

Office of Chief Counsel
Internal Revenue Service
Memorandum

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from: Associate Area Counsel (Houston, Group 1)
(Large & Mid-Size Business)

subject: Foreign Tax Credit

This memorandum responds to your request for assistance dated March 22, 2010. This advice may not be used or cited as precedent.

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ISSUES

1. Section 905(a) of the Internal Revenue Code provides that a taxpayer may claim a foreign tax credit in the year in which the foreign tax accrued.

_____, an accrual-basis taxpayer, contested its _____ and _____ withholding taxes. In _____, it paid the taxes and resolved the dispute. In which taxable years may _____ claim the credits?

2. Section 6511(d)(3)(A) of the Internal Revenue Code provides that the ten-year period of limitations to file a foreign-tax-credit refund claim begins on the due date of the return for the year in which the foreign tax was actually paid or accrued. On its amended _____ return, _____ claimed a refund for foreign tax credits relating to its _____ and _____ withholding taxes. When did the period of limitations begin?

CONCLUSIONS

1. Subject to the limitations period prescribed in section 6511(d)(3)(A), may claim the foreign tax credits in its and taxable years — and not in its taxable year.

For purposes of section 905(a), the withholding taxes are considered to have accrued in and when the foreign-source income was subject to the taxes, even though under traditional accrual principles the accrual was not perfected until , when the contest was resolved. Because the purpose of the foreign tax credit is to avoid the double taxation of foreign-source income, consistent with Revenue Ruling 58-55, the accrual of the taxes in related back to and , the years to which the taxes related and the years in which income was subject to tax.

2. The period of limitations began on the due dates (without extensions) of the returns for the and taxable years because the withholding taxes accrued in those years for purposes of the foreign tax credit and the relevant period of limitations.

In 1997, the amendment to section 6511(d)(3)(A) removed the language, “for the year with respect to which the claim is made,” and substituted the language “for the year in which such taxes were actually paid or accrued.” The only purpose for the amendment was to clarify that the limitations period is determined by reference to the year to which the tax relates, and not the year in which foreign taxes, paid or accrued, that exceed the section 904 limitation for such year are “deemed” paid or accrued under the carryover provisions of section 904(c) and claimed as a credit. In the amended language, the word “actually” distinguishes the year paid or the relation-back year from the year in which the taxes are “deemed” paid or accrued under the carryover provisions. Alternatively, the word “actually” can be read to modify only the word “paid,” since there is no legislative history or policy justification that supports interpreting the word “actually” also to modify the word “accrued” in a manner that would override the relation-back rule.

Consistent with Revenue Ruling 84-125, since is an accrual-basis taxpayer, the period of limitations began to run on the due date of the returns for the years in which the taxes accrued, in and (and not in , the year in which the contest was resolved and the taxes were actually paid).

FACTS

is a domestic corporation that files its U.S. income tax return on a calendar-year basis using the accrual method of accounting. It files a consolidated return.

extended the due dates to file its and returns to , and , respectively.¹

In , the tax authorities asserted that foreign subsidiary, , was liable as withholding agent for a 25 percent withholding tax on bond interest paid to in , , , and . contested liability for the withholding taxes. On , the parties agreed that would pay on behalf a 15 percent withholding tax on the bond interest.

Pursuant to the agreement, paid the following withholding taxes on behalf of with respect to interest paid by to in - .²

Date	Amount (USD)
	\$,394
	\$,289
	(\$) ³
	\$

did not claim any foreign tax credits for the withholding taxes on its , , , and returns. On ,⁴ filed an amended return for the taxable year. On this return, it claimed foreign tax credits totaling \$ for the withholding taxes assessed for its - taxable years that were paid in . The amended return reported the credits as resulting in an overpayment of U.S. tax for which requested a refund.

The IRS contends that could claim foreign tax credits relating to the withholding taxes with respect to the and taxable years,⁵ but for the

¹ The IRS’s Notice of Proposed Adjustments (“**NOPA**”) provides that the ten-year statute of limitations under section 6511(d)(3)(A) of the Internal Revenue Code (“**Code**”) for and taxable years expired on , and , respectively. The undersigned attorney assumes that the due dates to file the returns for these years were ten years prior to these expiration dates. However, because the section 6511(d)(3)(A) period of limitations is determined without regard to extensions, the relevant statutes of limitation for foreign tax credit-related refund claims for and calendar taxable years expired on , and , respectively. Treas. Reg. § 301.6511(d)-3(a).

