

CC-2016-004

December 30, 2015

**Subject:** Cancellation of Chief Counsel Notice  
2014-007 Pursuant to PATH Act Section 209  
**Cancel Date:** Effective until further  
notice/Indefinite

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**UIL: 6664.01-00**

## Purpose

This notice obsoletes Chief Counsel Notice 2014-007, "Application of the Accuracy-Related or Fraud Penalty in Tax Court Cases Involving Disallowed Refundable Credits," pursuant to section 209 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113 Div. Q (2015).

## Background

In Rand v. Commissioner, 141 T.C. 376 (2013), the Tax Court held that disallowed refundable credits must be taken into account when determining the tax shown on the return, but cannot reduce the tax shown on a return below zero. Consistent with this holding, the Service issued Chief Counsel Notice 2014-007, instructing attorneys to calculate any accuracy-related or fraud penalty involving disallowed refundable credits in accordance with the Rand decision and to concede penalties in excess of the amount provided for by Rand.

Section 209(a) of the PATH Act amends section 6664(a) of the Code to provide that "a rule similar to the rule of section 6211(b)(4) shall apply for purposes of this subsection." Under section 6664 as amended, disallowed refundable credits must be taken into account when determining the tax shown on the return and can reduce the tax shown on a return below zero for purposes of calculating the underpayment subject to penalty under sections 6662 and 6663. Section 209(d)(1) of the PATH Act provides that the amendment is effective for all returns filed after December 18, 2015, and all returns filed on or before December 18, 2015, for which the period of limitations specified in section 6501 had not expired as of that date.

## Procedures for Handling Pending and Future Tax Court Cases

Attorneys should not follow Rand and Chief Counsel Notice 2014-007 and should not concede section 6662 or section 6663 penalties based on disallowed refund claims for erroneous refundable credits when the statutory notice of deficiency asserted those penalties on such amount. Pending further guidance on procedures for handling pending and future Tax Court cases, attorneys should contact Procedure and Administration.

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Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room

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