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From:

Sent: Tuesday, April 09, 2013 10:22:26 AM

To:

Cc:

Subject: FW: Overpayment question - nondocketed case

My reviewer concurs in my response below. Sorry it has taken me so long to get back to you. Another question that came up was when the 6-year statute of limitations applicable for substantial omission of income is applicable. If you have questions about the 6-year statute under section 6501 you can contact

Regarding your overpayment question, we think you are confusing "overpayment" with "offset" under section 6402(a). A taxpayer does not have to have a section 6401(a) statutory overpayment to have an overpayment. Lewis v. Reynolds and Rev. Rul. 85-67 address overpayment for a particular tax year. The GL School training materials chapter on refunds has a good discussion of Lewis v. Reynolds and overpayments. While Lewis v. Reynolds uses the term "offset", it is talking about whether there is an overpayment of tax for a particular tax year. The entire return can be examined to determine the correct liability even where additional liability cannot be assessed. Under Rev Rul 85-67, expiration of the assessment statute does not preclude the Service from keeping payments received within the assessment statute; there is no section 6401(a) overpayment.

Your question is whether the overpayment for one year can be offset against the liability for another year, not whether there is an overpayment. The authority to offset an overpayment against other tax liabilities is under section 6402(a). Section 6402(a) allows offset of an overpayment against a tax "liability" of the same taxpayer entitled to the overpayment. While "liability" is not specifically defined, it is the Service's long-standing position that offset is available only against a liability which has been assessed or is shown on a statutory notice of deficiency. See, e.g., IRS CCA 200217005 (no offset against unagreed, proposed deficiency without a stat notice). See also Rev. Rul. 2007-51 (can offset against liability shown on statutory notice of deficiency); Rev. Rul. 2007-52 (can offset against liability shown on a bankruptcy proof of claim).

If there is a (timely) overpayment under section 6402(a), unless there is another outstanding (assessed) liability against which it can be offset, it must be refunded to the taxpayer.

Let me know if you have any further questions.