² The IRS’s NOPA contains conflicting information regarding the amounts of withholding taxes paid in Euros and the conversion into dollars. The undersigned attorney assumes that the amounts presented in dollars are correct.

³ This amount is a refund of overpaid withholding taxes.

⁴ In Rebuttal 1, states that it filed the amended return on . The undersigned attorney assumes that the date indicated in the IRS’s NOPA is the correct filing date.

⁵ The IRS’s NOPA states that conceded the portion of the foreign tax credit for the , , and

fact that the ten-year period of limitations to file foreign-tax-credit-related refund claims for those taxable years has expired. , on the other hand, argues that it may claim the foreign tax credit in the taxable year when it paid the withholding taxes and resolved the dispute with the tax authorities. It also claims that its refund claim was timely because the period of limitations began on the due date of its return, which had not expired as of the amended return's filing date.

LAW AND ANALYSIS

I. In which taxable years may claim the foreign tax credits?

A. is an accrual-basis taxpayer and may only claim the foreign tax credits in the year the taxes accrued.

As a preliminary matter, failed to specifically address on which method of accounting it may take a foreign tax credit in any given year. The relevant authority is section 905(a) of the Code, which provides that a taxpayer may claim a foreign tax credit in the year in which the foreign taxes accrued. The regulations under this section provide that “the credit . . . may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid,” depending on whether the taxpayer’s accounts and returns use an accrual- or cash-basis method of accounting.⁶

Here, is an accrual-basis — not a cash-basis — taxpayer. As such, it may only claim foreign tax credits in the year the foreign taxes accrued.⁷ Accordingly, the determination of the taxable year in which may claim the foreign tax credit hinges on the meaning of “accrue” within this section.

B. Foreign taxes accrued in and , the years to which the foreign taxes related, for purposes of the foreign tax credit.

To understand the meaning of “accrue” for purposes of the foreign tax credit, we must look to the purpose of the credit itself. The legislative history explains that the credit’s purpose was to avoid double taxation of foreign-source income by crediting foreign taxes against U.S. income tax liabilities.⁸ Congress recognized that, to avoid double taxation, the year in which the credit may be taken should match the year when the income is subject to the foreign tax. Indeed, Congress acknowledged that “the tax laws of most [foreign] countries, like our own, provide for the payment of income taxes

withholding taxes. For this reason, this memorandum only addresses the and taxable years. However, it appears that did not so concede, and the section 6511(d)(3)(A) period of limitations expired on , for the taxable year. The section 6511(d)(3)(A) period of limitations will expire on and for the and taxable years, respectively.

⁶ Treas. Reg. § 1.905-1(a).

⁷ I.R.C. §§ 461(a); 905(a); Treas. Reg. § 1.905-1(a).

⁸ H.R. Rep. No. 65-767, pt. 2, at 93 (1918).

during the year following the year for which the tax is imposed.”⁹ And “in many cases the credit is taken against the United States tax for the year following the year in which was earned the income on which the foreign tax was imposed.”¹⁰ As a result, Congress remedied this timing issue by allowing a cash-basis taxpayer, at its option, to take the credit “in the year in which the taxes of the foreign country accrued.”¹¹ This remedy allows taxpayers who use a cash method of accounting to claim the credit in the year the foreign tax accrued. Congress’s remedy therefore underscores the foreign tax credit’s purpose — avoiding double taxation of foreign-source income.

When foreign taxes are contested, however, the timing of when they accrue for purposes of the credit does not follow traditional accrual accounting principles. For example, in order to clearly reflect income in a taxable year, all events which fix the fact and amount of a liability must occur in that year before a taxpayer may deduct or claim a credit for that liability.¹² And, in general, when an accrual-basis taxpayer contests a deductible liability and that liability remains contingent, the taxpayer may not accrue and deduct it in that year.¹³ As articulated in Dixie Pine Products Co. v. Commissioner, the accrual-basis taxpayer could deduct the liability only in the year when the liability is finally adjudicated.¹⁴ This principle is referred to as the “contested tax” doctrine.

