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From:

Sent: Wednesday, June 02, 2010 2:54:30 PM

To:

Cc:

Subject: FW: 6411/6501 question

Attachment: IRS CCA200243019

Getting back to you about your question regarding the Letter 1139 that was returned indicating that the statute had expired for the oldest year:

I took a look at Rev. Proc. 2009-52 and discussed your question with two attorneys in my office who have worked on the section 6411 regulations. Assuming the NOL for your taxpayer was properly carried back to under the rev proc and the tentative refund claim was timely under section 6411(governed by the NOL year, not the carryback year), we don't know why the 1139 would state the statute had expired, either for the taxpayer to be entitled to a refund or for the IRS to examine the year. A refund under section 6411 is not the same as an ordinary refund claim for purposes of the limitations period. In other words, the taxpayer is not precluded from getting a refund as a result of the carryback because the 6411 claim is outside of the normal 3 year/2 year limitations period for refunds of tax.

The is also not closed for purposes of making further assessments. The statute of limitations for assessment is suspended under sections 6501(h) and (k). See the attached CCA.

This is the tradeoff of being able to get the quick refund under section 6411--it reopens the door to allow the IRS to reexamine an old tax year where the assessment statute might otherwise have run.

Please let me know if you would like to discuss further or if I am misunderstanding any of the facts. But based on what we discussed, I don't understand why the refund claim would have been denied for the year.