



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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MEMORANDUM FOR

ASSOCIATE DISTRICT COUNSEL,

CC:WR:

FROM: Joseph W. Clark
Senior Technical Reviewer (General Litigation)

SUBJECT:

This refers to the transmittal from your office forwarding for pre-review a memorandum to Person A, with regard to the issue of whether the refund for Year 3 should be characterized as an erroneous refund because the Service did not treat it as part of a Joint Committee case prior to making the refund. This document is not to be cited as precedent.

LEGEND:

Taxpayer X =
Person A =
Year 1 =
Year 2 =
Year 3 =
Year 4 =

FACTS:

The facts as presented indicates that Taxpayer X filed its income tax return for Year 4, reporting a net operating loss ("NOL") of . Taxpayer X claimed that the NOL was a specified liability loss pursuant to I.R.C. § 172(f) and that it is entitled to the 10-year carryback provided under Treas. Reg. § 1.172-13. As a result, Taxpayer X filed amended income tax returns for Years 1, 2 and 3, with refund claims for each of those years. The Service Center allowed the refunds for Years 1 and 3 in the amounts of

. The Year 2 refund claim was in the amount of . That refund did not go out because under I.R.C. § 6405(a), a Joint Committee report was required prior to issuing a refund in excess of \$1 million. The Examination Division reviewed the refund claimed for Year 2 and subsequently determined that it was not allowable.

The District Director's office requested your advice with regard to whether the Year 3 refund claim should have been aggregated with the Year 2 refund claim for purposes of the report required by I.R.C. § 6405(a), and if so, whether the failure to treat the Year 3 claim as a Joint Committee case prior to issuing the refund would provide the basis of an erroneous refund suit under I.R.C. § 7405(b).

CONCLUSION:

Your advisory memorandum to Person A correctly concludes that, although a refund of over \$1 million should not be made without a report to the Joint Committee, the failure to make the required report does not provide a basis for an erroneous refund suit by the Government. Further, you are correct in noting that I.R.C. § 6405 does not provide that a refund made without the report is erroneous per se.

With regard to the issue of whether the Year 3 refund claim should have been aggregated with the Year 2 refund claim for purposes of the Joint Committee report, it is our understanding from discussions with that their office will or has addressed this issue.