

## Section 6511.—Limitations on Credit or Refund

26 CFR 301.6511(d)–3: Special rules applicable to credit against income tax for foreign taxes

Rev. Rul. 2020-8

This revenue ruling suspends Rev. Rul. 71-533, 1971-2 C.B. 413, pending reconsideration by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (Service) of whether the ten-year limitations period provided by section 6511(d)(3)(A) of the Internal Revenue Code (Code) applies to claims for refund or credit of an overpayment resulting from a foreign tax credit (FTC) carryback arising as a result of a net operating loss (NOL) carryback from a subsequent year. As part of the reconsideration of Rev. Rul. 71-533, Rev. Rul. 68-150, 1968-1 C.B. 564, is also being reconsidered and is suspended in part as discussed in the “ANALYSIS” section of this ruling.

### REVENUE RULING

In Rev. Rul. 71-533, the Service considered whether the special ten-year period of limitations provided by section 6511(d)(3)(A) can apply to claims for refund or credit of an overpayment resulting from an FTC carryback that arose as a result of an NOL

carryback from a subsequent year. The taxpayer incurred an NOL in 1969 that it carried back to 1966, eliminating the taxpayer's entire taxable income for 1966. In its original 1966 return, the taxpayer had claimed an FTC for the foreign taxes it had paid that year. There was no change to the computation or amount of the creditable foreign taxes reported as paid in 1966. When the NOL carryback eliminated the taxpayer's taxable income for 1966, the entire amount of taxes it paid to foreign countries for that year exceeded the amount allowable as an FTC for 1966. As a result, the taxpayer carried the excess FTC back from 1966 to 1964, which generated an overpayment in that year for which the taxpayer filed a claim for refund. The ruling held that the refund claim was subject to the limitations period provided by section 6511(d)(3)(A).

In Rev. Rul. 68-150, the Service addressed the scope of section 6511(d)(3)(A) and concluded, in relevant part, that it applied to "claims for credit or refund based on the correction of mathematical errors in the computation of taxes subject to the provisions of that section... or *any other adjustments to the size of the foreign tax credit*, including those due to the payment of additional foreign taxes" (emphasis added).

#### LAW

Section 6511(d)(3)(A) provides, in part, that when "the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country," the limitations period is ten years from the due date of the return for the year in which the foreign taxes were paid or accrued.

Section 6511(d)(2)(A) provides, in part, that when "the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss

carryback,” the limitations period is three years from the due date of the return for the year of the net operating loss or net capital loss that results in such carryback.

#### ANALYSIS

The Treasury Department and the Service are reconsidering whether the ten-year limitations period provided by section 6511(d)(3)(A) applies to the refund claim at issue in Rev. Rul. 71-533. Under the facts of Rev. Rul. 71-533, there would not have been any excess FTC available to be carried back from 1966 to generate an overpayment in 1964 if the taxpayer had not first carried the NOL back from 1969 to 1966. As is the case with FTCs, claims for credit or refund that relate to overpayments attributable to NOL carrybacks have a special limitations provision in section 6511(d)(2)(A) of the Code. The 1964 overpayment resulted from the interaction of the NOL carryback from 1969 and FTC carryback from 1966, but Rev. Rul. 71-533 does not consider whether the three-year limitations period provided by section 6511(d)(2)(A) of the Code should apply to the refund. Whether section 6511(d)(2)(A) should apply to the refund claim at issue in Rev. Rul. 71-533 instead of section 6511(d)(3) is an issue that is being reconsidered by the Treasury Department and the Service.

Accordingly, Rev. Rul. 71-533 is suspended pending reconsideration by the Treasury Department and the Service.

As part of its reconsideration of Rev. Rul. 71-533, the Treasury Department and Service are also reconsidering the portion of Rev. Rul. 68-150, 1968-1 C.B. 564, that refers to “the correction of mathematical errors in the computation of taxes subject to the provisions of that section... or any other adjustments to the size of the foreign tax

credit.” Therefore, this portion of Rev. Rul. 68-150 is suspended, with respect to adjustments that arise from a change to the FTC limitation, including as the result of the correction of mathematical errors or the application of an NOL carryback.

#### PROSPECTIVE APPLICATION

While the Treasury Department and Service are reconsidering whether section 6511(d)(3)(A) applies to claims for refund or credit of an overpayment resulting from an FTC carryback arising as a result of an NOL carryback from a subsequent year, the suspension of Rev. Rul. 71-533 and the partial suspension of Rev. Rul. 68-150 will not be applied adversely to a taxpayer that filed or files a claim for credit or refund within the limitations period of section 6511(d)(3) of the Code in accordance with Rev. Rul. 71-533 and Rev. Rul. 68-150.

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 71-533 is suspended, and Rev. Rul. 68-150 is suspended in part.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Marshall French of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Marshall French at (202) 317-6845 (not a toll-free call).