

Part III - Administrative, Procedural, and Miscellaneous

Statute of Limitations on Assessment Concerning Certain Individuals Filing Income Tax Returns with the U.S. Virgin Islands

[Notice 2007-99]

SECTION 1. PURPOSE

This notice announces that Treasury and the Internal Revenue Service (IRS) intend to issue regulations under sections 932(c) and 7654 concerning the statute of limitations on assessment of the U.S. income tax liability (if any) of a U.S. citizen or resident alien who takes the position that he or she is a bona fide resident of the U.S. Virgin Islands. This notice also provides interim rules concerning the U.S. filing obligations of such an individual. In conjunction with the issuance of regulations, Treasury and the IRS intend to prescribe a new form for the reporting of information similar to the summary information required in the statement described in this notice. The new form will be similar to Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b). Until the regulations and form are issued, taxpayers may rely on this notice.

SECTION 2. INTERIM RULES

Under the authority of sections 932(c) and 7654, an income tax return filed with the U.S. Virgin Islands (USVI Form 1040) by a U.S. citizen or resident alien will be deemed to be a U.S. income tax return of that individual for purposes of section 6501(a), provided that the individual is a covered person. The term “covered person” means a U.S. citizen or resident alien who takes the position that he or she is a bona fide resident of the U.S. Virgin Islands, files USVI Form 1040 with the U.S. Virgin Islands, and has less than \$75,000 of gross income for the taxable year. For purposes of this notice, gross income means the total amount of income from whatever source derived, before any exclusions or deductions (for example, disregarding any applicable U.S. Virgin Islands tax benefits authorized under section 934(b)). Gross income does not include income of the individual’s spouse.

For example, assume that C, a U.S. citizen and calendar year taxpayer who has less than \$75,000 of gross income for 2006, takes the position that he is a bona fide resident of the U.S. Virgin Islands and files USVI Form 1040 for 2006 on March 12, 2007. C does not file Form 1040, U.S. Individual Income Tax Return (US Form 1040). C is a covered person. Under these circumstances, the 3-year period of limitations under section 6501(a) will expire on April 15, 2010, and the IRS will make no further assessment of income tax for A’s 2006 taxable year after that date except as otherwise authorized by section 6501.

With respect to a U.S. citizen or resident alien who takes the position that he or

she is a bona fide resident of the U.S. Virgin Islands for a taxable year but who has gross income of \$75,000 or more (referred to as a non-covered person), a US Form 1040 filed by the non-covered person with the IRS, on which the non-covered person reports no gross income and no taxable income, will be treated as an income tax return described in section 6501(a).

This notice imposes a new annual information reporting requirement under section 7654 for non-covered persons. Treasury and the IRS intend to issue a new form titled Bona Fide Residence-Based Return Position for purposes of this new information reporting requirement. Until this form is issued, a non-covered person will meet the information reporting requirement by attaching a statement to the US Form 1040 reporting no gross income and no taxable income. The statement should be titled “Bona Fide Residence-Based Return Position” and must set forth the following information.

1. The non-covered person’s name, social security number, and address as reported on US Form 1040.

2. A statement affirming the non-covered person’s bona fide residence in the U.S. Virgin Islands as defined in Treas. Reg. § 1.937-1(b) (or Treas. Reg. §§ 1.871-2 through 1.871-5, with respect to taxable years ending before October 22, 2004) and a brief summary of the facts on which it is based.

3. An affirmation that the non-covered person has properly filed a U.S. Virgin Islands individual income tax return, a statement of the total tax liability reported on the

USVI Form 1040, and the amount of gross income reported on such return (adding back any applicable territorial tax benefits described in section 934(b)).

For example, assume that on March 12, 2007, N, a U.S. citizen and calendar year taxpayer with at least \$75,000 of gross income for 2006, files with the IRS a US Form 1040 (2006) taking the position that he does not have any gross income or taxable income for U.S. income tax purposes (as reported on lines 22 and 43, respectively) under section 932(c)(4) with an attached Bona Fide Residence-Based Return Position statement. Under these circumstances, the 3-year period of limitations under section 6501(a) will expire on April 15, 2010, and the IRS will make no further assessment of income tax for N's 2006 taxable year after that date except as otherwise authorized by section 6501.

The US Form 1040 with attached Bona Fide Residence-Based Return Position statement must be filed by the due date (including extensions) for filing US Form 1040 at the following address: Internal Revenue Service Center, P.O. Box 331 Drop Point S-607, Bensalem, PA 19020-8517. In addition to any criminal penalty that may apply, failure to file the Bona Fide Residence-Based Position statement is subject to a \$1,000 penalty under section 6688. If the non-covered person and his or her spouse filed a joint USVI Form 1040, then they may file a jointly executed US Form 1040 but must attach a separate Bona Fide Residence-Based Return Position statement for each spouse who is a non-covered person.

SECTION 3. EFFECTIVE DATE

Except as provided in this section 3, this notice applies for taxable years ending on or after December 31, 2006.

A non-covered person may choose to apply this notice to a taxable year ending before December 31, 2006, by filing a US Form 1040 reporting no gross income and no taxable income on or before October 15, 2007. Although a Bona Fide Residence-Based Position statement need not be filed for a taxable year ending before December 31, 2006, the non-covered person should clearly note on the first page of the US Form 1040 the applicable taxable year and that the US Form 1040 is being filed in accordance with this notice.

For example, assume that on February 28, 2007, J, a U.S. citizen and calendar year taxpayer with at least \$75,000 of gross income for taxable year 2003, files a US Form 1040 taking the position that for that taxable year she does not have any gross income or taxable income for U.S. income tax purposes under section 932(c)(4). J clearly marks that the US Form 1040 (2006) applies to her taxable year beginning January 1, 2003, and ending December 31, 2003, and that she is filing the US Form 1040 in accordance with **[Notice 2007-99]**. Under these circumstances, the 3-year period of limitations under section 6501(a) will expire on October 15, 2010, and the IRS will make no further assessment of income tax for J's 2003 taxable year after that date except as otherwise authorized by section 6501.

A covered person may choose to apply this notice to a taxable year ending before December 31, 2006, by providing documentation upon examination that establishes to the satisfaction of the Commissioner that the taxpayer is a covered person. Because the USVI Form 1040 filed with the U.S. Virgin Islands is deemed to be a covered person's US Form 1040, the covered person's statute of limitations under section 6501(a) will begin to run on the date the USVI Form 1040 was filed with the U.S. Virgin Islands.

SECTION 4. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-[XXXX].

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in section 2. This information is required to determine if a taxpayer satisfies the requirements of bona fide residence in the U.S. Virgin Islands under section 937(a). The information will be used to determine if a taxpayer satisfies his or her U.S. income tax filing requirements. The collection of information is voluntary. The likely respondents are individuals.

The estimated total annual reporting burden is 42,500 hours.

The estimated annual burden per respondent varies from 4 to 6 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 8,500.

The estimated annual frequency of responses is annually.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is J. David Varley of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Varley at (202) 435-5262 (not a toll-free call).