

Part I

Section 6203—Method of Assessment

26 CFR 301.6203-1: Method of assessment
(Also: § 6330)

Rev. Rul. 2007-21

PURPOSE

The Internal Revenue Service (Service) is aware that some taxpayers are claiming that, before the Service may collect overdue taxes, the Service must provide taxpayers with a summary record of assessment made on a Form 23C, "Assessment Certificate-Summary Record of Assessments," that is signed by an authorized employee or officer. If a Form 23C is not provided, these taxpayers claim that the assessment is invalid, and, consequently, that the Service may not collect any taxes due.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that, although an assessment is recorded on a summary record of assessment, such as the Form 23C or its computer-generated equivalent, the Revenue Accounting Control System (RACS) Report 006, there is no legal requirement that a summary record of

assessment be provided to a taxpayer before the Service may proceed with collection activity. Further, if a taxpayer requests proof that an assessment was made, the Service is not required to provide any particular form or information in any particular format to the taxpayer so long as the Service provides the information required by Treasury Regulation § 301.6203-1 to the taxpayer. Any position to the contrary has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service determines whether taxpayers who have taken frivolous positions have filed all required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service's website at www.irs.gov.

ISSUE

Whether the Service must provide a taxpayer with a summary record of assessment, such as a Form 23C, before collection may begin.

FACTS

Taxpayer A argues in a request for a collection due process hearing under section 6330 or 6320 of the Internal Revenue Code that, pursuant to section 6203 and Treasury Regulation § 301.6203-1, the Service must first provide the taxpayer with a summary record of assessment of taxes due before collection action may commence. Taxpayer A further argues that the record provided must include a Form 23C signed by an authorized Service official. In response, the Service provides Taxpayer A with a record of assessment on a Form 4340 ("Certificate of Assessments and Payments"), MFTRA-X ("Master File Transcript"), or other similar document. Taxpayer A asserts these forms do not meet the legal requirements and until the Service produces a valid summary record of assessment, the Service is prohibited from collecting the assessed liability. According to Taxpayer A, the Appeals Officer conducting the collection due process hearing, in verifying under section 6330(c)(1) that the Service has complied with applicable law and procedure, may not rely on anything other than the Form 23C to determine, for purposes of the section 6330(c)(1) requirement, that a valid assessment was made.

LAW AND ANALYSIS

Section 6203 states that an assessment of tax (including interest, additions to tax, and assessable penalties) "shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." The section also states that, when requested by a taxpayer, "the Secretary shall furnish the taxpayer a copy of the record of assessment." Treasury Regulation

§ 301.6203-1 specifies that an assessment is made "by an assessment officer signing the summary record of assessment," which "through supporting records" must include the "identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." Under the regulation, if a taxpayer requests a copy of the record of assessment, the Service will give the taxpayer "a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed." The date of the assessment is the date the summary record is signed.

There is no requirement in the statute or regulation that the assessment be recorded on a specific form or that the taxpayer be provided with a certain form as a record of assessment.

Until its transition to computerized recordkeeping, the Service generally used Form 23C for the summary record of assessment, but it now uses, except in unusual circumstances, a computer-generated summary record of assessment known as the RACS Report 006. Both forms have been recognized as summary records of assessment within the meaning of section 6203. See March v. Internal Revenue Service, 335 F.3d 1186, 1188 (10th Cir. 2003). In Roberts v. Commissioner, 329 F.3d 1224, 1228 (11th Cir. 2003), the taxpayer argued that an assessment was invalid because the Service did not use Form 23C but instead used RACS Report 006. The court held that there was nothing in the law to show that the use of the RACS report was not in compliance with the statute and the regulation. The RACS report and the

Form 23C are both signed by an assessment officer. The RACS report, like the Form 23C, provides, when coupled with “supporting records,” the information set forth in Treasury Regulation § 301.6203-1.

In response to a taxpayer's request under section 6203 and the regulation for “a copy of the record of assessment,” the Service is not required to provide any particular form or document and may choose among documents that contain the items of information listed in the regulation. Instead of a RACS report 006, which does not break out individual taxpayer information, the Service may provide Form 4340, “Certificate of Assessments and Payments,” or a MFTRA-X transcript (literal or plain-language transcript) of the taxpayer's account, either of which sets forth all of the information required by the regulation, because each identifies the taxpayer, states the character of the liabilities assessed, the tax period giving rise to the assessment, the amount of the assessment, and the date of assessment. See Goodman v. United States, 185 Fed. Appx. 725, 728 (10th Cir. 2006); Roberts, 329 F.3d at 1228; Carillo v. Commissioner, T.C. Memo. 2005-290; Michael v. Commissioner, T.C. Memo. 2003-26. In addition, an Appeals Officer is not required to obtain a Form 23C or other particular document in a collection due process hearing and may rely on a Form 4340 or MFTRA-X transcript to verify the validity of the assessment for purposes of section 6330(c)(1). See Nestor v. Commissioner, 118 T.C. 162 (2002); Perez v. Commissioner, T.C. Memo. 2002-274.

HOLDING

The Service is not required to provide Taxpayer A with a summary record of assessment before collecting any taxes due. An assessment is not invalid, and

collection is not precluded, because the Service has not provided a summary record of assessment to the taxpayer.

Additionally, Taxpayer A's claim that the Service must produce a Form 23C or other record of assessment as proof of assessment is frivolous. If a taxpayer requests a copy of the record of assessment, the Service may produce the information in any form or format, provided the summary produced contains the information required by Treasury Regulation § 301.6203-1. Acceptable copies of the record of assessment include, but are not limited to, Forms 4340 and MFTRA-X transcripts. Further, the Form 4340, MFTRA-X transcript, or other similar documents may be used in a collection due process proceeding to verify the validity of an assessment under section 6330(c)(1).

The Service will challenge the claims of individuals who improperly attempt to avoid or evade their federal tax liability.

CIVIL AND CRIMINAL PENALTIES

The position described above, that the Service must provide a taxpayer with a summary record of assessment, such as a Form 23C, before collection or must provide a Form 23C in any collection proceeding is a frivolous position under section 6702. The Service will challenge the claims of individuals who attempt to improperly avoid or evade their federal tax liability. In addition to liability for the tax due plus statutory interest, taxpayers who insist upon receiving a Form 23C before complying with their tax obligations face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6702(b) \$5,000 penalty for submitting a "specified

frivolous submission”; (2) the section 6651(a)(3) addition to tax for failure to pay the tax owed; and (3) the section 6673 penalty of up to \$25,000 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this frivolous position also may face criminal prosecution under section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years, or prosecution under other federal laws as applicable.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).