But the court in Cuba Railroad Co. v. United States (“Cuba”) rejected the contested tax doctrine for purposes of the foreign tax credit.¹⁵ In light of the statutory language of section 131(d) of the 1939 Code — now section 905(a) — the contested tax doctrine did not apply.¹⁶ The court in Cuba analyzed section 131(d), which provided that “[t]he credits . . . may be taken in the year in which the taxes of the foreign country . . . accrued.”¹⁷ The court found that the language was “clear and unambiguous” and supported by case law.¹⁸ It therefore held that the credit may be taken in the year the foreign taxes accrued, even though the taxpayer contested the taxes, then resolved the dispute and paid the taxes in a later year.¹⁹

In Revenue Ruling 58-55, the IRS followed the holding in Cuba. It determined that a foreign tax accrued for purposes of the credit in the year to which the tax related, although the tax was disputed and could not be reasonably fixed in that year.²⁰ It noted that the provisions in section 905(a) are “strictly statutory and do not relate to usual

⁹ H.R. Rep. No. 68-179, pt. 2, at 257 (1924); S. Rep. No. 68-398, pt. 2, at 284 (1924).

¹⁰ Id.

¹¹ Id.

¹² I.R.C. § 461(h)(4); United States v. Anderson, 269 U.S. 422, 441 (1926).

¹³ Dixie Pine Products Co. v. Commissioner, 320 U.S. 516 (1944). But see Treas. Reg. § 1.461-2(a)(1).

¹⁴ Id.

¹⁵ 124 F. Supp. 182 (S.D.N.Y. 1954).

¹⁶ Id. at 185.

¹⁷ I.R.C. § 131(d) (1939).

¹⁸ Cuba, 124 F. Supp at 185.

¹⁹ Id.

²⁰ Rev. Rul. 58-55, 1958-1 C.B. 266.

accounting practices.”²¹ But the IRS also noted that the accrual of the foreign tax for purposes of the credit must still conform to section 461, which required that the accrual of a contested tax could not be made until it was finally determined.²²

To harmonize the rules under section 461 with the holding in Cuba, the IRS reasoned that, under the principles of Cuba, and in view of the special nature of the foreign tax credit as evidenced by its legislative history and concept, the “relation-back” doctrine applied to the accrual of the foreign tax.²³ In other words, the foreign tax accrued when the fact and amount of the liability were finally determined, but the accrual related back to the year in which the liability arose.²⁴

The legislative history to sections 905 and 986 further bolsters the argument that contested foreign taxes are considered to accrue in the year to which they relate, not in the year in which the contest is resolved and the taxes are paid. The Taxpayer Relief Act of 1997²⁵ revised the rules with respect to when a foreign tax redetermination is considered to have occurred and what translation rate applies to foreign income taxes paid in foreign currencies.

In lieu of the prior translation convention, whereby foreign taxes were translated at the time they were paid to the foreign country,²⁶

Congress believed that taxpayers that are on the accrual basis of accounting for purposes of determining creditable foreign taxes should be permitted to translate those taxes into U.S. dollar amounts in the year to which those taxes relate, and should not be required to make adjustments or redetermination [sic] to those translated amounts, if actual tax payments are made within a reasonably short period of time after the close of such year.²⁷

Consistent with that legislative history, section 986(a)(1)(A) states that, in the case of any taxpayer who takes foreign income taxes in account when accrued, the amount of any foreign income taxes is translated into dollars by using the average exchange rate for the taxable year to which such taxes relate. If taxes are paid after the date that is two years after the close of the taxable year to which they relate, they are translated at the spot rate on the date of payment.²⁸

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Pub.L. No. 105-34, 111 Stat. 788 [hereinafter Taxpayer Relief Act].

²⁶ This translation rule applied to taxes claimed as credits under either the cash method or the accrual method.

²⁷ General Explanation of Tax Legislation Enacted in 1997, Part Two: Taxpayer Relief Act of 1997. JCS-28-97, Pt. 2 Title XI [hereinafter General Explanation].

