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DOCNUM 2013-0515121E5
REFDATE 140411
SUBJECT Application of 162(7.01) and (7.02) penalties
SECTION ITA: 162(7.01) and (7.02); Regulations: 205(3) and 205.1(1)

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: 1. In the application of subsection 162(7.01), is a taxpayer liable to a penalty for each type of information return that is late-filed? 2. In the application of subsection 162(7.02), is a taxpayer liable to a penalty for each type of information return that is not filed electronically?

POSITION: 1. & 2. Yes.

REASONS: 1. & 2. The application of these penalties is based on the number of prescribed information returns of a particular type.

XXXXXXXXXX

2013-051512
J. Ouimet

April 11, 2014

Dear XXXXXXXXXXXX:

Subject: Application of subsection 162(7.01) and (7.02) penalties

We are writing in reply to your email of December 7, 2013, requesting our views on the application of the penalties under subsections 162(7.01) and (7.02) of the Income Tax Act (the "Act") and subsection 205(3) and proposed subsection 205.1(1) of the Income Tax Regulations (the "Regulations"), respectively.

You provided a hypothetical example where a taxpayer filed 40 T4As and 40 T5s late for the 2013 year. You asked whether the taxpayer would be liable for one or two late-filing penalties under subsection 162(7.01). Specifically, you asked whether the phrase "the number of those information returns" means that the taxpayer would be liable for one penalty for late-filing 80 information slips or two penalties, that is, one for the 40 T4As and one for the 40 T5s.

As well, you asked the same question regarding the penalty in subsection 162(7.02) for failing to file information slips electronically where required and provided an example where a taxpayer failed to file 150 T4A slips and 200 T5 slips electronically.

Our Comments

This technical interpretation provides general comments about the provisions of the Income Tax Act and the Income Tax Regulations. It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 706R5, Advance Income Tax Rulings.

Subsection 162(7.01) of the Act, imposes a penalty on a person where information returns are filed late. Subsection 162(7.01) states:

"Every person (other than a registered charity) or partnership who fails to file, when required by this Act or the regulations, one or more information returns of a type prescribed for the purpose of this subsection is liable to a penalty equal to the greater of \$100 and

(a) where the number of those information returns is less than 51, \$10 multiplied by the number of days, not exceeding 100, during which the failure continues;..." [emphasis added]

It is our view that the reference to "the number of those information returns" used in this provision refers to the phrase "of a type" used in the preamble. The wording indicates that a taxpayer is liable to a separate penalty based on the number of each particular type of information return prescribed by subsection 205(3) of the Regulations. The February 2009 Finance Explanatory Notes confirm that subsection 162(7.01) is intended to apply in this manner. The Explanatory notes state, "The penalty is based on the number of prescribed information returns of a particular type ..." [emphasis added].

Therefore, in the hypothetical example provided above, two separate penalties could be assessed under paragraph 162(7.01)(a) of the Act, in respect of late-filing.

Subsection 162(7.02) uses the same words throughout the provision as subsection 162(7.01). Therefore, for the same reasons discussed above, the taxpayer in your second example would be liable to separate penalties pursuant to paragraph 162(7.02)(a) in respect of the T4 and T5 slips not filed electronically.

We trust our comments will be of assistance.

Yours truly,

Terry Young, CPA, CA
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