



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
May 7, 1999

CC:DOM:FS:PROC

Number: **199932015**
Release Date: 8/13/1999
UILC: 7121.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service)
CC:DOM:FS:PROC

SUBJECT: - Authority to Execute Closing
Agreements

This Field Service Advice responds to your memorandum dated February 5, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

Taxpayer =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

ISSUE(S):

1. Whether three closing agreements relating to a docketed Tax Court case drafted on Forms 906 (Rev. 1/87), and executed by the Appeals Team Chief, who has joint jurisdiction over the case under Rev. Proc. 87-24, 1987-1 C.B. 720, are binding upon the Service without additional signatures in the signature blocks provided for "Receiving Officer" and for "Reviewing Officer" under Paragraph 5 and/or 6 of Delegation Order No. 97, Revision 34.

2. Whether a closing agreement (“fourth closing agreement”) drafted on Form 906 (Rev. 1/87), executed by an Examination Team Chief, in a Coordinated Examination Program (CEP) case under his jurisdiction, is binding upon the Service without additional signatures in the signature blocks for “Receiving Officer” and for “Reviewing Officer” under Delegation Order No. 236, Rev. 3.

3. Whether execution of the signature blocks for “Receiving Officer” and for “Reviewing Officer”, located on the reverse side of Form 906 (Rev. 1/87) closing agreements is optional or required.

CONCLUSIONS:

1. With respect to the three closing agreements for the docketed years, the signature required on behalf of the Government is the signature of the Appeals Team Chief. Signatures for Receiving and Reviewing Officers, as provided for in Form 906 (Rev. 1/87), are not required for the agreements to be effective and valid.

2. With respect to the fourth closing agreement, the Examination (CEP) Case Manager is authorized to execute the agreement. However, the execution may only take place if the closing agreement was reviewed and approved by the Branch Chief. The agreement will be effective and valid if signed by the Examination (CEP) Case Manager after review and approval by the Branch Chief. Signatures for Receiving and Reviewing Officers are not required for the agreement to be effective and valid.

3. Although signatures for Receiving and Reviewing Officers, as provided for in Form 906 (Rev. 1/87), are not required for the agreement to be effective and valid, these signatures should not be regarded as “optional”, because existing Internal Revenue Manual procedures provide that the signatures should be obtained, and the Service’s closing agreement forms include signature lines for Receiving Officers and Reviewing Officers. Thus, the Service should nevertheless obtain signatures for Receiving and Reviewing Officers where feasible, unless and until Internal Revenue Manual procedures requiring such signatures are eliminated and the Form 906 is changed such that there are no signature blocks for Receiving and Reviewing Officers.

FACTS:

The parties have reached a basis for settlement on all issues in a docketed Tax Court case. Implementation of the settlement requires execution of four closing agreements. The first three closing agreements relate to settlement of all issues in the docketed years over which Counsel and Appeals have concurrent jurisdiction. The docketed years are taxable years 1, 2, and 3. A “timing” issue settled in the docketed years results in additional losses for the taxpayer in each of the docketed years in addition to a roll-out of losses and/or additional income in two subsequent cycles up through year 7. The roll-out of the losses and or additional income through year 7 is the mechanical result of settlement reached in the docketed years and does not present a substantive tax issue in the two subsequent cycles. The fourth closing agreement addresses the rollout of losses and/or additions to income for taxable years 4 through 7. The year 4 through year 5 cycle is presently under the jurisdiction of the Appeals Division. The case is a part of the CEP Program, and for the year 6 through year 7 cycle, the case is still with the Examination Division.

The three closing agreements for the docketed years were drafted on Forms 906 (Rev. 1/87) and have already been executed by the petitioner and the Appeals Team Chief. The taxpayer is in the process of executing the fourth closing agreement which will thereafter be executed on behalf of the Government by the Examination Case Manager. The Appeals Officer assigned to the case has been consulted and concurs that the resulting rollout of losses and/or additions to income in the year 4 through year 5 cycle, does not present a substantive tax issue in those years.

