

December 18, 2017

VIA EMAIL

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**Re: Limitations on Credit or Refund under Revenue Procedure 99-21
Comments
OMB Number: 1545-1649**

To Whom It May Concern:

The University of Baltimore Low Income Taxpayer Clinic (“the Clinic”) is pleased that the Internal Revenue Service (“the Service”) has opened Revenue Procedure 99-21 (“the Revenue Procedure”) to comment. The Clinic identifies two problems in the application of the current version of the Revenue Procedure.

First, the taxpayers most likely to suffer financial disability are those most likely to be unable to meet the high threshold required to obtain proof of financial disability under the Revenue Procedure’s definition. This is due to the nature of those taxpayers, the types of medical professionals who treat them, and the types of organizations for which those professionals work.

Second, the Revenue Procedure problematically calls on medical professionals to certify a taxpayer’s “financial disability,” a nonmedical determination that a medical professional cannot reasonably be expected to make.

These comments conclude with proposed changes to the Revenue Procedure intend to solve these problems.

1. The Revenue Procedure Imposes Excessive Burdens on Affected Taxpayers.

The current requirements of the Revenue Procedure impose excessive burdens on the very taxpayers that Section 6511(h) of the Internal Revenue Code is designed to assist. That subsection was added to the Code in response to cases such as *United States v. Brockamp*, 519 U.S. 347 (1997) and *Webb v. United States*, 850 F. Supp. 489 (E.D. Va. 1994), in which taxpayers failed to receive relief under the basic refund provisions of Section 6511 due to mental and physical impairments that made it impossible for them to manage their financial affairs.

However, such impaired taxpayers are least likely to be able to comply with the Revenue Procedure’s strict requirements. Many taxpayers who could potentially benefit from Section 6511(h) suffer from serious mental illnesses. Such taxpayers are comparatively unlikely to seek the tax (or legal) assistance they need to help them obtain

certification of their financial disability from medical professionals. Many may not even be aware that they have tax problems. Those that do are often homeless and maintain poor or no records, making it difficult for them to certify their financial disability.

For example, in a recent case involving Section 6511(h), the Clinic assisted a homeless veteran diagnosed with schizophrenia by a physician.¹ The disorder severely limits his earning capability and stability. He has difficulty keeping steady employment and residence. The taxpayer's illness makes gathering accurate information from him difficult for both legal and medical professionals. Moreover, his treatment is historically sporadic, and his illness makes him highly suspicious of the health care industry. He began going to the U.S. Department of Veteran Affairs ("VA") and was diagnosed with schizophrenia.

With the help of the VA, he filed an income tax return claiming a refund over three years after the return's due date claiming financial disability under Section 6511(h), including a supporting statement from a physician stating that his schizophrenia affected him during the period in question. While this taxpayer was regularly assisted by the VA, which ultimately referred him to the Clinic, it is difficult to imagine that a homeless, mentally ill taxpayer could even attempt to comply with the requirements of the Revenue Procedure unassisted.

Even the assistance of a medical professional, the Revenue Procedure may still render relief impossible for a taxpayer whose situation reflects the spirit of Section 6511(h). First, the Revenue Procedure draws its definition of "physician" from Section 213(d)(4) of the Code.² This definition includes a variety of medical professionals but does not include psychologists. This exclusion is surprising, given Section 6511(h)'s reference to "mental impairment." Psychologists treat patients for depression, post-traumatic stress disorder, and a variety of other mental disorders, all of which may affect a person's ability to handle finances. The Service's refusal to accept statements by psychologists under the Revenue Procedure excludes an entire class of professionals treating mentally impaired taxpayers who may suffer financial disability.

Second, the Revenue Procedure fails to account for turnover within an organization treating a taxpayer. In the Clinic's recent case, the Service denied the taxpayer's claim for refund because the Section 6511(h) supporting statement was drafted by a medical professional who was not present at the time of the original diagnosis. The Revenue Procedure's requirement that the same professional perform the original diagnosis and provide the statement supporting the claim for refund meshes poorly with the reality of treating organizations. Medical clinics, such as those operated by the VA, are notoriously understaffed and plagued by high rates of turnover.³ This further forces

¹ To maintain anonymity, he will be referred to simply as "the taxpayer."

² This section in turn incorporates Section 1861(r) of the Social Security Act (42 U.S.C. § 1395x(r)).

³ See, e.g., <http://www.witn.com/content/news/Rally-held-to-protest-49000-vacancies-at-Veterans-Affairs-nationwide-444328093.html>; <https://www.usatoday.com/story/news/politics/2016/12/07/internal-report-details-secret-quality-ratings-veterans/94811922/>.

such clinics to employ other kinds of medical professionals that are currently not qualified under the Revenue Procedure, namely psychologists, as discussed above. Like the taxpayers themselves, the services typically diagnosing and treating taxpayers who would otherwise qualify as financially disabled are institutionally disadvantaged when attempting to satisfy the strict requirements of the Revenue Procedure.

The Clinic additionally notes that the Service's estimate of a typical burden on taxpayers of thirty minutes to submit a request for relief under the Revenue Procedure is unrealistically low, given the need to marshal medical evidence and, in many cases, obtain legal representation to ensure compliance with the Revenue Procedure as well.

2. The Revenue Procedure Problematically Requires Certification of "Financial Disability."

The Revenue Procedure currently requires that a taxpayer provide a statement from a medical professional specifying the taxpayer's "financial disability." If the statement omits this term and simply describes the taxpayer's physical or mental state during the period at issue, the request for suspension under Section 6511(h) will be rejected. However, requiring a medical specialist to come to explicitly diagnose financial disability elevates the wording of Section 6511(h) above its intent and calls on medical professionals to draw conclusions they are ill-equipped to make.

"Financial disability" is a term of art lifted from Section 6511(h). It does not exist in the medical professional's mindset. Financial disability is a legal concept, not a medical status, condition, or symptom to be evaluated or treated. Thus, medical professionals are highly unlikely to make spontaneous determinations of financial disability contemporaneous with the period a taxpayer seeks to suspend. This is particularly true for mental disabilities which can go undiagnosed for years and fluctuate in medical intensity without affecting a taxpayer's legal financial disability under Section 6511(h).

Moreover, requiring a declaration that a legal status began on a particular date and existed for a particular period calls on medical professionals to draw a legal conclusion that most prudent medical professionals are likely reluctant to make.

3. Proposed Revisions to the Revenue Procedure

Despite these issues, there are solutions that can decrease the burden to taxpayers and safeguard the Service from opening the gates to a flood of refund claims under Section 6511(h).

First, the Clinic recommends that the Service revise the Revenue Procedure's list of certifying medical professionals. At a minimum, that list should include psychologists. The Clinic suggests that the Service carefully examine any existing list it chooses to borrow for this purpose from other law, such as other provisions of the Social Security Act, to ensure that it encompasses the full, possible range of treating professionals for mental and physical impairments.

Second, the Clinic recommends that the Revenue Procedure be revised so that the statement it requires may be submitted by a treating professional other than the one who diagnosed the underlying physical or mental impairment.

Third, the Clinic recommends that the Revenue Procedure not require a statement by the medical professional that the taxpayer was “financially disabled” during the period in question. Instead, the Clinic suggests that the revised Revenue Procedure require a statement from a medical professional describing the underlying physical or mental impairment, including its duration. The Service should then develop standards, described in the Revenue Procedure, for evaluating whether an impairment described in such a statement indicates financial disability. The Service may also wish to publish a list of mental and physical impairments that constitute “financial disability per se.” The Clinic notes that the Service already performs a similar evaluative function under Revenue Procedure 2013-34 in examining evidence in support of innocent spouse relief under Section 6015(f). Adopting a similar approach to Section 6511(h) determinations will shift the focus from word choice by the medical professional to the *evidence* of financial disability.

Finally, the Clinic notes that the simple inclusion in the Revenue Procedure of an example letter complying with the Revenue Procedure’s requirements would help guide medical professionals and reduce the burdens of reviewing the current array of differing letters.

The University of Baltimore Tax Clinic is thankful for this opportunity to contribute and hopes that the Service considers the above outlined comments. If you have any questions, please contact the Clinic at (410) 837-5706 or jsnyder@ubalt.edu. Thank you.

Respectfully Submitted,

/s/

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