



OFFICE OF  
CHIEF COUNSEL

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

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INTERNAL REVENUE SERVICE NATIONAL OFFICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL  
CC:NER:UNY:BUF

FROM: Acting Assistant Chief Counsel (Income Tax and Accounting)  
CC:DOM:IT&A

SUBJECT: Filing Delinquent Returns Directly with Revenue Officers

This responds to your request for advice dated February 22, 1999, in connection with a question posed by the Chief, Special Procedures, Upstate New York District.

ISSUE(S):

1. Whether a revenue officer has delegated authority from the District Director to request and receive hand-carried, delinquent income tax returns?
2. Whether a revenue officer can require a taxpayer to file delinquent returns directly with the revenue officer rather than mailing the returns to the appropriate Service Center?

CONCLUSION:

1. Revenue officers have the authority to request and received hand-carried, delinquent returns.
2. Revenue officers may request taxpayers to file delinquent returns directly with the revenue officer; however, there is no penalty specifically applicable if a taxpayer ignores the request of the revenue officer and chooses to file the

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delinquent return by mailing the return to the appropriate Service Center instead of with the revenue officer.

FACTS:

Revenue officers frequently demand that taxpayers file delinquent returns with them. A local practitioner challenges this procedure, claiming the returns must be filed by mailing the returns to the appropriate Service Center. The practitioner also contends that a revenue officer has no authority to receive the delinquent returns. The practitioner proposes to give the revenue officer a copy of the signed delinquent return, a copy of the envelope the return was mailed to the Service Center in, a copy of the certified mailing receipt, and an affidavit of mailing from a responsible person at the firm stating that the return was mailed by the firm to the Service Center. The local Special Procedures Function has advised that a revenue officer cannot make a prompt assessment from anything other than an original return and that the delinquent return filing procedure suggested would cause great delay to revenue officers.

LAW AND ANALYSIS

Section 6091(b)(1)(A) of the Internal Revenue Code provides that for a person other than a corporation, a return shall be made to the Secretary (i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or (ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

Section 6091(b)(4) provides that a return of a person other than a corporation that is made by hand carrying shall, under regulations prescribed by the Secretary, be made in the internal revenue district referred to in paragraph (1)(A)(i).

Section 1.6091-2(a)(1) of the Income Tax Regulations provides that except as provided in paragraph (c) of this section, income tax returns of individuals shall be filed with the district director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return.

Section 1.6091-2(c) provides that, notwithstanding paragraphs (a) and (b) of this section, whenever instructions applicable to income tax returns provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions.

Section 1.6091-2(d)(1) provides that, notwithstanding paragraphs (1) and (2) of

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§ 6091(b) and paragraph (c) of this section, that returns for persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) as provided by paragraph (a) of this section.

The instructions to the 1998 Form 1040 provide that taxpayers are to mail their returns to the Internal Revenue Service Center for the place where they live.

#### Issue 1

The pertinent Code and regulation sections provide individual income tax return filers with two methods of filing their returns<sup>1</sup>. They can either file their returns by mailing it to the appropriate Service Center or by hand carrying the return to the District Director of the internal revenue district in which they live. Neither the Code nor the regulations specifically provide for filing returns directly with revenue officers. Furthermore, the Service has not issued a delegation order granting authority to the revenue officers to directly receive returns for filing.

However, delegations of authority may take many forms, including functional statements in position descriptions. I.R.M. § 1222(2). A functional statement constitutes a delegation of authority to the responsible official, who is the incumbent of the position or head of the organizational entity to which the assignment is made. This includes the authority to perform whatever official acts are necessary to exercise such functions. I.R.M. § 1222(3).

The position descriptions for a revenue officer at the GS-11 and GS-12 level provides that the revenue officer's duties and responsibilities include preparing and/or receiving delinquent returns. The position description for a revenue officer at the GS-9 level states that the revenue officer "conducts interviews with taxpayers (and/or their representatives) as part of the investigation necessary to collect delinquent taxes and secure delinquent returns." All three position descriptions state that the revenue officers are to prepare and process delinquent returns under § 6020(b) of the Code, or Substitute for Return. Furthermore, the position descriptions state in several places that the purpose of the work is to collect delinquent taxes and to secure delinquent returns from taxpayers. The provisions in the position descriptions are consistent with the procedures set forth in I.R.M. §§ 5261-5263 for securing and processing delinquent returns. Moreover, these provisions are consistent with the regulations as the revenue officers are acting on behalf of, and under the authority of, the District Director.

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<sup>1</sup>The Code, regulations, and instructions of the Form 1040 do not make any reference to delinquent returns.

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Based on the position descriptions for revenue officers and the delinquent return procedures set forth in the I.R.M., revenue officers have the authority to secure delinquent returns directly from the taxpayer, and process them in accordance with applicable procedures. Accordingly, we disagree with the local practitioner's argument that revenue officers cannot receive delinquent returns.

### Issue 2

As discussed above, revenue officers have the delegated authority to receive delinquent returns. Furthermore, revenue officers in the performance of their assigned duties can request that taxpayers file their delinquent returns with the revenue officer instead of mailing the delinquent return to the applicable Service Center. However, even with delegated authority to receive delinquent returns, under current law a revenue officer still could not require taxpayers to file directly with the revenue officer as the Code and the regulations also provide that taxpayers can file by mailing the return to the appropriate Service Center<sup>2</sup>.

A revenue officer has no means by which to compel the taxpayer to satisfy the demand for the delinquent return. There is no penalty specifically applicable to the taxpayer for failing to provide the requested return to the revenue officer. However, one or more practical adverse consequences may result if the taxpayer files with the Service Center rather than the revenue officer. For example, interest and penalties may accrue to a later date if receipt of payment is delayed because filing with the Service Center by mail takes longer than filing with the revenue officer. Further, a revenue officer will not enter into an installment agreement until all returns have been filed and the filing verified by the revenue officer. Therefore, it is generally in the taxpayer's best interests to file the delinquent return directly with the revenue officer instead of mailing it to the appropriate Service Center.

If you have any further questions, please call Charles A. Hall at (202) 622-4940.

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<sup>2</sup>The legislative history to § 6091, while silent on the issue of delinquent returns, provides a rationale for having delinquent returns filed with revenue officers. The section was amended in 1966 to allow for filing with the Service Centers. The principal purpose in providing for direct filing with the Service Centers was that it was economically cost effective. See, P.L. 89-713; S. Rep. No. 1625, 1966 U.S. Code Cong. & Admin. News, p. 3676-3678 (9-20-66). However, having delinquent returns filed with the Service Centers increases the costs of processing rather than producing cost efficiencies. Nonetheless, since the Code and regulations do not differentiate between timely filed and delinquent returns, taxpayers may file their delinquent returns either with the applicable Service Center or with a revenue officer.

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