

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:DOM:IT&A:B1:AOO-I-67085-96
MLGompertz

date: DEC 20 1996
to: Assistant Commissioner (Examination)
Attn: Oneida Stephens
from: John M. Coulter, Senior Technician Reviewer, CC:DOM:IT&A:1

subject: Interest on Overpayment

This is in reference to a memorandum dated March 12, 1996, from the Acting Assistant Commissioner (Examination) (copy attached) requesting technical assistance concerning the issue involved in TAM 9443007. We believe that the TAM represents a correct interpretation of the tax law and may be incorporated into the Internal Revenue Manual and related training material.

In TAM 9443007, a corporate taxpayer filed Form 1139 (application for a tentative carryback adjustment under section 6411) and received a tentative refund, paid without interest on [REDACTED], based on the carryback to [REDACTED] of a credit for the year 1983. In [REDACTED], upon the conclusion of an audit for [REDACTED], the Service determined that (1) the tentative refund was erroneous because the credit was improper, and (2) the taxpayer had previously overpaid its tax for [REDACTED]. Pursuant to section 6402(a), the prior overpayment for [REDACTED] was credited against the taxpayer's liability for the erroneous refund. The TAM held that interest on the overpayment should be computed from the date of the overpayment to the date of the refund, [REDACTED]. The date of the refund, rather than the filing date for the year ([REDACTED] in which the disallowed credit arose, was considered to be "the due date of the amount against which the credit is taken" under section 6611(b)(1). The TAM relied on Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978), and Rev. Rul. 88-98, 1988-2 C.B. 356.

Thus, the TAM stands for the principle that under section 6611(b)(1), if an overpayment is credited against a liability resulting from the Service's payment, without interest, of an erroneous refund for a subsequent taxable year, then interest on the overpayment runs from the date of the overpayment to the date of the erroneous refund, not to the filing date for the year for which the erroneous refund was paid.

We agree with the principle of the TAM, but are uncertain whether it applies to the situation where the erroneous refund is paid with interest. Therefore, at this time we express no opinion

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on the proper date for terminating the accrual of interest on an overpayment that is credited against a liability resulting from the Service's payment of an erroneous refund with interest. Please contact us if you would like us to consider this issue.