

A, a calendar year taxpayer, is made in the amount of \$18,000. The termination assessment is for the period from January 1, 1979 through November 1, 1979. Further assume that on or before April 15, 1980, A files a form 1040 showing an income tax liability for the full year 1979 of \$10,000. If the district director determines A's liability for tax for 1979 is \$16,000, a notice of deficiency for \$6,000 shall be sent to A on or before June 14, 1980. Assuming that the district director had collected the \$18,000 assessed, \$2,000 shall be refunded.

(c) *Immediate payment.* The district director shall make demand for immediate payment of the amount of the termination assessment, and the taxpayer shall immediately pay such amount or shall immediately file the bond provided in section 6863.

(d) *Abatement.* The provisions of §§ 301.6861-1(e) and 301.6861-1(f) relating to the abatement of jeopardy assessments, shall apply to assessments made under section 6851.

[T.D. 7575, 43 FR 58816, Dec. 18, 1978]

§ 1.6851-2 Certificates of compliance with income tax laws by departing aliens.

(a) *In general—(1) Requirement.* The rules of this section are applicable, except as otherwise expressly provided, to any alien who departs from the United States or any of its possessions after January 20, 1961. Except as provided in subparagraph (2) of this paragraph, no such alien, whether resident or nonresident, may depart from the United States unless he first procures a certificate that he has complied with all of the obligations imposed upon him by the income tax laws. In order to procure such a certificate, an alien who intends to depart from the United States (i) must file with the district director for the internal revenue district in which he is located the statements or returns required by paragraph (b) of this section to be filed before obtaining such certificate, (ii) must appear before such district director if the district director deems it necessary, and (iii) must pay any taxes required under paragraph (b) of this section to be paid before obtaining the certificate. Either such certificate of compliance, properly executed, or evidence that the

alien is excepted under subparagraph (2) of this paragraph from obtaining the certificate must be presented at the point of departure. An alien who presents himself at the point of departure without a certificate of compliance, or evidence establishing that such a certificate is not required, will be subject at such departure point to examination by an internal revenue officer or employee and to the completion of returns and statements and payment of taxes as required by paragraph (b) of this section.

(2) *Exceptions—(i) Employees of foreign governments or international organizations—(a) Diplomatic representatives, their families and servants.* (1) Representatives of foreign governments bearing diplomatic passports, whether accredited to the United States or other countries, and members of their households shall not, upon departure from the United States or any of its possessions, be examined as to their liability for United States income tax or be required to obtain a certificate of compliance. If a foreign government does not issue diplomatic passports but merely indicates on passports issued to members of its diplomatic service the status of the bearer as a member of such service, such passports are considered as diplomatic passports for income tax purposes.

(2) Likewise, the servant of a diplomatic representative who accompanies any individual bearing a diplomatic passport upon departure from the United States or any of its possessions shall not be required, upon such departure, to obtain a certificate of compliance or to submit to examination as to his liability for United States income tax. If the departure of such a servant from the United States or any of its possessions is not made in the company of an individual bearing a diplomatic passport, the servant is required to obtain a certificate of compliance. However, such certificate will be issued to him on Form 2063 without examination as to his income tax liability upon presentation to the district director for the internal revenue district in which the servant is located of a letter from the chief of the diplomatic mission to which the servant is attached certifying (i) that the name of the servant

appears on the "White List", a list of employees of diplomatic missions, and (ii) that the servant is not obligated to the United States for any income tax, and will not be so obligated up to and including the intended date of departure.

(b) *Other employees.* Any employee of an international organization or of a foreign government (other than a diplomatic representative to whom (a) of this subdivision applies) whose compensation for official services rendered to such organization or government is excluded from gross income under section 893 and who has received no gross income from sources within the United States, and any member of his household who has received no gross income from sources within the United States, shall not, upon departure from the United States or any of its possessions after November 30, 1962, be examined as to his liability for United States income tax or be required to obtain a certificate of compliance.

(c) *Effect of waiver.* An alien who has filed with the Attorney General the waiver provided for under section 247(b) of the Immigration and Nationality Act (8 U.S.C. 1257(b)) is not entitled to the exception provided by this subdivision.

(ii) *Alien students, industrial trainees, and exchange visitors.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of—

(A) An alien student, industrial trainee, or exchange visitor, and any spouse and children of that alien, admitted solely on an F-1, F-2, H-3, H-4, J-1 or J-2 visa, who has received no gross income from sources inside the United States other than—

(1) Allowances to cover expenses incident to study or training in the United States (including expenses for travel, maintenance, and tuition);

(2) The value of any services or accommodations furnished incident to such study or training;

(3) Income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa; or

(4) Interest on deposits described in section 871(i)(2)(A); or

(B) An alien student, and any spouse or children of that alien admitted solely on an M-1 or M-2 visa, who has received no gross income from sources inside the United States other than income derived in accordance with the employment authorization in 8 CFR 274a.12(c)(6) or interest on deposits described in section 871(i)(2)(A).

