OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Sara M. Coe
Chief, Field Service Procedural Branch
CC:DOM:FS:PROC

SUBJECT: Current Tax Implications Resulting from an Election to be a "Qualified Oil Corporation" under Section 6(c)(3) of the Subchapter S Act of 1982.

This Field Service Advice responds to your memorandum dated April 23, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

X =

Y =

ISSUE(S):

1. X and Y are small business corporations that elected, pursuant to section 6(c)(3) of the Subchapter S Revisions Act of 1982 to have that act not apply. Therefore, their tax liability is computed on the basis of the Subchapter S law as it existed in 1982. The companies are currently filing their income tax returns, Forms 1120S, using the 1982 forms. May the companies continue to use this form?

2. X and Y also computed their preference items, for the purposes of the alternative minimum tax, using 1982 law. May the companies apply the 1982 law for this purpose?

CONCLUSION:

1. X and Y may continue to file their returns using the 1982 forms.

2. You informed us that you determined that X and Y will not be subject to the alternative minimum tax. Thus, this issue is moot and is not be addressed.

FACTS:

X and Y Corporation are small business corporations engaged in the business of exploring for and producing oil and gas. Both companies elected, pursuant to section 6a(c)(3) of the Subchapter S Revision Act of 1982, Pub. L. No. 97-354, to opt out of the provisions of the act. Due to this election, the companies still compute their income tax using the law in effect in 1982. Since electing in 1982, X and Y both continued to use 1982 tax forms when filing their Forms 1120S.

LAW AND ANALYSIS

I.R.C. § 6037(a) of the 1986 Code requires S corporations to file income tax returns containing the following information:

1. the items of gross income and deduction;
2. the names and addresses of all shareholders;
3. the number of shares of stock owned by each shareholder;
4. the amount of money and property distributed to each shareholder and the date distributed; and
5. each shareholder's pro rata share of each item of the corporation.

See also, Treas. Reg. § 1.6037-1.

I.R.C. § 6037(a) for 1982 and earlier did not differ in any material way from the 1986 version.

No cases have interpreted what constitutes a return for the purposes of I.R.C. § 6037. Several cases, however, have examined the requirements for an individual income tax return under I.R.C. § 6011 - which provides no explicit criteria for what constitutes a return.

The term "return" is not defined by I.R.C. § 6501(a). Treas. Reg. § 1.6011-1(b) provides, "[e]ach taxpayer should carefully prepare his return and set forth fully and

clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code."

Despite the requirements, it is clear that meticulous compliance with each every requirement of the Code and regulations is not required for a document to be considered a return for purposes of I.R.C. § 6501(a). The courts have consistently held that a return need not be perfectly accurate or complete if it purports to be a return, is sworn to, and evidences an honest effort to satisfy the law. Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934).

Further, guidance defining the "meticulous compliance" standard can be found in Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986), in which the Tax Court stated:

> The Supreme Court test to determine whether a document is sufficient for statute of limitations purposes has several elements: First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the law; and fourth, the taxpayer must execute the return under the penalties of perjury.

In this case, X and Y filed the wrong versions of Forms 1120S. These incorrect forms set forth the items of gross income, deductions, and credits from which their income tax liability could be calculated. Commissioner v. Lane-Wells Co., 321 U.S. 219, 222 (1944); Germantown Trust Co. v. Commissioner, 309 U.S. 304, 308 (1940). The returns were honest and reasonable attempts to report the taxable income that X and Y received. Ellerbach Paper Co. v. Helvering, 293 U.S. 172, 180 (1934); Florsheim Bros. Drygoods Co., Ltd. v. United States, 280 U.S. 453, 462 (1929). The returns were also signed under the penalties of perjury. I.R.C. § 6061; Lucas v. Pilliod Lumber Co., 282 U.S. 245 (1930); Reaves v. Commissioner, 295 F.2d 336 (5th Cir. 1961).

The Forms 1120S filed by X and Y contain the information required by I.R.C. § 6037(a) and satisfy the four pronged test laid down by the Supreme Court. The companies use of the old forms does not affect the validity of the returns.

If you have any further questions, please call the branch telephone number.