Form 906 (Revised 1/87), includes a page for the signatures of a “Receiving Officer” and “Reviewing Officer.”

LAW AND ANALYSIS

Issue 1

The delegation of authority to execute closing agreements is statutory. I.R.C. § 7121(a) authorizes the Secretary of the Treasury or his delegate to enter into closing agreements with respect to the tax liability of any person for any taxable period. Treasury Regulation 301.7121-1(a) and Treasury Order 150-07, delegate the authority to the Commissioner of Internal Revenue. The Commissioner delegates this authority further down the chain of command through a series of Delegation Orders.

A settlement agreement is not enforceable when the person entering into the agreement on behalf of the Commissioner lacked the authority to bind the Commissioner. Estate of Jones v. Commissioner, 795 F.2d 566 (6th Cir. 1986); Dorl v. Commissioner, 507 F.2d 406, 407 (2d Cir. 1974); Gardner v. Commissioner, 75 T.C. 475 (1980). In other words, a closing agreement is not binding if the agents who executed the agreement on the Commissioner's behalf did not have the delegated authority to do so. Botany Worsted Mills v. United States, 278 U.S. 282, 288-289 (1929); Reimer v. United States, 441 F.2d 1129, 1130 (5th Cir. 1971).

Delegation Order No. 97 (Rev. 34), effective August 18, 1997, IRM Handbook of Delegation Orders, is entitled "Closing Agreements Concerning Internal Revenue Tax Liability." Delegation Order No. 97 authorizes certain personnel in Chief Counsel, Examination, and Appeals to enter into closing agreements. Three of the closing agreements described above were executed by the petitioner and the Appeals Team Chief.

With respect to the authority of Appeals Team Chiefs to enter into closing agreements, the pertinent language (contained in paragraphs 5 and 6) of Delegation Order No. 97 is as follows:

5. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts), for a taxable period or periods ended prior to the date of the agreement and related specific items affecting other taxable periods. This issue does not include the authority to set aside any closing agreement.

Delegated to: In cases under their jurisdiction (*but excluding cases docketed before the United States Tax Court*), Assistant Commissioner (International); regional commissioners; regional counsel; regional chief compliance officers; service center directors; district directors; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and *appeals team chiefs with respect to their team cases*. (Emphasis added).

* * *

6. Authority: In cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate, to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or

of the person or estate for whom he or she acts), *but only in respect to related specific items affecting other taxable periods*. This does not include the authority to set aside any closing agreement.

Delegated to: Associate Chief Counsels; Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); regional commissioners; regional counsel; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and *appeals team chiefs with respect to their team cases*. (Emphasis added).

Based on the foregoing, it is clear that Delegation Order No. 97 gives authority to Appeals Team Chiefs to execute closing agreements with respect to their team cases under certain circumstances. However, it is also clear that the authority of Appeals Team Chiefs to execute closing agreements is limited with respect to cases, such as the instant case, which are docketed in the United States Tax Court.

Paragraph 5 of Delegation Order No. 97 excludes cases docketed before the United States Tax Court from the types of cases for which Appeals Team Chiefs have authority to execute closing agreements. However, paragraph 6 of Delegation Order No. 97 gives Appeals Team Chiefs limited authority to enter into closing agreements in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel and/or his delegate. The authority of Appeals Team Chiefs to execute closing agreements in such cases is limited to *“related specific items affecting other taxable periods.”*

It is our understanding that the three closing agreements executed by the Appeals Team Chief in this case relate to a timing issue settled in the docketed years that results in additional losses for the taxpayer in each of the docketed years in addition to a roll-out of losses and/or additional income in two subsequent cycles up through year 7. We have reviewed the portions of these three closing agreements that were provided to us. Although the closing agreements relate to a case which is docketed in the United States Tax Court, the closing agreements are confined to *“related specific items affecting other taxable periods.”* Thus, paragraphs 5 and 6 of Delegation Order No. 97 provide authority for the Appeals Team Chief to execute each of the three closing agreements.

