

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
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CASE MIS No.: TAM-106302-99/CC:DOM:IT&A:B1

Chief, Appeals Office

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND:

Taxpayer =

A =

X =

\$a =

\$b =

\$c =

\$d =

ISSUE:

Whether interest is allowed under § 6611 of the Internal Revenue Code on a refund of an overpayment of income tax attributable to a carryback of a net operating loss when the Service refunds the overpayment within 45 days of the date on which a taxpayer files a claim for refund of the overpayment in a processible form.

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CONCLUSION:

Interest is not allowed under § 6611 when the Service refunds an overpayment of income tax attributable to a carryback of a net operating loss within 45 days of the date on which a taxpayer files a claim for refund of the overpayment in processible form.

FACTS:

The Service examined several income tax returns of X, an accrual basis S corporation of which A was the sole shareholder, including the 1992 year. Depreciation adjustments to X's 1992 tax year resulted in an adjustment to the distributive share of X's income for the 1992 tax year. However, the adjustments to X's return did not result in an overassessment for Taxpayer for the 1992 tax year as reflected on the Form 870-AD. The adjustments contributed to the Taxpayer's negative taxable income of \$a for the 1992 tax year.

On September 4, 1996, Taxpayer mailed a Form 1040X for the 1989 tax year carrying back the negative taxable income figure of \$a as a net operating loss deduction for 1989. The Service contacted Taxpayer in October of 1996 concerning the Form 1040X and requested that the Taxpayer submit a Schedule A of Form 1045, Application for Tentative Refund. The Taxpayer mailed a revised 1989 Form 1040X with the Schedule A to the Service on October 11, 1996. The Schedule A computation of the net operating loss showed that the correct net operating loss for 1992 was \$b and not \$a as shown on the first Form 1040X filed by Taxpayer. When the Schedule A was submitted, the Taxpayer noted that the Service had the information to determine the correct amount of the refund.

The Service processed the revised Form 1040X for 1989 using the correct net operating loss deduction and mailed a refund check dated November 22, 1996. The Taxpayer's transcript of account reflects that the refund was paid on November 25, 1996, which was within 45 days of the October 11, 1996, mailing date of the revised Form 1040X for 1989. The refund check was for \$c, which included \$d of interest. The Service subsequently determined that no interest was due on the refund.

The Taxpayer filed a claim for overpayment interest on \$c computed from the due date of the 1992 loss year return to October 11, 1996. The Service denied the claim for the reason that interest is not allowed on refunds of overpayments attributable to net operating loss carrybacks if the refund is made within 45 days of the date the claim is filed.

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LAW AND ANALYSIS:

Applicable Law and Legislative History

Section 6611(a) states that interest shall be allowed and paid upon any overpayment in respect of an internal revenue tax at the overpayment rate established under § 6621.

Section 6611(b)(2) provides that overpayment interest is allowed and paid, in the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days.

Section 6611(e)(1) states that if any overpayment of tax imposed by title 26 is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest is allowed under § 6611(a) on that overpayment.

Section 6611(e)(2) states that if the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by title 26, and the overpayment is refunded within 45 days after the claim is filed, then no interest is allowed on that overpayment from the date the claim is filed until the day the refund is made.

Section 6611(e)(3) states that if an adjustment initiated by the Secretary results in a refund or credit of an overpayment, interest on the overpayment is computed by subtracting 45 days from the number of days interest would otherwise be allowed on the overpayment.

Prior to amendment by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13271, 107 Stat. 541 (OBRA 1993 amendment) former § 6611(e) stated that if an overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extensions of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest is allowed under § 6611(a) on that overpayment.

The committee report on the OBRA 1993 amendment states under then present law that no interest is paid on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date of the return (determined without regard to extensions) or the date the return is filed. There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax. If a taxpayer files a timely original return with respect to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, then

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IRS will pay the refund with interest computed from the original due date of the return. Congress amended the law by extending the 45-day processing period to amended returns, claims for refund, and IRS-initiated adjustments. See H.R. Rep. No. 111, 103d Cong., 1st Sess. 787 (1993)).

Section 6611(f) provides rules for computing interest on refunds of income tax caused by carryback or adjustment for certain unused deductions. Section 6611(f)(1) states that if any overpayment of income tax results from a carryback of a net operating loss or net capital loss, the overpayment is deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net operating loss arises. Section 6611(f)(4)(A) provides that for purposes of § 6611(f)(1) the term “filing date” means the last date prescribed for filing the return of tax imposed by subtitle A for the taxable year (determined without regard to extensions).

Section 6611(f)(4)(B)(i)(I) provides that for purposes of § 6611(e), any overpayment described in § 6611(f)(1), (2), or (3) is treated as an overpayment for the loss year. Section 6611(f)(4)(B)(i)(II) provides that § 6611(e) is applied to the overpayment by treating the return for the loss year as not filed before claim for the overpayment is filed.

