a delegation of authority by a foreign related party to the reporting corporation to act as its agent for purposes of the Service applying its examination authority under section 6001 and its summons authority under sections 7602-7604 with respect to transactions with that foreign related party. Where a foreign related party does not authorize the reporting corporation to act as its limited agent for these purposes, section 6038(e)(3) provides that:

(A) the amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(B) the cost to the reporting corporation of any property acquired in such transaction from the related party (or transferred by such corporation in such transaction to the related party),

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shall be the amount determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

See also Treas. Reg. § 1.6038A-7.

Information subject to summons is likewise distinguishable from the "information required to be reported" under section 6038A. Section 6038A(e)(2)(A) makes reference to a situation in which the Secretary, pursuant to the authority granted by section 7602(a)(2), issues a summons to a reporting corporation to produce records or testimony necessary for the determination of the correct tax treatment of any transaction between the reporting corporation and a foreign related party. As with an IDR, such a summons seeks information maintained by a taxpayer but not necessarily filed with the Service and is thus different from the Form 5472 information filing requirement. The noncompliance penalty of section 6038A(e)(3) is applicable in the case of a failure to substantially and timely comply with a summons to produce records or testimony. See Treas. Reg. § 1.6038A-7. Section 6038A(e)(4)(D) also provides for a separate suspension of the statute of limitations on assessment under certain circumstances in connection with summonses. See Treas. Reg. § 1.6038A-6(e).

Question 4:

What is the meaning of the word "event" in section 6501(c)(8)? When would the statute of limitations on assessment be extended with respect to an "event" as distinct from a "period"?

Discussion:

Like the section 6038A(a) reportable transactions discussed above, most of the information required to be reported under the Code sections listed in section 6501(c)(8) relates to discrete events. For example:

- Section 6038 requires U.S. persons that control certain foreign corporations to report¹ certain transactions of the foreign corporation (see Treas. Reg.

¹ For the purposes of these Code sections, "report" means to file a return or form reporting the information.

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§ 1.6038-2(f)(11)). Certain U.S. partners that control foreign partnerships are also required to report information on certain partnership transactions and allocations (see Treas. Reg. § 1.6038-3(g));

- Section 6038B requires U.S. persons to report certain transfers of property to foreign corporations and foreign partnerships, as well as certain liquidation distributions to non-U.S. persons (see I.R.C. § 6038B(a));
- Section 6046 requires a return to be made by certain U.S. persons who are or become officers or directors of foreign corporations, or make certain acquisitions of the stock of foreign corporations;
- Section 6046A requires U.S. persons to report certain acquisitions and dispositions of interests in foreign partnerships, along with substantial changes in the proportional interests in foreign partnerships (see I.R.C. § 6046A(a)); and
- Section 6048 requires that the Secretary be provided written notice of specifically identified “reportable events” – a U.S. person’s creation, or transfer of money or property to, a foreign trust, and the death of a U.S. citizen or resident who was treated as the owner of a foreign trust (see I.R.C. § 6048(a)(3)). Also, section 6048 requires U.S. owners of foreign trusts to ensure that the foreign trust files an information return setting forth, among other things, a complete accounting of all trust activities (see I.R.C. § 6048(b)), and U.S. persons receiving distributions from a foreign trust to report information about the distributions (see I.R.C. § 6048(c)).

In most cases where the information required to be reported concerns a discrete event such as a transaction or transfer, the event itself may have distinct tax consequences for the reporting party. In these cases, pursuant to section 6501(c)(8), the assessment period with respect to the tax affected by the discrete event will not expire until the date three years after the date on which the Secretary is furnished the required information.

The information reporting requirements contained in the Code sections listed in section 6501(c)(8) may also concern “periods.” For example, Treas. Reg. § 1.6038A-2(d) requires that the Form 5472 be filed as part of the taxpayer’s annual income tax return. Thus the relevant period to which the information relates is taxpayer’s taxable year for which the Form 5472 was required to be filed. However, the extended statute of limitations provided by section 6501(c)(8) will apply only to the tax consequences related to the information required to be

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reported in the relevant taxable year and not to all transactions within that taxable year. Cf. T.D. 8850, 2000-2 I.R.B. 265, 268.²

Please note that section 6501(c)(8) does not apply to the assessment of monetary penalties for failure to furnish information under the enumerated Code sections. In particular, there is no statute of limitations on the period for assessment of these monetary penalties. See I.R.C. § 6671(a); Treas. Reg. § 601.106(a)(1)(iv).

If you have any questions, please contact Edward Barret at (202) 874-1889.

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² See the quoted language from the Treasury Decision at pp. 2-3, supra.