

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3086-99
SDTillem

date:

to: Chief, Quality Measurement Staff, Manhattan District
Attention: Jerry Feig, Restricted Interest Reviewer

from: District Counsel, Manhattan

subject:

[REDACTED]
EIN: [REDACTED]
Interest on Deficiencies
Taxable Year: [REDACTED]
U.I.L. # 6601.01-00

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to the taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This advice assumes that the facts are as represented herein.

This advice is subject to 10 day post review by the National Office. Accordingly, we request that you do not act on this

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advice until we have advised you of the National Office's comments, if any, about this advice.

This memorandum is in response to your request for advice concerning when underpayment interest begins to accrue on [REDACTED] (" [REDACTED] ") deficiency in tax for the tax year [REDACTED]. We have spoken with Deborah A. Swann of the National Office regarding this issue.

ISSUE

On what date does underpayment interest begin to accrue on [REDACTED] deficiency in tax of \$ [REDACTED] for tax year [REDACTED] where the underpayment is attributable to [REDACTED] election on [REDACTED] to have an overpayment of tax from [REDACTED] credited to its estimated tax liability for [REDACTED] without designating the estimated tax payments to which the overpayment was to be credited.

CONCLUSION

Underpayment interest should begin to accrue on [REDACTED] deficiency of \$ [REDACTED] for tax year [REDACTED] as follows:

<u>Interest Start Date</u>	<u>Amount of Deficiency</u>
[REDACTED]	\$ [REDACTED]
	\$ [REDACTED]

FACTS

[REDACTED] timely filed its [REDACTED] tax return under extension on [REDACTED]. The return reported an overpayment of \$ [REDACTED] which the taxpayer elected to apply towards its [REDACTED] estimated taxes pursuant to I.R.C. § 6402(b). The return did not designate the installment to which the overpayment was to be applied.

The following is a summary of the estimated tax payments reported by [REDACTED] for [REDACTED]:

<u>Payment Due Date</u>	<u>Amount Due</u>	<u>Deposit</u>	<u>Application Of Credit Elect</u>	<u>Total</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	-	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	-	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	* [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	** [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]

* The deposit for [REDACTED] consists of a cash deposit of \$ [REDACTED] plus a rollover from [REDACTED] of \$ [REDACTED] (\$ [REDACTED] less \$ [REDACTED]).

** The deposit for [REDACTED] consists of a cash deposit of \$ [REDACTED] plus a rollover from [REDACTED] of \$ [REDACTED] (\$ [REDACTED] less \$ [REDACTED]).

In [REDACTED], the Service assessed an audit deficiency of \$ [REDACTED] together with underpayment interest of \$ [REDACTED] against [REDACTED]. The Service computed the underpayment interest starting from [REDACTED] (the first quarter estimated tax due date for the [REDACTED] tax year). [REDACTED] contends that under May Department Stores Co. v. United States, 36 Fed. Cl. 680 (1996), acq. AOD CC:1997-008 (Aug. 4, 1997), underpayment interest should accrue starting from [REDACTED].

DISCUSSION AND ANALYSIS

Section 6601(a) of the Internal Revenue Code provides "[i]f any amount of tax...is not paid on or before the last date prescribed for payment, interest on such amounts...shall be paid for the period from such last date to the date paid." The date prescribed for payment of income tax is the due date for the tax return, without regard to extensions. I.R.C. §§ 6151; 6601(b).

In situations where the Service determines a deficiency in tax after a taxpayer has elected to have an overpayment that is claimed on a timely filed return (including one filed under extension) for the deficiency year credited against an installment of the succeeding year's estimated tax liability, Revenue Ruling 88-98, 1988-2 C.B. 356, concludes that interest on

the subsequently determined deficiency runs from the due date of the installment payment against which the overpayment was credited on the part of the deficiency that is equal to or less than the claimed overpayment, and from the original due date of the next year's return on the remainder of the deficiency.

Revenue Ruling 88-98 follows Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978), in which the court interpreted § 6601(a) to mean that interest on a deficiency can only be charged when the tax is both due and unpaid. Under the Avon Products analysis the tax liability does not become unpaid until the date on which amounts that were in the account on the due date have been refunded to the taxpayer or credited to another tax liability.

In the instant case, the taxpayer had an overpayment of \$ [REDACTED] which the taxpayer elected to have applied towards its [REDACTED] estimated taxes. The Service subsequently assessed a deficiency of \$ [REDACTED] for [REDACTED]. The overpayment exceeds the deficiency by \$ [REDACTED]. After the \$ [REDACTED] of credit elect was applied on [REDACTED] the part of the deficiency equal to the claimed credit elect was as follows:

Payment		
Due Date	Credit Elect	Deficiency
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]*
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]**

* The deficiency of \$ [REDACTED] equals the credit elect of \$ [REDACTED] less \$ [REDACTED] (the amount by which the overpayment of \$ [REDACTED] exceeds the deficiency of \$ [REDACTED] for [REDACTED]).

** The deficiency of \$ [REDACTED] equals the amount of the credit elect of \$ [REDACTED] applied on [REDACTED].

The total deficiency of \$ [REDACTED] for [REDACTED] exceeds the amount of the deficiency allocated above of \$ [REDACTED] by \$ [REDACTED]. Interest on this remainder of the deficiency in the amount of \$ [REDACTED] should run from the due date of the [REDACTED] tax year return or [REDACTED] pursuant to I.R.C. § 6513(a) and (d).

Accordingly, interest on the deficiency of \$ [REDACTED] for [REDACTED] should run as follows:

<u>Interest Start Date</u>	<u>Amount of Deficiency</u>
[REDACTED]	\$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED]

Should you have questions regarding this memorandum, please contact Steven D. Tillem at (212) 264-1595 extension 291.

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Enclosures

Noted:

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