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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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SCAF-104684-02

MEMORANDUM FOR M. K. MORTENSEN

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CC:SB:5:SLC
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FROM: Pamela W. Fuller, Senior Technician Reviewer, Branch 1
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SUBJECT: Significant Service Center Advice
OGD - Black Reparations - Interest
SCAF-104684-02

This Chief Counsel Advice responds to your memorandum dated February 20, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

Issues

1. What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Service recovers the erroneous refund through deficiency procedures?
2. What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Service recovers the erroneous refund through mathematical or clerical error assessment procedures?
3. What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Internal Revenue Service recovers the erroneous refund through an erroneous refund suit?

Conclusions

1. Interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Internal Revenue Service recovers the erroneous refund through deficiency procedures runs from the date prescribed for filing the return,

SCAF-104684-02

determined without regard to any extension of time for filing, to the date of payment by the taxpayer.

2. Interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Internal Revenue Service recovers the erroneous refund through mathematical or clerical assessment procedures runs from the date prescribed for filing the return, determined without regard to any extension of time for filing, to the date of payment by the taxpayer.
3. Interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Internal Revenue Service recovers the erroneous refund through an erroneous refund suit runs from the date of payment of the refund.

Overview

The Service has received numerous claims for refund based on a purported black or slavery reparations credit on the line of the return reserved for credits from an regulated investment company (RIC), real estate investment trust (REIT), or earned income tax credit (EITC). Initial processing of these returns often results in a credit being entered on the account, typically using Transaction Code 766. When the Service timely identifies such frivolous claims, it seeks to avoid paying refunds. There have been instances, however, in which refunds based on these frivolous claims have been issued. On December 26, 2001, the Office of Chief Counsel issued Notice 2002-012 which dealt with these claims and concluded that in certain situations, the Service could assess the tax liability arising from that claim under procedures for mathematical or clerical error provided by I.R.C. §§ 6213(b)(1) and 6213(g)(2). The Service has begun the process of sending out mathematical error notices to taxpayers. The mathematical error assessment is typically done by reversing the credit on the taxpayer's account. If the credit is reversed as of the date of the original input of Transaction Code 766, the taxpayer would receive a bill for the amount of the refund made with interest from the date of issuance of the refund. If the credit is reversed as of the date the Service issues the mathematical error notice to the taxpayer, the taxpayer will receive a bill for the erroneous refund and will not be charged interest unless the taxpayer fails to pay the assessed amount within 30 days.

Discussion

Issue 1: What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Service recovers the erroneous refund through deficiency procedures?

The Service should issue a statutory notice of deficiency where an erroneous refund has been issued, and the period of limitation for assessment of a deficiency would expire before the time required for the taxpayer to properly request an abatement under I.R.C. § 6213(b)(2). See *Brown v. Commissioner*, T.C. Memo. 1996-100 (limitation period under I.R.C. § 6501 applies). The Service should also issue a statutory notice of

SCAF-104684-02

deficiency where an erroneous refund has been issued, the Service has made a math error assessment under I.R.C. § 6213(b)(1), and the Service has abated the assessment at the request of the taxpayer as required under I.R.C. § 6213(b)(2). In calculating the deficiency, the Service should treat the erroneous earned income credit as a negative tax as provided under I.R.C. § 6211(b)(4).

I.R.C. § 6601(a) governs the payment of interest in deficiency cases and provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest shall be paid on the amount from such last date to the date paid. *See Tomburello v. Commissioner*, 86 T.C. 540, 546 (1986), *aff'd without published opinion*, 838 F.2d 474 (9th Cir. 1988), *cert. denied*, 486 U.S. 1057 (1988). I.R.C. § 6151(a) provides, in general, that the date prescribed for payment is the time fixed for filing the return, determined without regard to any extension of time for filing. I.R.C. § 6601(b) provides that for determining interest on underpayments, the “last date prescribed for payment” is determined without regard to any extension of time for payment or filing. Finally, I.R.C. § 6072(a) in general provides that in the case of individuals, returns made on the basis of the calendar year shall be filed on or before April 15th of following the close of the calendar year.

To the extent that the Service paid interest on the refund, the Service is entitled to recover interest computed on the refund up to the date the Service made the payment. *See United States v. LaRosa*, 993 F. Supp. 907 915 (D. Md. 1997); *United States v. Lasbury*, 83-2 USTC ¶ 9721 at 88,580 (D. Ariz. 1983); *Beckman v. United States*, 396 F. Supp. 44, 48 (D. Kan. 1975); Rev. Proc. 94-60, 1994-2 C.B. 774, 775.

Issue 2: What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Service recovers the erroneous refund through mathematical or clerical error assessment procedures?

Mathematical or clerical error procedures under I.R.C. § 6213(b)(1) should generally be used in instances in which a taxpayer has claimed a black reparations tax credit on the line typically used to claim EITC. For instance, I.R.C. § 6213(g)(2)(F) includes in the definition of math error “an omission of a correct taxpayer identification number required under I.R.C. § 32 (relating to the EITC) to be included on a return.” I.R.C. § 32(c)(3)(D) and I.R.C. § 32(m) require the taxpayer to provide the name, age and taxpayer identification number of the qualifying child on the return. The failure to provide this information permits the Service to summarily assess the amount claimed as an EITC. The black reparations credit claimed as EITC fails to provide the information required by I.R.C. § 32. Thus, summary assessment as a math error under I.R.C. § 6213(b)(1) is appropriate. A claim for black reparations credit may also fit within other provisions of I.R.C. § 6213(g)(2) defining mathematical or clerical errors depending on the facts and circumstances of each case.

We believe that the same Code provisions governing computation of interest apply to erroneous refund assessments made pursuant to the mathematical or clerical error

SCAF-104684-02

procedures under I.R.C. § 6213(b)(1) as to the deficiency procedures outlined in Issue 1 above. See *Beckman v. United States*, 396 F. Supp. 44, 48 (D. Kan. 1975).

Issue 3: What is the proper method of computing interest on the recovery of erroneous refunds made in slavery reparations credit cases where the Internal Revenue Service recovers the erroneous refund through an erroneous refund suit?

I.R.C. § 6602 governs the payment of interest in erroneous refund suits pursuant I.R.C. 7405 and provides that:

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and recovered by suit pursuant to section 7405, shall bear interest at the underpayment rate established under section 6621 from the date of payment of the refund.

I.R.C. § 6404(e)(2) provides that the Service shall abate the assessment of all interest on an erroneous refund until the date demand for repayment is made, unless the taxpayer or a related party had in any way caused the erroneous refund or the erroneous refund exceeded \$50,000. We do not believe the taxpayers who made these false slavery reparations credit claims can qualify for interest abatement.

Accordingly, interest in this situation shall generally run from the date of payment of the refund.

If you have any questions, please contact _____ at _____