



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: DEBORAH A. BUTLER
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SUBJECT: Interest on Overpayments

This Field Service Advice responds to your memorandum, dated November 10, 1998, seeking advice on the extent of the Government's liability for interest on an overpayment of tax used as a credit against a later tax deficiency. This Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

X =

Year 1 =
Year 2 =
Year 3 =
Year 4 =

Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =

ISSUE:

Where the Service offsets overpayments in Years 1-4 against underpayments for later Years 7 and 8, is X entitled to additional statutory interest under § 6611 of the Internal Revenue Code from the statutory due date of the underpaid tax, against which the overpayment is credited, to the later date that the underpayment actually arose and the offset was effective.

CONCLUSION:

The statutory terms of § 6611 should not be construed to allow X overpayment interest up until the date the underpayment actually arose and the offset was effective. Overpayment interest runs only to the due date of the income tax return for the year in which the overpayment is applied, not the actual date the underpayment arose.

FACTS:

X reported overpayments on its returns for Years 7 and 8, and elected, pursuant to Treas. Reg. § 301.6402-3(a)(5), to apply them to its estimated tax liabilities for the next succeeding years, Years 8 and 9, respectively. See Code § 6402(b).¹ The return overpayments were used to pay the third installment of estimated taxes in the succeeding years. Later, on audit, the Service determined X had overpaid its income taxes in Years 1-4, and had underpaid in Years 7 and 8. The deficiencies the Service subsequently determined for Years 7 and 8 were less than the overpayments reported on X's returns. Thus, although X had originally overpaid its taxes in these years, the excessive credits it had taken against estimated taxes wiped out the surplus and created deficiencies.

The Service offset overpayments (determined on examination of Years 1 through 4) against the underpayments for Years 7 and 8.² See § 6402(a). See also Treas. Reg.

¹ When the taxpayer makes such an election, no interest is allowed on the portion of the overpayment that is credited. Treas. Reg. § 301.6611-1(h)(2)(vii).

² The overpayments for Years 1 through 4 are separate and distinct from the "return overpayments" X originally reported for the Years 7 and 8.

§ 301.6402-1. The Service proposes to compute interest on the overpayments from the date the overpayments arose to the due date of the tax for Years 7 and 8, pursuant to § 6611. Seeking symmetrical treatment with respect to interest on the overpayments (in Years 1-4) that were used to offset the underpayments (in Years 7 and 8), X claims interest should run on the overpayments up until the date of the offset (the due date of the third installment for estimated taxes, September 15, Year 8, and September 15, Year 9)³, not the original due dates of Year 7 and 8 taxes (March 15, Year 8, and March 15, Year 9).

LAW AND ANALYSIS

“In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment” § 6402(a). See also, Treas. Reg. § 301.6402-1 (“Commissioner ... may credit any overpayment of tax, including interest thereon, against any outstanding liability ...”). Interest, however, is not recoverable on an obligation owed by the Government unless explicitly provided by statute or contract. Rosenman v. United States, 323 U.S. 658, 663 (1945). X claims a right to interest under § 6611. That section provides “interest shall be allowed and paid ... [i]n the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.” § 6611(b)(1)(emphasis supplied). Under the general rule of Treasury Regulation § 301.6611-1(h)(2), the “due date ... of the amount against which the overpayment is credited” means “the last day fixed by law or regulations for the payment of the tax.”

Code § 6151(a) provides that “when a return of tax is required under this title or regulations, the person required to make such return shall ... pay such tax at the time ... fixed for filing the return (determined without regard to any extension of time for filing the return).” See also, Treas. Reg. § 1.6151-1(a). Code § 6072 governs the time for filing income tax returns. “Returns of corporations [required] under section 6012[,⁴] made on the basis of a calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and ... returns made on the basis of a fiscal

³ These are the dates the Government was actually deprived of the use of X’s return overpayments as a payment of the Year 7 taxes and the Year 8 taxes, because this was when the return overpayments were applied as estimated tax payments in the succeeding years.

⁴ Section 6012 (a)(2) requires every corporation subject to taxation under subtitle A to make returns of income.

year shall be filed on or before the 15th day of the third month following the close of the fiscal year.”

§ 6072(b). See also, Treas. Reg. § 1.6072-2(a). Thus, the last day fixed by law for the payment of income tax is the due date of the return (determined without regard to any extension of time). Accordingly, the due date of the amounts (here the underpayments for Years 7 and 8) against which the overpayment was credited, is the due date of the returns for the years in which the taxes were underpaid. Overpayment interest runs only to the due date of the income tax return for the year in which the overpayment is applied, not the actual date the underpayment arose.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

[REDACTED] The courts, as evidenced by May Department Stores v. United States, 36 Fed. Cl. 680 (1996), acq. AOD CC-1997-008 (Aug. 4, 1997), and Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978), have employed a use-of-money analysis in interpreting the statutory terms of section 6601, which are substantially similar to the terms used in section 6611 and regulation § 301.6611-1(h)(2)(i). Nevertheless, the conclusion that interest runs only to the due date of the income tax return is compelled by our interpretation of the regulation as having a fixed meaning for the term “due date” for the payment of tax. [REDACTED]

By: _____
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cc: