

Bank Secrecy Act - 31 USC 5321(a)(5)(G)

Right to Obtain Basis for Assessment

Proposed change:

31 USC 5321(a)(5) is amended to add new sub-section (G) to read as follows:

(G) Any person who is notified about a proposed assessment or assessment under this section shall be entitled upon request to a copy of the administrative file supporting the assessment within thirty days from the making of the request.

Reason for change:

The Internal Revenue Service has adopted a policy that persons against whom a proposed assessment or assessment is made for failure to maintain records or timely file a foreign bank account report form under the Bank Secrecy Act are not entitled to a copy of the administrative file supporting the assessment on request.

The effect of this policy is that assessments can be made administratively without the person against whom the assessment is made being notified of the reasons or grounds for the assessment, and that the person cannot obtain the file that shows the basis on which the assessment is being made. Instead, the person against whom the penalty is assessed must make a Freedom of Information Act request in order to obtain the administrative file that contains the basis of the proposed assessment or assessment.

When the request for the administrative file is made under the Freedom of Information Act, the Government then does not provide the information. Instead, the Government has implemented a rule that the failure of the Government to provide information under the Freedom of Information Act does not provide the assessed person with any defense against the arbitrary assessment.

We made a request for the administrative file for a taxpayer assessed a penalty under the Bank Secrecy Act in September, 2014. Under the Freedom of Information Act, the Government is required to provide documents within sixty days from the request. The Government is permitted to request a thirty day extension if exigent circumstances exist. The Government now routinely sends a form letter every forty-five days saying that they are still awaiting documents from the branch of the Government that has the documents, but that if the taxpayer is aggrieved, they can file a lawsuit in Federal Court to compel the Government to produce the documents. That is now how Government is supposed to work in the United States. We are still awaiting the documents.

This policy creates a situation that permits arbitrary and capricious action on the part of the Internal Revenue Service. A person who is assessed a penalty should be able to learn the basis on which the penalty is proposed or assessed upon request.