Issue 2

As stated above, the fourth closing agreement addresses the rollout of losses and/or additions to income for taxable years 4 through 7. The year 4 through year 5 cycle is presently under the jurisdiction of Appeals, whereas the year 6 through year 7 cycle is still with the Examination Division. The case is part of the Coordinated Examination Program (CEP).

Delegation Order No. 236 (Rev. 3), effective date August 25, 1997, applies to cases, such as the instant case, involving settlements and closing agreements in CEP cases where Appeals has effected a settlement. Pursuant to Delegation Order No. 236, Examination Case Managers have authority to accept settlement offers on any issue in a CEP case under their jurisdiction where a settlement has been effected by Appeals in a previous, subsequent or the same tax period with respect to the same issue of the same taxpayer, or of another taxpayer who was directly involved in the transaction or taxable event. Additionally, Delegation Order No. 236 gives authority to Examination branch chiefs to review and approve such settlements and/or closing agreements prior to finalization in a CEP case.

We understand that an Examination Case Manager, (having already received the approval of the Appeals Officer assigned to the year 4 through year 5 cycle), intends to execute the fourth closing agreement on behalf of the government following review and approval by the appropriate Examination Branch Chief. Insofar as it appears that all of the criteria set forth in Delegation Order No. 236 are present in this case, the Examination Case Manager has authority to execute the agreement. However, the execution may only take place if the closing agreement was reviewed and approved by the Examination Branch Chief, as Delegation Order No. 236 gives authority to review and approve settlements proposed by Examination case managers in CEP cases under their jurisdiction where Appeals has effected a settlement.

Issue 3

In addition to the signature line for the IRS official who signs on behalf of the Commissioner of Internal Revenue, the Form 906 Closing Agreement also contains a page with signature lines for a "Receiving Officer" and a "Reviewing Officer." Advice has been requested as to whether a closing agreement which is signed by an appropriate IRS official with delegated authority to sign on behalf of the Commissioner, but is not signed by a Receiving Officer or Reviewing Officer, is a valid closing agreement which is binding on the Service.

There is no language in I.R.C. § 7121 or the implementing regulations indicating that closing agreements require signatures by Receiving Officers and Reviewing Officers. Section 7121(a) authorizes the Secretary of the Treasury or his delegate to enter into closing agreements, and, through a series of delegations of authority, the Secretary of the Treasury has delegated such authority to the Commissioner of Internal Revenue, who has delegated it to various other IRS officials. No mention is made in the Delegation Orders pertaining to closing agreements of the need for signatures by Receiving Officers and Reviewing Officers.

The requirement for signatures of Receiving Officers and Reviewing Officers is entirely absent from the statute, the regulations and the Delegation Orders

relating to closing agreements. However, the Internal Revenue Manual contains several references indicating that IRS procedures require such signatures on closing agreements.

For example, IRM Handbook No. 8(13)10, Closing Agreement Handbook, Sub-SubSection 613.1, entitled "Appeals Officer's Submission of Agreement", reads as follows:

Ordinarily, the closing agreement, executed on behalf of the taxpayer, is submitted for review along with the supporting statement. Appeals officials authorized to enter into and approve closing agreements frequently appoint a reviewer for closing agreements for their respective offices. It is generally desirable that a review of the rough draft take place prior to signing by the taxpayer. ***Both the Appeals Officer who prepares and the official who reviews the agreement must sign the reverse side of the original as receiver and reviewer...***(Emphasis added).

