



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
July 6, 1999

Number: **200002002**
Release Date: 1/14/2000
CC:DOM:FS:PROC
TL-N-1123-99
UILC: 6215.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: DEBORAH A. BUTLER
Assistant Chief Counsel (Field Service)
CC:DOM:FS

SUBJECT: Crediting a Separate Liability from the Overpayment of a
Joint Return

This Field Service Advice responds to your memorandum dated April 1, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

- X =
- Y =
- Year 1 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =
- Date 10 =
- A =
- B =

C =
D =
E =
F =

ISSUE(S):

- 1) Whether the claim for refund filed jointly by X and Y was timely filed pursuant to section 6511.
- 2) Whether X and Y are precluded from filing a suit for refund for Year 1; and if just X is precluded from filing a suit for refund because a decision was entered against X individually by the Tax Court for Year 1, whether Y may file a suit to recover Y's portion of the joint refund.

CONCLUSION:

1) Section 6511(a) states that a claim for credit or refund of an overpayment must be made within three years from the date the return was filed or two years from the date the tax was paid. Section 6511(b) further limits the allowance of credits and refunds by stating that if the claim for refund is mailed within three years from the date the return is filed, then the amount of the credit or refund is limited to the portion of the tax paid within the period equal to three years from the filing of the return. In the case at issue, the joint return was originally filed on Date 2, the claim for refund was filed on Date 7, and the tax was paid on Date 9 and Date 10. Therefore, the claim for refund was filed within three years from the date the return was filed pursuant to section 6511(a). However, this claim for refund is limited to the amount of tax that has been paid for Year 1 since Date 8, which is three years prior to the date the claim was filed. As the tax was paid on Date 9 and Date 10, it appears that the full amount may be claimed as a refund.

2) Each spouse has an individual interest in the overpayment of a joint return. Each spouse's individual share of the joint return is determined pursuant to the formulas as stated in Rev. Rul. 80-7, 1980-1 C.B. 296. X is prohibited from filing a suit for refund pursuant to section 6512 because a final decision was entered in X's Tax Court case. Y may file a suit for refund for Y's individual share of the joint return, however, the amount that Y may be refunded is limited by section 6511.

FACTS:

X failed to file an income tax return for Year 1. On Date 1, respondent issued a notice of deficiency to X for Year 1. On Date 2, X and X's spouse, Y, filed a joint return for Year 1. On Date 3, X filed a petition in the United States Tax Court for the court to redetermine the deficiency listed in the notice of deficiency. On Date 4, X and Y filed with the Service a Form 1040X, Amended United States Individual Income Tax Return, amending the joint return for Year 1. The amended joint return indicated an increase in income tax in the amount of A. The Service accepted the amended return and prepared a stipulation and decision for X to sign in X's Tax Court case. X did not sign the stipulation and decision because X told the Service that X was confused over the wording of the documents. On Date 5, the Tax Court case was called to trial. X did not appear at trial, and the case was dismissed for lack of prosecution. A deficiency amount was entered in the amount of A, an addition to tax in the amount of B, and an addition to tax in the amount of C. The deficiency against X was assessed on Date 6 and posted to X's transcript of account. On Date 7, X and Y mailed a second Form 1040X to the Service, amending the joint income tax return for Year 1. This second Form 1040X indicated a decrease in capital gains in the amount of D, a decrease in taxable pension income in the amount of E, and claimed a refund in the amount of F. X and Y paid the tax deficiency determined in the Date 4 Form 1040X on Date 9 and Date 10.

LAW AND ANALYSIS

Issue 1

In order to determine if the taxpayers are eligible for a refund, it first must be decided if the taxpayers filed a timely refund claim. Section 6511(a) states that a claim for credit or refund of an overpayment shall be filed by the taxpayer within 3 years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later. In the case at issue, X and Y filed their joint return on Date 2. X and Y filed their amended joint income tax return, which included a claim for refund on Date 7, which date is within 3 years from Date 2. Therefore, X and Y timely filed their claim for refund pursuant to section 6511(a).

Section 6511(b), however, limits the amount that the taxpayers can be refunded. Section 6511(b) states that if the claim was filed within 3 years from the time the original return was filed, then the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of extension of time for filing the return. Thus X and Y are limited in their refund to the tax that was paid for Year 1 after

Date 8. As the tax was paid on Date 9 and Date 10, it appears that X and Y are not limited in their refund claim.

