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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

MAR 03 1999

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MEMORANDUM FOR DISTRICT COUNSEL, DELAWARE-MARYLAND DISTRICT

FROM: Barry J. Finkelstein
Assistant Chief Counsel (Criminal Tax)

SUBJECT: Waiver of Statute of Limitations

This memorandum provides our response to your formal request for technical advice, dated January 28, 1999, concerning the waiver of the statute of limitations in a criminal case. At issue in this case is whether the criminal statute of limitations can be waived by the defendants.

Although there is a split of authority among the circuits on the issue of whether the statute of limitations is jurisdictional or whether it is an affirmative defense that may be waived, the majority of the circuits, including the Fourth Circuit, have held that the statute of limitations is not a jurisdictional bar to prosecution but a waivable defense. *See United States v. Williams*, 684 F.2d 296 (4th Cir. 1982), *cert. denied*, 459 U.S. 1110 (1983); *United States v. Wild*, 551 F.2d 418 (D.C. Cir. 1977), *cert. denied*, 431 U.S. 916 (1977); *United States v. Akmakjian*, 647 F.2d 12 (9th Cir.) *cert. denied*, 454 U.S. 964 (1981); *United States v. Doyle*, 348 F.2d 715 (2d Cir. 1965), *cert. denied*, 382 U.S. 843 (1965); *United States v. Waldin*, 253 F.2d 551, 558 (3rd Cir. 1958), *cert. denied*, 356 U.S. 973 (1958); *United States v Franklin*, 188 F.2d 182 (7th Cir. 1955); *Capone v. Aderhold*, 65 F.2d 130 (5th Cir. 1933); *United States. V. Levine*, 658 F.2d 113 (3d Cir. 1981). Since the case at issue would most likely be appealed to the Fourth Circuit, the law is clear that the statute of limitations can be waived. Like other waivers, however, waiver of the statute of limitations may be withdrawn by the defendant.

The issue as to whether the Service should enter into an agreement to extend or waive altogether the statute of limitations in the present case is fact determinative. Accordingly, the decision to enter into such an agreement rests with the District Director. It is our understanding that C.I. will be completing its investigation of this matter within the requisite time period and, thus, this issue may be moot. It may also not be in the Service's interest to delay the investigation or institution of charges, i.e., evidence and leads become stale, witnesses memories may fade, etc.

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We hope this addresses your concerns in this matter. Should additional assistance be required, please feel free to contact Martin Needle of the Criminal Tax Division on (202) 622-4470.