Additionally, IRM Handbook No. 8(13)10, Closing Agreement Handbook, Sub-Section 346, entitled "Receiving and Reviewing Officers' Recommendations", reads as follows:

The reverse side of the original of each closing agreement should reflect the dated signatures of the receiving and reviewing officers as recommending the agreement for acceptance and approval. Where the forms are not used, the recommendation should be reflected in the same manner as shown on the form. If a form has not been made for showing the recommendations, an additional page, properly identified, may be added reflecting them. If the receiving officer has neglected to sign and is no longer available, his/her supervisor or another officer familiar with the case should ordinarily sign in his/her place. However, in those Appeals cases where the same official will review or sign the agreement, he/she should not sign as receiving officer. District personnel should consult 533:(4). The reviewing officer must sign the reverse side of the agreement (or additional page) to show his/her recommendation for approval unless he/she is executing the agreement for the Commissioner.

Section 533:(4) of the Closing Agreement Handbook, referenced in the paragraph quoted above, reads as follows:

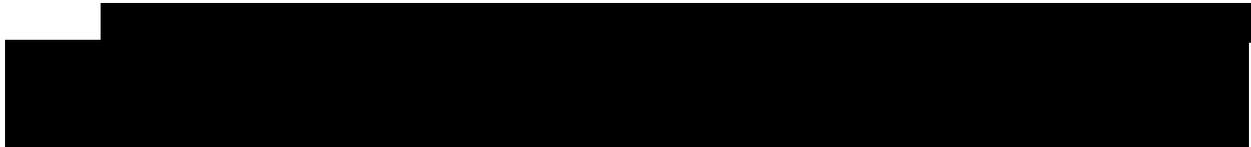
The examining officer and reviewing officer must sign and date the reverse side of the original of each Form 866, Agreement as to Final Determination of Tax Liability, or Form 906, Closing Agreement on Final Determination Covering Specific Matters, in the space

provided or of the original of each completely typed closing agreement in the same fashion. In the absence of the examining officer, his/her supervisor or another examiner familiar with the case should sign in his/her place. The designated reviewer (see 531:(2)), or in his/her absence a regular reviewer, must similarly sign the reverse side of the original of the agreement...

Insofar as the requirement for signatures by Receiving Officers and Reviewing Officers on closing agreements exists only on the closing agreement forms created by the Service and in the Internal Revenue Manual setting forth the Service's internal administrative procedures, there is no statutory or regulatory requirement for such signatures on closing agreements. It is well-settled that the provisions of the manual are directory rather than mandatory, and do not have the force of law. Pomeroy v. United States, 864 F.2d 1191 (5th Cir. 1989); see also United States v. Will, 671 F.2d 963, 967 (6th Cir. 1982) (Internal Revenue Manual, "adopted solely for the internal administration of the IRS, rather than for the protection of the taxpayer, does not confer any rights upon the taxpayer"); Urban v. Commissioner, 964 F.2d 888, 889 (9th Cir. 1992) (Compliance with Internal Revenue Manual's requirements is not mandatory). Therefore, it is our view that the signatures of Receiving Officers and Reviewing Officers are not absolutely required, and a closing agreement which does not have such signatures is nevertheless valid and binding on the Service and the taxpayer, provided it is properly executed by an IRS official with delegated authority to sign on behalf of the Commissioner, and by an individual with authority to sign on behalf of the taxpayer.

However, it is our view that the Service should generally follow its own rules. Thus, although closing agreements which do not include signatures of Receiving Officers and Reviewing Officers may be valid and enforceable, we do not think this is a sufficient basis for routinely disregarding Internal Revenue Manual procedures specifically requiring such signatures. Insofar as the Service's own procedures, and the Service's own closing agreement forms provide that such signatures should be included, we do not think that such signatures can simply be regarded as "optional." If, for some reason, it is frequently unduly burdensome or impractical to obtain signatures of Receiving Officers and Reviewing Officers, consideration should be given to instituting a change in the Internal Revenue Manual procedures and the closing agreement forms such that those signatures are no longer required. Until such change is instituted, the Service should make every attempt to follow its own existing procedures.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



If you have any further questions, please call.

By: _____
NANCY B. ROMANO
Senior Technician Reviewer
CC:DOM:FS:PROC