

AUDIT RECONSIDERATION

A. Introduction

Generally, once the IRS makes an assessment the taxpayer must pay the assessment and file suit in order to challenge the assessment. The taxpayer, however, does have other options rather than paying the tax. One option is to request audit reconsideration. Audit reconsideration is available when there has been a communication problem between the taxpayer and the IRS, or the taxpayer has chosen to ignore a statutory notice of deficiency. In some cases, the IRS has permitted audit reconsideration of returns after collection has begun. It is important to gather as much information as possible about the year in question to show a need for audit reconsideration. A taxpayer should always ask for audit reconsideration. The worst that can happen is the IRS denies audit reconsideration. If this happens, the taxpayer should ask for an appeals conference.

B. Requirements

The following three requirements must be met to receive audit reconsideration after collection has begun:

1. The taxpayer has changed addresses since the original tax return was filed; therefore, the deficiency notice was not sent to the taxpayer's new address.
2. The taxpayer has not received any notification from the IRS of the assessment or as to how the assessment was determined prior to receipt of the bill.
3. The taxpayer has not had an opportunity to submit any required substantiation to tell his side of the story.

C. Reasons for Audit Reconsideration Request (IRM 4.13.1.3)

1. The taxpayer did not appear for the audit.
2. The taxpayer moved and did not receive the correspondence from the IRS.
3. The taxpayer has new documentation to present.
4. The taxpayer disagrees with an assessment from an audit of the taxpayer's return and has additional information to be considered.
5. The taxpayer disagrees with an assessment created under the authority of Section 6020(b).
6. The taxpayer has been denied tax credits such as EITC claimed during prior examination.

D. Criteria for Audit Reconsideration (IRM 4.13.1.4)

1. The taxpayer must have filed a tax return.
2. The assessment remains unpaid or the IRS has reversed tax credits that the taxpayer is disputing.
3. A request for audit reconsideration in Texas should be sent to:

Austin Service Center
P.O. Box 934 Stop 4107
Austin, TX 78767
Phone 1-800-829-1040

E. What Should an Audit Reconsideration Include?

The audit reconsideration sent to the IRS should include these items:

1. Introduction

Set forth who the taxpayer is, what years are being requested to receive an audit reconsideration, and what the issues are.

2. Facts

Set forth a detailed statement of the facts on which the taxpayer relies. This should show why the taxpayer is entitled to an audit reconsideration.

3. Argument

Set forth a detailed statement of the law that supports the taxpayer's position.

4. Exhibits

Obtain copies of all documents that set forth the facts and are relevant to why the IRS erred in the first assessment. List the documents, including a brief description of what each document is, and attach them at the end of the audit reconsideration request.

5. Conclusion

Set forth a summary as to why the facts and/or the law are in favor of the taxpayer.

The following is an example of an audit reconsideration request:

July 1, 2007

Austin Service Center
PO Box 934, Stop 4107
Austin, TX 78767

Re: Jane Doe; SSN: 444-44-4444
Audit Reconsideration Request for the year 2005

Dear Sir/Madam:

This letter is to request an Audit Reconsideration for Ms. Jane Doe for the 2005 tax year regarding the denial of the earned income credit, the denial of the dependency exemption, and the change in filing status. In addition, Ms. Doe requests the abatement of interest and penalties associated with the denial of the earned income credit, the denial of the dependency exemption, and the change in filing status.

According to the enclosed information, Ms. Doe's son, Johnny Michael Doe ("Johnny"), is in fact her son and has been living with her since he was born. During 2005, Ms. Doe furnished all of the costs of maintaining a home that was the main home for more than half the year for her and Johnny.

FACTS

Ms. Doe and Johnny lived with her brother for several years, but have been living by themselves since November 1999. In 2000, the IRS requested document verification for her 1999 return for the head of household status, earned income credit, and exemptions. Later that year, the IRS proposed changes to her 1999 return that included changing her filing status from head of household to single, disallowing the dependent exemption, and disallowing the earned income credit and prohibiting her from claiming the earned income credit for the next two years.

In 2002, the IRS proposed changes to Ms. Doe's 2001 income tax return by decreasing her federal withholding credits not refunded by \$2,400, disallowing the earned income credit of \$2,158, and adjusting her filing status to single. Ms. Doe has continuously sent in proof that her son is hers, but has not been allowed to take the earned income credit.

ARGUMENT

Ms. Doe was denied an exemption in 2005 for her son: Johnny. Ms. Doe should have been allowed the exemption for her son because he lived with her exclusively

throughout the 2001 tax year, and she provided all of his living expenses and support for that year. Ms. Doe should have also been allowed to file as head of household because she provided more than half of her son's living expenses and support for the year, and there were no other persons living with her at the time.

We request an audit reconsideration, and are presenting the following documents showing that Ms. Doe was qualified to take the exemption for her son in 2005, and thereby regain the Earned Income Credit:

- Exhibit 1 – Birth Certificate of Johnny Michael Doe verifying that Ms. Doe is Johnny's mother.
- Exhibit 2 – Social Security card of Johnny Michael Doe.
- Exhibit 3 – Elementary Report Card of Johnny Michael Doe for the 1999-2000 school year at Daniel Webster Elementary School, the same school that he now attends.
- Exhibit 4 – Letter from Daniel Webster Elementary School to Ms. Doe's address stating Johnny needs current immunization shots.
- Exhibit 5 – Note written by Ms. Doe stating that she and Johnny moved out of her brother's apartment in November 1999.
- Exhibit 6 – Lease agreement starting on April 1, 2005, for the apartment that Ms. Doe and Johnny continue to live in, showing that Ms. Doe and Johnny are the only occupants.

The enclosed documents are sufficient to show Ms. Doe is entitled to the exemption for her son, the filing status of head of household, and the earned income credit for the tax year 2005. Please do not hesitate to contact me at 214-555-1234 if you have any questions.

Sincerely,