

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM  
MARCH 22, 1999

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Index (UIL) Number: 6511.00-00

CASE MIS Number: TAM-118240-98

Number: **199928002**

Release Date: 7/16/1999

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND:

Taxpayer =

Y =

Z =

TY P03 =

TY Q03 =

TY S03 =

TY T03 =

TY U03 =

ISSUE:

Were Taxpayer's claims for refund for tax year (TY) P03 and TY Q03 relating to research credits timely filed?

**CONCLUSION:**

Taxpayer's claims for refund for TY P03 and TY Q03 relating to research credits were timely filed because the December Y payments by Taxpayer of excess tentative carryback refund amounts constitute payments of taxes for TY P03 and TY Q03 within the meaning of § 6511(a) of the Internal Revenue Code and because the refund claims were filed within two years of such payments. Moreover, the refund claims were not for amounts in excess of the tax paid within the two years immediately preceding the respective refund claims.

**FACTS:**

Taxpayer filed timely tax returns for TY P03 and TY Q03. Subsequently, Taxpayer incurred a net operating loss (NOL) and had investment tax credits (ITC) for TY S03, TY T03, and TY U03. Taxpayer timely filed an application on Form 1139 for tentative carryback adjustment to TY P03 and TY Q03 with respect to the NOL and unused ITCs. The Service paid the tentative carryback refund amounts.

Upon audit of Taxpayer's returns for TY S03, TY T03, and TY U03, the amount eligible for carryback to TY P03 and TY Q03 was reduced. In December Y, Taxpayer paid the excess portions of the tentative carryback adjustments for TY P03 and TY Q03 to the Service.

In March Z, within two years of Taxpayer's December Y repayment of the excess portions of the tentative carryback adjustments, Taxpayer filed claims for refund of taxes paid for TY P03 and TY Q03 based on its eligibility to claim research and experimentation credits for TY P03 and TY Q03. The claims were limited to the amount of taxes paid in December Y.

The Service concluded that Taxpayer's payments of the excess portions of the tentative carryback assessments did not constitute payments of tax and therefore denied Taxpayer's claims for refund as untimely.

**LAW AND ANALYSIS:**

Section 6511(a) of the Internal Revenue Code provides that a claim for credit or refund of an overpayment shall be filed by a taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later.

Section 6511(b)(2)(B) of the Code provides that, if a claim for credit or refund is not filed within three years from the time the return was filed, plus the period of any extension of

time for filing the return, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.

Under § 6411, a taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback (provided in § 172(b)), by a business carryback (provided in § 39), or by a capital loss carryback (provided in § 1212(a)(1)), from any taxable year. Under § 6411(b), the Service has 90 days to make a limited examination of the application, discover omissions and errors of computation therein, and determine the amount of the decrease in the tax attributable to such carryback.

Section 6411(a) provides that an application for a tentative carryback adjustment shall not constitute a claim for credit or refund.

In Rev. Rul. 71-8, 1971-1 C.B. 404, the taxpayer's timely filed 1961 income tax return was examined by the Service and a deficiency was assessed on October 29, 1965. The deficiency was attributable in part to a disallowance of depreciation on equipment. On the same date, the taxpayer was allowed a tentative carryback adjustment (under § 6411) of its 1961 taxes, based on a net operating loss incurred in 1964. A portion of the tentative allowance was used as a credit to offset the 1961 deficiency and the remainder was refunded to the taxpayer. Subsequently, after examination of the taxpayer's 1964 income tax return, the Service determined that a portion of the tentative allowance was excessive. The amount of the excess was assessed as a deficiency on November 18, 1967, and paid by the taxpayer on November 26, 1967. On November 21, 1969, within two years of the repayment of the excess tentative allowance, the taxpayer filed a claim for refund for 1961 taxes in the amount of the excess tentative allowance. The claim for refund was based on the contention that the Service had erroneously disallowed depreciation in 1961. The revenue ruling concludes that the repayment of an excessive tentative carryback allowance constitutes a payment of tax for purposes of § 6511(a) of the Code and that, therefore, a refund claim filed within two years of that repayment is timely.

In the instant case, the revenue agent report (RAR) finds that Taxpayer is not entitled to refunds for TY P03 and TY Q03 because the statutes of limitation for filing claims for refund had expired for those years. The RAR concludes that Taxpayer's payments of the excess tentative carryback adjustments did not constitute payments of tax for purposes of § 6511(a) and denied Taxpayer's claims for refund as untimely. The appeals officer concurs with the RAR results.

Taxpayer contends that the repayments of the excessive tentative adjustments constitute payments of tax for purposes of § 6511(a) and, thus, that its refund claims filed within two years of its payments of tax are timely to the extent of the amounts of the repayments (the amounts of tax paid during the two years immediately preceding the filing of the claims).

Tentative carryback adjustments under § 6411 are subject to special rules. For example, under § 6411(a) (except for purposes of applying § 6611(f)(3)(B)), an application for a tentative carryback adjustment shall not constitute a claim for credit or refund; under § 6411(b) and Rev. Rul. 78-369, 1978-2 C.B. 324, an application, with no omissions or computation errors, generally must be allowed within 90 days; under § 6501(k), an application extends the period for assessment of tentative carryback adjustments; and, under § 6213(b)(3), any excess tentative carryback or refund adjustments may be assessed, without abatement rights, as if it were due to a mathematical or clerical error. These special rules, however, do not go so far as to say that repayment of an adjustment is not a payment for purposes of the Code or in particular for § 6511.

In fact, in Rev. Rul. 71-8, discussed above, the Service has taken the position that such a repayment of an adjustment is a payment for purposes of § 6511(a). Moreover, it specifically deals with a factual situation where the basis for the claimed refund concerns the carryback year itself and not a credit carried back to the carryback year. Thus, Rev. Rul. 71-8 is on point for this issue and is controlling for our conclusion in this case.

Taxpayer paid the excess portions of the tentative carryback adjustments in December Y. Under Rev. Rul. 71-8, those payments constitute payments of tax for purposes of § 6511(a) of the Code, and refund claims filed within two years of those repayments are timely. Taxpayer filed its claims for refund within two years of its December Y payments, and, thus, the payments were timely under § 6511(a). Finally, Taxpayer limited its claims for refund to the amounts paid within the two years prior to the claims, as is appropriate under § 6511(b).

We conclude that Taxpayer filed timely claims for refund and, therefore, is entitled to refunds limited to the amounts paid in December Y.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

SIGNED BY: Michael D. Finley  
Branch Chief  
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