

LARGE AND INTERNATIONAL BUSINESSES: IRS DIRECTS EXAMINERS TO MORE STRICTLY ENFORCE DELINQUENT IDR RESPONSES

DECEMBER 13, 2013

The IRS has issued guidance to its large business & international (LB&I) tax examiners that will affect taxpayers who are under examination and who are delinquent in providing timely responses to an examiner's Information Document Requests (IDRs).

Last June, the IRS issued best practices for examiners to follow when gathering information in LB&I examinations, including the issuance of IDRs, which must identify and state the specific tax issue on which the IDR is predicated, and which must be discussed with the taxpayer beforehand. Both parties must discuss and determine a reasonable timeframe for responding. All IDRs issued after June 30, 2013 must comply with the foregoing principles, and any Memorandum of Understanding between the IRS and the taxpayer that purports to govern the conduct of an ongoing examination but does not comply with these principles is no longer effective. By following these steps, it is expected that the IDR process will be more efficient, and the enforcement of IDRs more infrequent.

Last month, the IRS rolled out its new IDR enforcement process. Effective January 2, 2014, LB&I managers at all levels will be actively involved early in the process, and IRS counsel will be prepared to enforce IDRs through the issuance of a summons when necessary. The new process is mandatory, has no exceptions, and applies to all previously issued IDRs. LB&I examiners will reissue any IDRs that do not conform to the foregoing principles, and establish a new response date which, if not met, will trigger the new enforcement process, as follows:

DELINQUENCY NOTICES (LETTER 5077)

If a taxpayer fails to respond to a properly issued IDR in a timely manner, the LB&I examiner will:

1. discuss a proposed Delinquency Notice with the taxpayer prior to issuance. If the taxpayer needs extra time to respond, this discussion is an opportunity to request it. Generally, the new deadline may not be more than 15 calendar days from the date of the Delinquency Notice. The examiner's Territory Manager, however, has the authority to approve a later date;
2. ensure that the taxpayer understands the next steps in the enforcement process if the requested information is not provided by the new deadline established in the Delinquency Notice; and then
3. issue a Delinquency Notice signed by the examiner's Team Manager within 10 calendar days after the original deadline established in the IDR.

To ensure a smooth transition to the new enforcement procedures, LB&I examiners will not issue Delinquency Notices before February 3, 2014.

PRE-SUMMONS LETTERS (LETTER 5078)

If a taxpayer fails to respond to the IDR by the deadline established in the Delinquency Notice, the LB&I examiner will discuss the taxpayer's lack of response with his or her management team and IRS counsel, then prepare a Pre-Summons Letter to the taxpayer. Before issuing the letter, the team's Territory Manager will:

1. discuss the proposed Pre-Summons Letter with the taxpayer. Again, if the taxpayer needs extra time to respond, this discussion is an opportunity to request it. Generally, the second new deadline may not be more than 10 calendar days from the date of the Pre-Summons Letter. The Director of Field Operations (DFO), however, has the authority to approve a later date;
2. ensure that the taxpayer understands the next steps in the enforcement process if the requested information is not provided by the new deadline established in the Pre-Summons Letter; and then
3. issue the Letter "as quickly as possible," but generally no later than 14 calendar days after the deadline established under the Delinquency Notice.

The Pre-Summons Letter will not be addressed to the same person who failed to respond to the IDR and the Delinquency Notice; it will be addressed to the individual who is at "a level of management above the taxpayer management official who received the Delinquency Notice." Therefore, individuals managing the taxpayer's IDR responses are well advised to keep their superiors fully apprised of the process as it is unfolding.

SUMMONS

If a taxpayer does not provide a complete response to an IDR by the response date in the Pre-Summons Letter, the examiner will:

1. discuss the lack of response to the Pre-Summons Letter with the Team Manager, the Territory Manager and the DFO, and IRS counsel;
2. prepare the Summons; and then
3. coordinate the issuance of the Summons with assigned IRS counsel.

Because LB&I examiners will aggressively enforce IDRs issued during the information gathering phase of the examination process, and will involve IRS counsel early in the examination process if the taxpayer's responses are delinquent, taxpayers are well advised to seek the assistance of tax counsel early in the examination process, even before the examiner determines what information will be requested through IDRs. Counsel can ensure that the examiner limits each IDR to the records that are responsive to the issue in question and that the IDR process is not used to obtain access to other records in search of new examination issues.

If you have any questions about this alert, please contact [Brian L. Gaudet](#).

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