²⁸ I.R.C. § 986(a)(1)(B).

Similarly, section 905(c)(1)(B) provides that, if accrued taxes are not paid before the date two years after the close of the taxable year to which the taxes relate, a foreign tax redetermination results. Taxes paid before that date are treated as paid in the year to which they relate and no redetermination of U.S. tax is required. The legislative history and the statute both provide that, “[i]n the case of the direct foreign tax credit, any such taxes subsequently paid are taken into account for the taxable year to which such taxes relate...,”²⁹ although translated at the spot rate on the date of payment. Thus, consistent with Cuba and Revenue Ruling 58-55, taxes paid either within or after two years after the close of the taxable year to which they relate are considered to accrue in the year to which they relate, not in the year in which they are paid.

The application of the relation-back doctrine therefore prevents the double taxation of foreign-source income. Otherwise, if the foreign tax accrued for purposes of the credit in the year the liability was finally determined, then the credit would not be taken in the year when the income was earned and subject to double taxation. Such a contrary result would thwart the purpose of the credit.

Consistent with the IRS’s position in Revenue Ruling 58-55, in the instant case, [redacted] accrued the [redacted] withholding taxes in [redacted] when the [redacted] contest was resolved and the taxes were paid. But for purposes of the foreign tax credit, the accrual related back to [redacted] and [redacted], the years for which the taxes were assessed.

C. [redacted] may not claim the foreign tax credits on its amended return.

In its rebuttals, [redacted] relied on Revenue Ruling 58-55, as well as United States v. Campbell,³⁰ to support its position that the credits may be taken on its amended [redacted] return, rather than the returns for the years to which the taxes related. Based on these authorities, it argued that, because the foreign taxes accrued in [redacted], the foreign tax credits may be taken in [redacted]. But in analyzing these authorities, [redacted] took statements out of context and failed to read the respective authorities as a whole.

In discussing Revenue Ruling 58-55, [redacted] dismissed the application of the relation-back doctrine and ignored the remaining contents of the ruling. It only focused on the statement that the accrual “cannot be made until the . . . liability is finally determined.”³¹ On this basis, it asserted that it could claim the credits on its amended [redacted] return. But the sentence preceding this statement provided: “A foreign tax for the purpose of such credit is accruable for the taxable year to which it relates even though the taxpayer contests the liability therefor and such tax is not paid until a later year.”³² In the instant case, [redacted] was not the taxable year to which the [redacted] withholding

²⁹ General Explanation, supra. See also I.R.C. § 905(c)(2)(B).

³⁰ 351 F.2d 336 (2d Cir. 1965).

³¹ Rev. Rul. 58-55.

³² Id.

taxes related. Therefore, this ruling does not support taking the credit in taxable year.

also relied on Campbell to support its assertion that the credit may be claimed only on its return. But it misread the Campbell court's discussion of Revenue Ruling 58-55. It ignored the court's entire description of the ruling. Instead, it bifurcated one of the court's sentences and took each portion out of context. Following the description of Revenue Ruling 58-55, the court stated:

Thus, if the taxpayer contests his liability for a foreign tax imposed on income in 1960, and this liability is finally adjudicated in the foreign country in 1965, 'the credit may not be claimed until 1965 . . . (but) the foreign tax imposed on 1960 income will be offset against the United States 1960 tax just as if it had accrued in 1960.'³³

interpreted the initial part of this sentence, ending with "the credit may not be claimed until 1965," to mean that "the taxpayer may not claim the credit for the contested tax until the year in which the contest is resolved."³⁴ Although literally correct, the phrase does not mean that the credit may be claimed in the return for the year in which the dispute was resolved. Rather, the second part of the sentence beginning with "(but)" indicated in which year the credit may be claimed and described the application of the relation-back doctrine to the particular facts in the ruling. Thus, the accrual of the liability related back to 1960, the year in which the foreign tax was levied. reliance on Campbell therefore fails. In the instant case, was not the year in which the withholding taxes were levied. Therefore, was not the year in which the credit may be taken.

cited to no authority that supported its position. Indeed, its cited authorities supported claiming the credits on the returns for the years in which the foreign taxes were imposed. Accordingly, may not claim the credits on its amended return.