(iii) *Other aliens temporarily in the United States.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of an alien hereinafter described in this subdivision, unless the district director has reason to believe that such alien has received taxable income during the taxable year up to and including the date of departure or during the preceding taxable year and that collection of income tax from such alien will be jeopardized by his departure from the United States:

(a) An alien visitor for pleasure admitted solely on a B-2 visa;

(b) An alien visitor for business admitted on a B-1 visa, or on both a B-1 visa and a B-2 visa, who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year;

(c) An alien in transit through the United States or any of its possessions on a C-1 visa or under a contract, including a bond agreement, between a transportation line and the Attorney General pursuant to section 238(d) of the Immigration and Nationality Act (8 U.S.C. 1228(d));

(d) An alien who is admitted to the United States on a border-crossing identification card or with respect to whom passports, visas, and border-crossing identification cards are not required, if such alien is a visitor for pleasure, or if such alien is a visitor for business who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year, or if such alien is in transit through the United States or any of its possessions;

(e) An alien military trainee admitted to the United States to pursue a course of instruction under the auspices of the Department of Defense who departs from the United States on official military travel orders; or

(f) An alien resident of Canada or Mexico who commutes between such country and the United States at frequent intervals for the purpose of employment and whose wages are subject to the withholding of tax.

(b) *Issuance of certificate of compliance*—(1) *In general.* (i) Upon the departure of an alien required to secure a certificate of compliance under paragraph (a) of this section, the district director shall determine whether the departure of such alien jeopardizes the collection of any income tax for the current or the preceding taxable year, but the district director may determine that jeopardy does not exist in some cases. If the district director finds that the departure of such an alien results in jeopardy, the taxable period of the alien will be terminated, and the alien will be required to file returns and make payment of tax in accordance with subparagraph (3)(iii) of this paragraph. On the other hand, if the district director finds that the departure of the alien does not result in jeopardy, the alien will be required to file the statement or returns required by subparagraph (2) or (3)(i) of this paragraph, but will not be required to pay income tax before the usual time for payment.

(ii) The departure of an alien who is a resident of the United States or a possession thereof (or treated as a resident under section 6013 (g) or (h)) and who intends to continue such residence (or treatment as a resident) shall be treated as not resulting in jeopardy, and thus not requiring termination of his taxable period, except when the district director has information indicating that the alien intends by such departure to avoid the payment of his income tax. In the case of a non-resident alien (including a resident alien discontinuing residence), the fact that the alien intends to depart from the United States will justify termination of his taxable period unless the alien establishes to the satisfaction of the district director that he intends to

return to the United States and that his departure will not jeopardize collection of the tax. The determination of whether the departure of the alien results in jeopardy will be made on examination of all the facts in the case. Evidence tending to establish that jeopardy does not result from the departure of the alien may be provided, for example, by information showing that the alien is engaged in trade or business in the United States or that he leaves sufficient property in the United States to secure payment of his income tax for the taxable year and of any income tax for the preceding year which remains unpaid.

(2) *Alien having no taxable income and resident alien whose taxable period is not terminated.* A statement on Form 2063 shall be filed with the district director by every alien required to obtain a certificate of compliance:

(i) Who is a resident of the United States and whose taxable period is not terminated either because he has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year where the period for making the income tax return for such year has not expired) or because, although he has had taxable income for such period or periods, the district director has not found that this departure jeopardizes collection of the tax on such income; or

(ii) Who is not a resident of the United States and who has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year where the period for making the income tax return for such year has not expired).

Any alien described in subdivision (i) or (ii) of this subparagraph who is in default in making return of, or paying, income tax for any taxable year shall, in addition, file with the district director any returns which have not been made as required and pay to the district director the amount of any tax for which he is in default. Upon compliance by an alien with the foregoing requirements of this subparagraph, the district director shall execute and issue to the alien the certificate of compliance attached to Form 2063. The certificate of compliance so issued shall

be effective for all departures of the alien during his current taxable year, subject to revocation upon any subsequent departure should the district director have reason to believe that such subsequent departure would result in jeopardy. The statement required of a resident alien under this subparagraph, if made before January 21, 1961, with respect to a departure after January 20, 1961, may be made on a Form 1040C in lieu of a Form 2063.

(3) *Nonresident alien having taxable income and resident alien whose taxable period is terminated*—(i) *Nonresident alien having taxable income.* Every nonresident alien required to obtain a certificate of compliance (but not described in subparagraph (2) of this paragraph) who wishes to establish that his departure does not result in jeopardy shall furnish to the district director such information as may be required for the purpose of determining whether the departure of the alien jeopardizes collection of the income tax and thus requires termination of his taxable period.

(ii) *Nonresident alien whose taxable period is not terminated.* Every nonresident alien described in subdivision (i) of this subparagraph whose taxable period is not terminated upon departure shall file with the district director:

(a) A return in duplicate on Form 1040C for the taxable year of his intended departure, showing income received, and reasonably expected to be received, during the entire taxable year within which the departure occurs; and

(b) Any income tax returns which have not been filed as required.

