



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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MEMORANDUM FOR DISTRICT COUNSEL

CC:MSR:STX:AUS SOUTH TEXAS DISTRICT

FROM: SARA M. COE, Chief
CC:PA:APJP:BO3

SUBJECT: Significant Service Center Advice - Claim for Refund/Math Errors

This Significant Service Center Advice responds to your memorandum dated August 17, 2000 in which you request advice on whether an original filed return which contains a mathematical error can be considered a refund claim.

FACTS:

The facts are accepted as stated in the August 17, 2000 memorandum. The questions posed by the memorandum include the following:

- 1) All the information on the original return was valid with the exception of the SSN. Can the original return be considered a timely-filed claim for refund for the purpose of refunding the claimed overpayment?
- 2) Should the Service issue a section 6532 notice of claim disallowance in cases in which the original return claims a refund and the Service makes a math error assessment thereby reducing the refund claimed on the original return?
- 3) Has the statute of limitations for filing a suit for refund expired in this case?
- 4) Is there a bar on refunding the overpayment shown on the original return because the taxpayer did not supply the required information until after the statute of limitations for filing a claim for refund had expired?

ISSUES:

- (1) Whether the original return included a valid refund claim.

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(2) Assuming the original return included a valid refund claim, whether the refund claim was properly disallowed by the Service.

(3) Whether the second return is an amendment that relates back to the original filed return.

(4) Whether the statute of limitations for filing a refund suit has expired in the instant case.

(5) Whether a notice of claim disallowance under section 6532 should be issued in cases in which the original return claims a refund and the Service makes a math error assessment thereby reducing the refund claimed on the original return

CONCLUSIONS:

(1) The original return filed by petitioner contained a valid claim for refund.

(2) The refund claim was never properly disallowed by the Service.

(3) The second return, filed after the expiration of the statute of limitations for filing a claim can be considered an amendment to the original filed return.

(4) The period of limitation has not expired and a refund can be issued in the instant case based on the new information provided.

(5) It is recommended that, in the future, a notice of claim disallowance under section 6532 be issued in a case in which an original return claims a refund and the Service makes a math error assessment thereby reducing the refund claimed on the original return

LAW AND ANALYSIS:

Section 7422(a) provides that no suit for a tax refund may be maintained unless a claim for refund or credit has been duly filed with the Service.

Was original return a claim for refund:

Treasury Regulation § 301.6402-3(a)(1) states in relevant part that in general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

Treasury Regulation § 301.6402-3(a)(5) provides, in relevant part, that a properly executed individual original income tax return constitutes a claim for refund, within the meaning of section 6402 and section 6511, for the amount of overpayment disclosed by

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the return, if the return contains a statement setting forth the amount determined to be an overpayment and advises the Service whether the amount should be refunded or should be applied as a credit against the taxpayer's estimated income tax for the immediately succeeding tax year.

The Supreme Court has long recognized that "perfect accuracy or completeness is not necessary to rescue a return from nullity if it purports to be a return, is sworn as such and evinces an honest and genuine endeavor to satisfy the law." See Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934); Florsheim Brothers Drygoods Co. v. United States, 280 U.S. 453 (1930).

The most frequently cited recitation of the standards for determining if a document is a valid return is set forth by the Tax Court in Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd per curiam, 793 F.2d 139 (6th Cir. 1986). Under Beard, a document constitutes a valid tax return if it meets four factors:

1. There is sufficient data to calculate tax liability;
2. The document purports to be a return;
3. There is an honest and reasonable attempt to satisfy the requirements of the tax law;
4. The taxpayer has signed the return under penalties of perjury.

Section 6611(e)(1) provides that, if the Service refunds an overpayment within 45 days after the date the return is filed, no interest is allowed on the overpayment. Section 6611(g) provides that, for interest purposes, a return is not treated as filed until it is filed in "processable form."

Section 6611. Interest on Overpayments.

(g) No Interest until Return in Processible Form.

(1) . . . [A] return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph (1), a return is in a processible form if -

(A) such return is filed on a permitted form, and

(B) such return contains -

(i) the taxpayer's name, address, and identifying number and the required signature, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

In the instant case, the taxpayer's original return meets the requirements of Treasury Regulation § 301.6402-3(a)(5) and Beard and thus was a valid claim for refund. The fact that it is not processible does not mean the return is not valid.

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Was the refund claim properly disallowed:

Section 6532 and Treasury Regulation § 301.6532-1 provide, in relevant part, that no suit or proceeding under section 7422(a) for recovery of any internal revenue tax, penalty, or other sum, shall be begun until whichever of the following first occurs:

- (1) The expiration of 6 months from the date of filing the required claim, or
- (2) A decision is rendered on such claim prior to the expiration of 6 months after the filing, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Service to the taxpayer a notice of the disallowance of the part of the claim to which the suit relates.

The two-year period for commencing a refund action under section 6532 starts to run when the Service mails a notice of disallowance to the taxpayer. Treasury Regulation § 301.6532(d) provides in relevant part that any consideration, reconsideration, or other action with respect to a claim, after the mailing by registered or certified mail of a notice of disallowance, shall not extend the period for bringing suit or other proceeding under section 7422(a).

A notice of claim disallowance under section 6532 was not sent by registered or certified mail to the taxpayer. Therefore, the refund claim in the original return was never properly disallowed.

Whether the statute of limitations for filing suit has expired:

Because the refund claim was never rejected by the Service, the statute of limitations for filing a refund suit has not expired under section 6532(a)(1).

Was second return an amendment to first refund claim:

Treasury Regulation § 301.6402-2(b)(1) provides in relevant part that no refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period.

Under this regulation, a claim seeking refund upon one asserted fact situation may not be amended out of time so as to require an investigation of matters not germane to the original claim. Weisbart v. United States Department of Treasury, 222 F.3d 93 (2nd Cir. 2000) (quoting Sappington v. United States, 408 F.2d 817, 819 (4th Cir. 1969)). See also, Favell v. United States, 22 Cl. Ct. 571, 579 (Cl. Ct. 1991) (stating that a taxpayer cannot amend his refund claim, with an informal refund claim or otherwise, to set forth a new ground for refund not asserted in the original claim after the statute of limitations has expired.)

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However, an amended claim can relate back if the amendment asserts the same ground for relief as the original claim. Mutual Assurance, Inc. v. United States, 56 F.3d 1353, 1356 (11th Cir. 1995) (relying on Bemis Brothers Bag Co. v. United States, 289 U.S. 28, 33 (1933)).

In the instant case, the second return filed contained a refund claim based on the same ground as the refund claim asserted in the original filed return. Therefore, the original refund claim can be considered to be amended with the additional facts supplied by the taxpayer in the second return filed. We advise that the refund should be issued.

Whether a notice of claim disallowance should be issued:

If the Service never sends the taxpayer a notice of claim disallowance, and the taxpayer has not waived the right to receive one, the limitations period for filing a refund suit may be open.

Therefore, it is recommended that a notice of claim disallowance under section 6532 be issued in a case in which an original return claims a refund and the Service makes a math error assessment thereby reducing the refund claimed on the original return