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**From:**

**Sent:** Wednesday, March 21, 2012 12:44:58 PM

**To:**

**Cc:**

**Subject:** RE: Barred Overpayments

In cases where a claim involves an overpayment based not only on a loss carryback but on another adjustment as well, and the claim with respect to the other items is barred, the mere fact that the claim is based on the carryback of a loss does not permit a barred item to increase the amount of the overpayment. Treas. Reg. section 6511(d)-2(a)(3).

If the claim is based on both a loss carryback and other items, credit or refund cannot exceed the amount of the overpayment attributable to the loss carryback and the amount that would otherwise be refunded under the general three-year and two-year rules.

Under the rationale of Lewis v. Reynolds, the Service may defeat a claimed overpayment based on a loss carryback by establishing a previously undiscovered deficiency, or by showing that the carryback could have been entirely absorbed by adjustment to income in a carryback year that preceded the year of the claimed overpayment. Some have argued that by analogy, a taxpayer should be permitted to utilize an unclaimed deduction barred from refund by expiration of the SOL to reduce the amount of the NOL consumed in a carryback year, and as a result, a barred unclaimed deduction should increase the amount of the available NOL in the next year. The Service does not accept this view and contends that the loss carryback is the first adjustment to taxable income, and any barred adjustment decreasing taxable income is used only to offset barred adjustments increasing taxable income. See Rev. Rul. 81-88, 1981-1 CB 585 (In determining the amount of an overpayment of income tax from a net operating loss carryback that may be refunded or credited, the taxable income of the first carryback year should not be reduced by the amount of an unclaimed deduction that is barred by the expiration of the period of limitations. If an adjustment for a barred deduction in the first carryback year results in a net operating loss for that year, that net operating loss may be carried forward and applied as an adjustment decreasing the taxable income of the next open carryback year prior to applying the net operating loss carryback.