Issue 2

Section 6402(a) states that in the case of an overpayment, the Service may credit the amount of the overpayment against any tax liability on the part of the person who made the overpayment and shall refund the balance to such person. Section 6512(a) states that if the Secretary has mailed a notice of deficiency to the taxpayer, and the taxpayer has filed a petition with the Tax Court to redetermine the deficiency amount, no credit or refund of income tax for the same taxable year, in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court. In the case at issue, a final court decision was entered in the United States Tax Court against X individually. This deficiency determination by the Tax Court was assessed against X and posted to X's transcript of account. X also does not meet any of the exceptions listed in section 6512(a). X is prohibited from filing a suit to recover any part of the deficiency determination that was made by the Tax Court on the basis of the doctrine of res judicata. See Commissioner v. Sunnen, 333 U.S. 591 (1948) (each income tax is a single cause of action and judgment on the merits is res judicata in any later proceeding involving a claim for the same tax year). Therefore, the Service is entitled, pursuant to section 6402(a), to credit X's overpayment to X's liability for Year 1 as determined in the final Tax Court decision.

The Service, however, has determined that when a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. Rev. Rul. 74-611, 1974-2 C.B. 399. The courts have also held that the Service is not entitled to apply the entire joint overpayment to a previous deficiency of one of the individuals who filed the joint return. Maragon v. United States, 153 F. Supp. 365 (Cl. Ct. 1957). Case law has also established that overpayments by joint filers are apportionable to each spouse to the extent that they contributed to the overpaid amount. Ragan v. Commissioner, 135 F.3d 329 (5th Cir. 1998). Case law has also established that Rev. Rul. 74-611 provides that filing a joint return does not give one spouse an interest in the income of the other spouse. Id. at 333.

The Service has provided in Rev. Rul. 80-7, 1980-1 C.B. 296, the proper method for computing the amount of an overpayment claimed in a joint return that may be credited to one spouse's unpaid separate tax liability. This revenue ruling applies the separate tax formula in section 20.2053-6(f) of the Estate Tax Regulations and section 1.6654-2(e) of the Income Tax Regulations to determine each spouse's

share of the joint tax liability. Each spouse's share of the joint liability is based on the tax liability for which each spouse would have been liable for had each spouse filed a separate return for the tax year at issue. Treas. Reg. § 1.6654-2(e). A spouse's contribution toward the payment of the joint liability must then be

established. Pursuant to Rev. Rul 80-7 and Treas. Reg. § 1.31-1, if a husband and wife file a joint return and do not file an estimated declaration and/or do not make a payment with the joint return, then each spouse's contribution toward the joint liability will be equal to the withholding tax credits attributable to the spouse. The division of any earned income credits is made pursuant to Rev. Rul. 87-52, 1987-1 C.B. 347. If a husband and wife file a joint return with an estimated declaration of tax and/or make a payment with their return, the estimated tax payments shall be allocated pursuant to the following formula:

$$\frac{\text{separate tax liability}}{\text{both separate tax liabilities}} \times \text{estimated tax payments}$$

Therefore, the Service will determine a spouse's individual refund by subtracting the spouse's individual liability from the spouse's contribution toward the joint tax liability. Rev. Rul. 80-7, 1980-1 C.B. 296.

In the case at issue, X and Y filed a joint return on Date 2, and they filed an amended joint return on Date 7 with a claim for refund in the amount of F. A final decision has been entered against X individually. Therefore, the Service is entitled pursuant to section 6402 to credit X's overpayment to X's outstanding tax liability. However, the overpayment was determined in an amended joint return filed by X and Y. X and Y each have a separate individual interest in the overpayment they claimed in the Date 7 amended return, and the Service is prohibited from crediting Y's share of the overpayment to X's individual tax liability. See Maragon v. United States, 153 F. Supp. 365 (Cl. Ct. 1957). Therefore, the Service must determine X and Y's individual shares of the overpayment pursuant to Rev. Rul. 80-7. The Service may credit X's share of the overpayment to X's separate liability and Y may file a claim for refund for Y's share of the overpayment, as limited by section 6511(b).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

If you have any further questions, please call the branch telephone number.