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From:

Sent: Friday, February 10, 2012 2:40 PM

To:

Cc:

Subject: Lewis v. Reynolds

Hi looking at this again, I either misread or misunderstood your original facts. I didn't realize payments were made within the ASED period. Thus, I stated below that "your question does not involve a payment of the underpaid excise tax made within the assessment period so Rev. Rul. 85-67 is inapplicable."

If TP did pay the tax before the ASED went, then it would seem that 85-67 would apply. The payment would not be considered an overpayment for purposes of section 6401(a), and section 6514(b) would not prohibit the credit. As such, 6402(a) would apply to permit offset of an overpaid excise tax of one type against a liability for another excise tax type, where the taxpayer paid the liability within the ASED, even if we never assessed that liability. The analysis in my second paragraph below is incorrect, as it is based upon the assumption that there was no payment made within the assessment period.

I apologize for the confusion.