



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR DISTRICT COUNSEL
BROOKLYN DISTRICT

FROM: Blaise G. Dusenberry
Acting Senior Technician Reviewer, Branch 1
(Administrative Provisions & Judicial Practice) CC:PA:APJP:1

SUBJECT: Significant Service Center Advice: Credit of Overpayment

This responds to your request for Significant Service Center advice in connection with questions posed by the Brookhaven Customer Service Center. We have restated the issue as follows:

ISSUE

Where the Service seeks to credit an overpayment shown on an early filed return against an outstanding tax liability from an earlier year, may the credit be deemed to occur prior to the due date for filing the taxpayer's return for the year of the overpayment?

CONCLUSION

Based on the facts you describe, an overpayment shown on the taxpayer's early filed return may be credited against an outstanding tax liability prior to the due date for filing the return for the year of the overpayment.

FACTS

A taxpayer's account shows an unpaid federal income tax liability for which the statute of limitations on collections expired on April 9, 2000. The taxpayer's 1999 income tax return was filed on February 23, 2000, and showed an overpayment of tax resulting from withholding and estimated tax payments that exceeded the computed income tax. On March 20, 2000, the Service processed the taxpayer's 1999 income tax return and credited the overpayment against the outstanding tax liability. You ask whether the

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Service may legally credit the overpayment prior to the due date of the 1999 return, April 15, 2000.

LAW & ANALYSIS

Section 6072(a) of the Internal Revenue Code (Code) provides that income tax returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year. As the statute indicates, taxpayers may file prior to the due date. Nothing in the Code prohibits the Service from accepting these early filed returns, assessing the tax shown on the return, and issuing a refund for any claimed overpayment. In fact, it has long been the practice of the Service to process early filed returns and refund overpayments claimed thereon.

Section 6201(a)(1) of the Code authorizes the Service to summarily assess all taxes determined by the taxpayer and shown on his or her return. The Service's assessment of the taxes shown on the taxpayer's return establishes the taxpayer's liability for such taxes. The Service determines whether an overpayment exists by applying the payments against the tax liability reported by the taxpayer.

Section 31(a)(1) of the Code provides that the amount withheld as tax under chapter 24 (i.e., wage withholding) shall be allowed to the recipient of the income as a credit against the tax imposed.

Section 6315 of the Code provides that payment of estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year. Section 301.6315-1 of the Regulations on Procedure and Administration provides that the aggregate amount of the payments of estimated tax should be entered upon the income tax return for the taxable year as payments to be applied against the tax shown on the return.

An "overpayment" is the amount by which payments made by the taxpayer exceed the amount of tax which is properly due. Jones v. Liberty Glass Co., 332 U.S. 524 (1947). Section 6402(a) of the Code authorizes the Service to credit the amount of any overpayment against any liability in respect of an internal revenue tax on the part of the person who made the overpayment.

Section 6402 does not specify the date on which an outstanding liability is deemed paid by credit of an overpayment. However, the courts have long held that an outstanding tax liability is considered paid by a credit on the date the credit is allowed. U.S. v. Swift & Co., 282 U.S. 468 (1930). The Code is consistent, providing in § 7422(d) that for purposes of civil refund actions, the credit of an overpayment of any tax in satisfaction of any tax liability shall be deemed to be a payment in respect of such tax liability at the time such credit is allowed (emphasis added).

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As we read your request for advice, it appears that the Service Center is concerned whether the taxpayer's income tax withholding and estimated tax payments can be treated as tax "payments" prior to the due date of the taxpayer's return. We agree that for some purposes, wage withholding and estimated tax payments are not deemed tax "payments" until the due date of the taxpayer's income tax return. Specifically, section 6513(b) provides that for purposes of section 6511 (relating to the statute of limitations on refunds) and section 6512 (relating to Tax Court petitions), an individual taxpayer's withholding tax and estimated tax payments shall be deemed "paid" on the last day prescribed for filing the return for the taxable year (determined without regard to extensions).

However, we note that 6513(b) treats wage withholding and estimated taxes as "paid" on the due date of the return only for certain limited purposes not at issue in your request. We note that wage withholding and estimated tax payments are methods for collecting the income tax, and are specifically allowed as credits against the tax shown on the return. See Baral v. United States, 528 U.S. 431 (2000). Accordingly, where the taxpayer files an early return claiming the withholding and estimated payments against his or her tax liability pursuant to sections 31(a)(1) and 6315 of the Code, the Service may credit any overpayment shown on the return against any outstanding tax liability.

If you have further questions, please contact Andrew Keyso at (202) 622-4910.