II. When did the period of limitations to file the foreign-tax-credit refund claim begin?

A. The period of limitations did not begin on the due date of the return.

In its rebuttals, relied on Campbell, as well as the 1997 amendment to section 6511(d)(3)(A), to support its position that the period began on the due date of its return. The court in Campbell made no mention of the period of limitations in its discussion of Revenue Ruling 58-55, and the case was decided well before the amendment to section 6511(d)(3)(A). Further, its conclusion — that the foreign tax

³³ Campbell, 351 F.2d at 338 (citing Owens, The Foreign Tax Credit 5/3B2, at 328 (1961)).

³⁴ Rebuttal 2.

accrued in the year the tax was levied — was contrary to position.
Therefore, this authority provides no support for position.

Regarding its other argument, made much of the fact that section 6511(d)(3)(A) was amended in 1997. Specifically, it focused on the language, “the year in which such taxes were actually paid or accrued.” It argued that the period of limitations began when the taxes were “actually paid” or “actually accrued.” argues that the withholding taxes were “actually paid” and “actually accrued” in , so that the period of limitations began to run on the due date of its return.

But an analysis of the plain language of the relevant statutes determining the limitations period, as well as the legislative history of the 1997 amendment to section 6511(d)(3)(A), demonstrates otherwise.

The relevant statutes are found in sections 901(a) and (b), 905(a) (discussed in part I., above), and 6511(d)(3)(A).

Section 901(a) describes the allowance of the foreign tax credit. It provides:

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall . . . be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice *for any taxable year* may be made or changed at any time before the expiration of the *period prescribed for making a claim for credit or refund* of the tax imposed by this chapter *for such taxable year . . .*³⁵

Section 901(b) describes the amount generally allowed as a credit. For domestic corporations, a credit is allowed for “the amount of any income, war profits, and excess profits taxes *paid or accrued during the taxable year* to any foreign country.”³⁶

Section 905(a) and its regulations describe the year in which the foreign tax credit may be claimed and on which method of accounting the credit may be claimed — in other words, the year in which the taxes were paid or accrued. Specifically, section 905(a) provides that, regardless of the method of accounting used by the taxpayer, the credit may be taken “in the year in which the taxes of the foreign country . . . accrued.”³⁷

Sections 901(a) and (b), when read together, provide that a foreign tax credit is allowed against U.S. income tax for foreign taxes paid or accrued during the taxable year to a foreign country. Section 905(a) then permits a cash-basis taxpayer to take the credit in the year in which the foreign taxes accrued. Based on a reasonable

³⁵ I.R.C. § 901(a) (emphasis added).

³⁶ *Id.* § 901(b) (emphasis added).

³⁷ *Id.* § 905(a).

construction of the statutes, the terms, “for any taxable year” and “for such taxable year” in section 901(a), “during the taxable year” in section 901(b), and “in the year” in section 905(a), all refer to the same year for purposes of when the taxes were paid or accrued.³⁸ And for purposes of the foreign tax credit, as discussed in part I.B., above, the liability for the withholding taxes was fixed in , but the accrual related back to the years to which the taxes related.

taxable years at issue are calendar years and . As stated above, section 901(a) provides that the choice to elect either a credit or a deduction for foreign taxes paid for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the U.S. tax imposed for such taxable year. Section 6511(d)(3)(A) describes the period of limitations for credit or refund referred to in section 901(a). This section was amended on August 5, 1997, with the amendment being effective for taxes paid or accrued in the taxable years beginning after its enactment.³⁹ Thus, taxable year

is subject to the pre-amendment version of section 6511 and taxable year the post-amendment version.

