



IRS issues alert on improper corporate domestic production activities deduction refund claims

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WASHINGTON – IRS officials issued an alert today concerning amended returns and claims for the Domestic Production Activities Deduction. This provision of tax law was repealed as part of the Tax Cuts and Jobs Act for taxable years after Dec. 31, 2017. In the wake of the repeal, the IRS has received a wave of questionable amended returns and claims for tax benefits in the billions of dollars.

“We have no qualms with taxpayers claiming benefits allowed by law,” said Doug O’Donnell, Commissioner, Large Business and International Division. “But a very high percentage of the claims for the now repealed Domestic Production Activities Deduction are not properly supported by those claiming it.”

A large majority of the filings involve taxpayers who are claiming DPAD for the first time based on studies conducted after the fact, which contain unreasonable assumptions of facts and law.

In September of 2018, LB&I [announced a campaign](#) to risk assess claims or amended returns under the repealed section of the law. The IRS will continue to audit this issue even though the section was repealed.

Examiners are auditing these claims with the support of Chief Counsel, engineer specialists, and the Corporate Income and Losses Practice Network. In July 2020, the IRS issued a [GLAM](#) addressing examples of meritless section 199 online software activity. In many examination cases, once challenged, taxpayers have conceded 100% of the claim. And, the IRS continues to litigate section 199 issues.

Examiners have been advised to consider Section 6676, Erroneous Claim for Refund or Credit, penalties, other applicable penalties, and referrals to the Office of Professional Responsibility (OPR), when appropriate. Taxpayers and their advisors should ensure they have documentation to support their position and should expect that the IRS may impose appropriate penalties unless taxpayers establish that they have reasonable cause. A study does not necessarily provide reasonable cause.

“Meritless claims are harmful to tax administration and voluntary compliance. Any corporate taxpayer who is considering filing such a claim should reconsider. Taxpayers who have already filed can withdraw prior to IRS audit contact to avoid penalties,” said O’Donnell.