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No. 215
Tuesday November 7, 2006
ISSN 1522-8800


Tax, Budget & Accounting

Dispute Resolution

Practitioners Cite Fast Track Successes As Initiative Introduced to SB/SE Taxpayers

SAN JOSE, Calif.--The Internal Revenue Service's decision to expand the use of its fast track settlement program to settle tax disputes could save practitioner's clients time and money while achieving IRS's goal of reducing cycle time, practitioners attending the California Tax Bar annual meeting said Nov. 3.

IRS in June 2003 issued Revenue Procedure 2003-40, which established a fast track settlement program for large taxpayers after evaluating results of a pilot project beginning in 2001 (107 DTR GG-1, 6/4/03 ).

And in August, the service launched a two-year test project extending the program's use to Small Business/Self Employed Division taxpayers (163 DTR G-1, 8/23/06 ). For the project's first six months, SB/SE fast track availability will be limited to taxpayers in Chicago; Houston; and St. Paul, Minn.

At the end of a six-month trial period, IRS will consider making the program available to SB/SE taxpayers across the country, the announcement said. A second evaluation will occur at the end of the two year-test period, at which time IRS could elect to make the program permanent, as it did for Large and Mid-Sized Business Division taxpayers.

Invaluable Procedure

The fast track settlement employs different negotiating techniques in an effort to promote case resolution. An IRS Appeals officer trained in mediation, or an agreed-upon alternative, serves as a neutral party during a conference of IRS examination officers and taxpayers. All issues must be developed and a case

must involve a limited number of contested issues to be accepted for fast track settlement.

The benefits of using a fast track process are that, if successful, issues are handled efficiently--actual negotiations typically consist of one conference--and the process is less expensive than litigating a disputed case, practitioners said. IRS benefits from issues associated with slimming examination cycle time.

Many practitioners at a Nov. 3 meeting session discussing the program praised the process. "I have found it to be an invaluable procedure," said session moderator and Hochman, Salkin, Rettig, Toscher & Perez P.C. practitioner Dennis Perez. Perez said he has used fast track on four occasions; three of those cases were successfully settled under the fast track process.

And Santa Ana, Calif.-based sole practitioner Mitchell Schwary said taxpayers appreciate the opportunity to settle a case directly with IRS officials in an expeditious fashion.

Pros, Cons

Others, however, counseled caution. Sideman & Bancroft LLP partner and session speaker Wendy **Abkin** said that since no taxpayer may qualify for fast track settlement unless all issues have been developed, taxpayers may be compelled to reveal facts to the government at a relatively early stage of an exam.

Deloitte Tax LLP practitioner Debra Estrem said while all four of her fast track settlement cases settled successfully, some were more successfully concluded than others.

Estrem, a former IRS special trial attorney, said such agreements may not be successful if IRS agents working the case are particularly adversarial to the taxpayer during initial stages of the exam. Further, Office of Chief Counsel staff who may participate in the conference may act more like trial attorneys rather than negotiators intent on settling a case's outstanding issues, she said.

Nevertheless, she said she favored IRS expanding the program to smaller taxpayers. "I think it's a great idea that IRS is expanding this to SB/SE," she said.

SB/SE fast track cases are designed to be completed within 60 days, compared with 120 days for LMSB taxpayers. Additionally, SB/SE fast track cases will be selected by a different type of manager than is making such decisions in LMSB cases.

The annual bar meeting was sponsored by the State Bar of California Taxation

Section. 

By Stephen Joyce