Before the enactment date, the section stated as follows:

If the claim for credit or refund relates to an overpayment attributable to *any taxes paid or accrued to any foreign country . . . for which credit is allowed against the tax . . . in accordance with the provisions of section 901 . . . in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.*⁴⁰

After the enactment date, the language was changed from “for the year with respect to which the claim is made” to “for the year in which such taxes were actually paid or accrued.”⁴¹

Under either version, the “year” referred to in section 6511(d)(3)(A) is the same “year” referred to in sections 901(a) and (b) and 905(a). Under the pre-amendment language, both the IRS and the courts determined that the year referred to in the foregoing statutes is the same — the year the taxes were actually paid or accrued, and not the later year to which excess credits were carried and “deemed” paid or accrued under section 904(c).⁴² The court in Chrysler stated that, “In our view, the most

³⁸ Rev. Rul. 58-55.

³⁹ Taxpayer Relief Act, supra § 1056(b).

⁴⁰ I.R.C. § 6511(d)(3)(A) (1997) (emphasis added).

⁴¹ I.R.C. § 6511(d)(3)(A) (1998) (emphasis added).

⁴² Rev. Rul. 75-268, 1975-2 C.B. 294; Rev. Rul. 77-487, 1977-2 C.B. 479; Rev. Rul. 84-125, 1984-2 C.B. 125; Chrysler Corp. v. Commissioner, 436 F.3d 644 (6th Cir. 2006). But see Ampex Corp. v. United States, 620 F.2d 853 (Ct. Cl. 1980).

reasonable reading of these two statutes is that the ‘such taxable year’ of § 901(a) and the ‘year with respect to which the claim is made’ of § 6511(d)(3)(A) refer to the same year: the year in which the taxpayer first made its election whether to claim a foreign tax credit.”⁴³ The court went on to say, “All that § 6511(d)(3)(A) provides to the taxpayer is a longer limitations period for altering its election of a foreign tax credit than the three-year limitations period prescribed by § 6511(a). The touchstone for triggering the statute of limitations remains the original year of election.”⁴⁴ Further, the Chrysler court, in discussing the pre-amendment version of section 6511(d)(3)(A), noted that, “[O]ur reading avoids the uncertainty that would attend Chrysler’s interpretation, which could lend to a shorter or longer limitations period depending on the unique fiscal circumstances of the taxpayer.”⁴⁵ Both statements of the Chrysler court apply equally to the pre- and post-amendment versions of section 6511(d)(3)(A), since the change to the statute was merely clarifying.

In reading the plain language of the amended statute, the phrase, “such taxes were actually paid or accrued,” refers to the prior language in the same sentence, “any taxes paid or accrued to any foreign country . . . for which credit is allowed against the tax . . . in accordance with the provisions of section 901.”⁴⁶ Thus, the “year in which such taxes were actually paid or accrued” is the year in which the credit may be taken under section 905(a).⁴⁷ And as discussed in part I.C., above, in the instant case, the credit may not be taken in the taxable year.

The legislative history of the amendment to section 6511(d)(3)(A) also demonstrated that the limitations period begins by reference to the year to which the creditable taxes relate. The amendment was enacted to clarify the limitations period attributable to refund claims attributable to foreign tax credit carryovers.⁴⁸ Congress acknowledged that the IRS took the position in Revenue Ruling 84-125 that, in the case of a credit carryforward, the period governed by “the year with respect to which the claim is made” is determined by reference to “the year in which the foreign taxes were paid or accrued (and not the year to which the credits were carried).”⁴⁹ It also acknowledged the holding in Ampex Corp. v. United States, which provided that the limitations period is determined by reference to “the year to which the credits are carried (and not the year in which the taxes were paid or accrued).”⁵⁰

As a result, Congress amended the section to make clear that, in the case of a claim relating to an overpayment attributable to foreign tax credits, the limitations period

⁴³ Chrysler Corp., 436 F.3d at 655.

⁴⁴ Id.

⁴⁵ Id. at 656.

⁴⁶ I.R.C. § 6511(d)(3)(A) (1998).

⁴⁷ Id.

⁴⁸ Taxpayer Relief Act, supra, § 1056.

⁴⁹ H.R. Rep. No. 105-148, at 552-53 (1997); H.R. Rep. No. 105-220, at 576-77 (1997) (Conf. Rep.); S. Rep. No. 105-33, at 179-80 (1997); see also Staff of Joint Comm. on Taxation, 105th Cong., General Explanation of Tax Legislation Enacted in 1997, at 253 (Comm. Print 1997).