Section 6611(f)(4) was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 346(c)(1)(C), 96 Stat. 637 (TEFRA amendment). The legislative history of the TEFRA amendment explains that Congress believed it was inappropriate to require the United States to pay interest on amounts prior to the time it has notice that owes such an amount. No interest is payable with respect to any overpayment until the Secretary can determine that such overpayment exists by way of a notice of such overpayment being filed in processible form. An overpayment due to a net operating loss or a net capital loss carryback, or a credit carryback, is deemed not to arise before the application for tentative carryback adjustment is made, or the claim for credit or refund is filed with respect to such overpayment. Thus, interest is not payable on such carryback for any period prior to the time such application or claim is filed in processible form. See S. Rep. No. 494, 97th Cong., 2d Sess. 307 (1982). See also Joint Committee on Taxation Staff, General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, 97th Cong., 2d Sess. (1982), which explains that if the claim for refund (including an application for tentative carryback or refund adjustment) based on the carryback of the loss or credit from the loss year is filed after the due date of the return for the loss year (determined without regard to extensions), interest on the refund is payable only if the refund is not made within 45 days of the claim. If the 45-day period expires, interest runs from the due date of the return for the loss year.

Section 6611(h) provides that for purposes of § 6611(e) a return is not treated as filed until it is filed in processible form. A return is in a processible form if the return is on a permitted form, and the return contains the taxpayer’s name, address, and identifying

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number and the required signature, and sufficient required information (whether on the return or on required statements) to permit the mathematical verification of tax liability shown on the return. Mathematical verifiability requires sufficient information to permit the Service to calculate and corroborate the mathematics and data reported by the taxpayer. Under § 6611 a taxpayer must submit enough underlying data for the Service to verify and calculate the tax liability without undue burden. See Columbia Gas System, Inc. v. United States, 70 F.3d 1244 (Fed. Cir. 1995).

Analysis

In general, interest on a refund is allowed and paid under § 6611(a) at the overpayment rate established under § 6621 from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days.

It is well settled that the Government may pay interest only if authorized to do so by a specific statutory provision. U.S. ex. rel. Angarica v. Bayard, 127 U.S. 251 (1888). In the case of overpayments attributable to carrybacks of net operating losses, the law provides specific rules with respect to how interest is to be computed on overpayments arising from the carryback of the net operating loss. Section 6611(f)(4)(B)(i)(I) provides that for purposes of § 6611(e) the overpayment attributable to the carryback of the net operating loss is treated as an overpayment for the loss year. In addition, § 6611(f)(4)(B)(i)(II) provides that § 6611(e) is applied with respect to that overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed.

Former § 6611(e), in effect at the time that § 6611(f)(4) was enacted, provided that if an overpayment of income tax is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extensions of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under § 6611(a) on such overpayment. Section 6611(f)(4)(B)(i)(II) provides that in applying § 6611(e), the return for the loss year is treated as not filed before the claim for the overpayment attributable to the net operating loss is filed. If the Service pays a claim relating to the carryback of the net operating loss within 45 days of the date of the claim, then the refund is deemed by § 6611(f)(4)(B)(i)(II) to be paid within 45 days of the date the return is filed. Under these circumstances § 6611(e) prohibits payment of interest on the refund attributable to the net operating loss carryback. This result is consistent with the legislative history of § 6611(f)(4)(B)(i) and the Joint Committee's Explanation of TEFRA.

The amendment to § 6611(e) by OBRA 1993 extended the 45 day rule to amended returns and IRS-adjustments but did not change the rule contained in § 6611(f)(4)(B)(i)(II). Section 6611(f)(4)(B)(i)(II) applies § 6611(e) to overpayments

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attributable to the carryback of a net operating loss by treating the return for the loss year as not filed before the claim for that overpayment is filed. OBRA 1993 amended § 6611(e) to provide a parallel rule for overpayments shown on amended returns, claims for refund, and IRS-initiated adjustments. However, the relevant provision under § 6611(e) relating to refunds made within 45 days of the date the return is filed is the same pre-OBRA (§ 6611(e)) and post-OBRA (§ 6611(e)(1)). Section 6611(e)(1) was broadened to cover all taxes and not just income taxes. Under pre- and post-OBRA law, § 6611(f)(4)(B)(i)(II) treats the return for the loss year as not filed before the claim with respect to the overpayment is filed and, accordingly, allows the Service 45 days to pay the refund without paying interest. The fact that neither § 6611(e)(2) nor § 6611(e)(3) refer to a return filing date provides additional support for the applying the rule of § 6611(e)(1), which does refer to the date the return is filed.

The \$c refund of Taxpayer's 1989 overpayment is attributable to Taxpayer's claim for the carryback of the net operating loss from 1992 to 1989. That claim, when filed in processible form, is the notice that began the 45 day period for payment of the refund. The Form 1040X mailed on September 4, 1996, was not filed in processible form because it lacked the information required by the Service to recalculate and corroborate the mathematical accuracy of the net operating loss claimed by the Taxpayer. The request for Schedule A of Form 1045, which is used to compute the amount of the net operating loss, enabled the Service to verify the accuracy of the Taxpayer's math without undue burden. The request for additional information was proper as evidenced by the Taxpayer's incorrect computation of the net operating loss shown on the Form 1040X mailed September 4, 1996.

Accordingly, the \$e refund was made within 45 days of when the claim was filed in processible form on October 11, 1996, and no interest is payable to the Taxpayer on that refund.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.