Upon compliance by the alien with the foregoing requirements of this subdivision, and the payment of any income tax for which he is in default, the district director shall execute and issue to the alien the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective for all departures of the alien during his current taxable year, subject to revocation by the district director upon any subsequent departure if the taxable period of the alien is terminated on such subsequent departure.

(iii) *Alien (whether resident or nonresident) whose taxable period is terminated.* Every alien required to obtain a certificate of compliance, whether resident or nonresident, whose taxable period is terminated upon departure shall file with the district director:

(a) A return in duplicate on Form 1040C for the short taxable period resulting from such termination, showing income received, and reasonably expected to be received, during the taxable year up to and including the date of departure;

(b) Where the period for filing has not expired, the return required under section 6012 and § 1.6012-1 for the preceding taxable year; and

(c) Any other income tax returns which have not been filed as required.

Upon compliance with the foregoing requirements of this subdivision, and payment of the income tax required to be shown on the returns filed pursuant to (a) and (b) of this subdivision and of any income tax due and owing for prior years, the departing alien will be issued the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective only for the specific departure with respect to which it is issued. A departing alien may postpone payment of the tax required to be shown on the returns filed in accordance with (a) and (b) of this subdivision until the usual time of payment by furnishing a bond as provided in § 301.6863-1.

(4) *Joint return on Form 1040C.* A departing alien may not file a joint return on Form 1040C unless:

(i) Such alien and his spouse may reasonably be expected to be eligible to file a joint return at the normal close of their taxable periods for which the return is made; and

(ii) If the taxable period of such alien is terminated, the taxable periods of both spouses are so terminated as to end at the same time.

(5) *Annual return.* Notwithstanding that Form 1040C has been filed for either the entire taxable year of departure or for a terminated period, the return required under section 6012 and § 1.6012-1 for such taxable year shall be filed. Any income tax paid on income shown on the return on Form 1040C

shall be applied against the tax determined to be due on the income required to be shown on the subsequent return under section 6012 and § 1.6012-1.

[T.D. 6537, 26 FR 547, Jan. 20, 1961, as amended by T.D. 6620, 27 FR 11803, Nov. 30, 1962; T.D. 7575, 43 FR 58817, Dec. 18, 1978; T.D. 7670, 45 FR 6931, Jan. 31, 1980; T.D. 8332, 56 FR 3034, Jan. 28, 1991; T.D. 8526, 59 FR 10067, Mar. 3, 1994]

§ 1.6851-3 Furnishing of bond to insure payment; cross reference.

See section 6863 and § 301.6863-1 of this chapter (regulations on procedure and administration) for rules relating to the furnishing of bond to stay collection.

[T.D. 7575, 43 FR 58817, Dec. 18, 1978]

THE TAX COURT

DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

§ 1.7476-1 Interested parties.

(a) *In general*—(1) *Notice requirement.* Before the Internal Revenue Service can issue an advance determination as to the qualified status of certain retirement plans, the applicant must provide the Internal Revenue Service with satisfactory evidence that such applicant has notified the persons who qualify as interested parties, under regulations prescribed under section 7476(b)(1) of the Code, of the application for such determination. See section 3001(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 995). For the rules for giving notice to interested parties, see § 1.7476-2 and paragraph (o) of § 601.201 of this chapter (Statement of Procedural Rules).

(2) *Declaratory judgments.* Section 7476 provides a procedure for obtaining a declaratory judgment by the Tax Court with respect to the initial or continuing qualification under subchapter D of chapter 1 of the Code of a retirement plan defined in section 7476(d), in the case of an actual controversy involving:

(i) A determination by the Internal Revenue Service with respect to the initial qualification or continuing qualification under such subchapter of such a plan, or

(ii) A failure by the Internal Revenue Service to make a determination with respect to:

(A) Such initial qualification of such a plan, or

(B) Such continuing qualification of such a plan, if the controversy arises from a plan amendment or plan termination.

Under section 7476(d) the term “retirement plan” means a pension profitsharing, or stock bonus plan described in section 401(a), or a trust which is part of such a plan, an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a). This procedure is available only to the employer, the plan administrator as defined in section 414(g), an employee who qualifies as an interested party as defined in this section, or the Pension Benefit Guaranty Corporation, where such person has an actual controversy involving a determination described in paragraph (a)(2)(ii) of this section. In the case of an application for such a determination, this procedure is available only if such determination or failure to make such determination is with respect to an application described in paragraph (b)(7) of this section. In addition, in the case of such an application, if a petitioner was the applicant for the determination, the Tax Court may hold, under section 7476(b)(2), the filing of a pleading for a declaratory judgment to be premature unless the petitioner establishes to the satisfaction of the Tax Court that such petitioner has caused the interested parties to be notified in accordance with this section and § 1.7476.2

(b) *Interested parties*—(1) *In general.* If paragraphs (b) (2), (3), (4), and (5) of this section do not apply, then, except as otherwise provided in paragraphs (b)(6) (i), (ii), and (iii) of this section, the following persons shall be interested parties with respect to an application for an advance determination as to the qualified status of a retirement plan:

(i) All present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section), and

(ii) All other present employees of the employer whose principal place of