⁵⁰ Id.

is determined by reference to the year in which the foreign taxes were paid or accrued, consistent with Revenue Ruling 84-125.⁵¹ Also, in acknowledging Revenue Ruling 84-125, which amplified Revenue Ruling 58-55, Congress by extension accepted the holding of the latter, that, “A foreign tax is accruable for the purpose of [the credit provided in section 901] for the taxable year to which it relates even though the taxpayer contests the liability therefore and such tax is not paid until a later year.”

Despite urging to interpret the amended language as “actually paid” or “actually accrued,” the legislative history makes no mention of the term “actually,” and the discussion of the reasons for the clarifying amendment supports the IRS’s position that Congress’s intention was merely to distinguish the year in which the credit claim arose from the carryover year. Alternatively, the word “actually” modifies the word “paid,” and there is no legislative history or policy justification that supports interpreting the word “actually” also to modify the word “accrued” so as to override the relation-back rule, as advocates. Notably, Congress did not reject the concept that foreign taxes accrue in a year that is different from the year the tax accrual is perfected based on section 461 and traditional accrual principles. In fact, it gave weight to Revenue Ruling 84-125, which provided for a special definition of accrual for purposes of the foreign tax credit. When Congress amended section 6511(d)(3)(A), it adopted the IRS’s position in the ruling that the period is determined by reference to the year in which the taxes were paid or considered to accrue, not the later year to which the taxes were carried and claimed as a credit.

Given the language of the relevant statutes and the legislative history of the amendment to section 6511(d)(3)(A), the period of limitations began to run on the due date (without extensions) of the return for the year to which the foreign taxes relate. In the instant case, though the taxes were “actually paid” in when the contest was resolved and the accrual was perfected, they did not accrue for purposes of claiming the foreign tax credit in the taxable year. So the limitations period began to run on the due date of and returns, not the due date of the return.

B. The period of limitations began on the due date of the and returns.

Under both the pre- and post-amendment language of section 6511(d)(3)(A), the date on which the period of limitations begins to run is the same. The IRS addressed the pre-amendment language in Revenue Ruling 84-125 and took the position that the period begins to run on the due date of the return for the year in which the taxes were paid or accrued. And for accrual-basis taxpayers, the year in which taxes accrue is the year to which the taxes relate. Through the enactment of the 1997 amendment to section 6511(d)(3)(A), Congress adopted the IRS’s position in the ruling.

Revenue Ruling 84-125 amplified Revenue Ruling 58-55, and applied the relation-back doctrine to the accrual principles of the foreign tax credit to determine in

⁵¹ Id.

which taxable year the credit was allowed.⁵² The accrual-basis taxpayer, who contested a foreign tax assessment, may claim the credit in the taxable year to which the foreign tax related, even though the credit may not be claimed (except to the extent the tax was already paid) until the tax was finally determined and the accrual was perfected.⁵³ The ruling specifically held that the taxpayer may claim the credit when the tax was paid and finally determined, but for purposes of the foreign tax credit, the tax accrued for the taxable year to which the tax related.⁵⁴ And in interpreting the pre-amendment language of section 6511(d)(3)(A), it held that the claim for refund of the foreign tax credit must be made within ten years of the due date of the return for the year to which the foreign tax related, that is, the year the taxes accrued.⁵⁵

In the instant case, for purposes of the foreign tax credit, the _____ withholding taxes accrued in _____ and _____, the years to which the taxes related. Since the amendment was effective for taxes accrued in the taxable years after August 5, 1997, the pre-amendment version of section 6511(d)(3)(A) applies to the _____ taxes and the post-amendment version applies to the _____ taxes. But under both versions, the determination is the same because Congress adopted the IRS's position in Revenue Ruling 84-125 as to the date on which the limitations period begins. And in any event, since the instant case does not involve a carryover of excess tax credits, the "year to which the claim relates" and the "year in which the taxes are actually paid or accrued" are one and the same. So consistent with the ruling, in the instant case, the period began to run on the due dates of the returns for _____ and _____.

Please call _____ if you have any further questions.

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By: _____
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(Large & Mid-Size Business)

cc:

⁵² See Rev. Rul. 84-125.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

