



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL
ROCKY MOUNTAIN DISTRICT
CC:SB:5:DEN:2
ATTN: John A. Weeda

FROM: Curt G. Wilson
Assistant Chief Counsel
Administrative Provisions and Judicial Practice
(Procedure and Administration)

SUBJECT: Significant Service Center Advice

This responds to your request for Service Center Advice in connection with a question posed by the Taxpayer Advocate in Colorado and the Ogden Service Center. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

1. Whether the Internal Revenue Service (Service) is authorized to issue a refund of a portion of an overpayment in cases in which the taxpayer is suffering or is about to suffer a significant hardship, yet the overpayment has already been credited to the taxpayer's account to satisfy a prior outstanding tax liability.
2. Whether there is an exception to the general prohibition on reversing an offset if the Service is not authorized to issue a refund of a portion of an overpayment because the overpayment has already been credited to the taxpayer's account to satisfy a prior outstanding tax liability.

CONCLUSION

1. In general, the Service is not authorized to reverse the offset of an overpayment that has been properly credited to an outstanding tax liability of a taxpayer.
2. There is an exception to the general prohibition in cases in which the Service has committed either a mathematical or clerical error, so long as the mistake can be corrected without prejudicing the taxpayer.

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FACTS

Your memorandum presents the following scenario. A taxpayer requested the Service to refund an overpayment for the current tax year even though the amount could have been offset against an outstanding tax liability for a prior tax year. The taxpayer asked the Service to approve this offset bypass refund request because the taxpayer was experiencing a significant hardship and needed the refund to alleviate this situation. In the process of considering the offset bypass refund request, the Service failed to follow certain IRM procedures. As a result of this processing error, the Service offset the taxpayer's refund prematurely. Had there been no processing error, the offset would not have occurred and the taxpayer would have received the refund.

DISCUSSION

1. Whether the Internal Revenue Service (Service) is authorized to issue a refund of a portion of an overpayment in cases in which the taxpayer is suffering or is about to suffer a significant hardship, yet the overpayment has already been credited to the taxpayer's account to satisfy a prior outstanding tax liability.

Statutes and Regulations

Section 6402(a) of the Code provides that in the case of an overpayment of tax, the Secretary may credit the overpayment against any outstanding federal tax liability ("offset"), or refund the overpayment, or any balance thereof, to the taxpayer.

Although section 6402 of the Code and the regulations thereunder address the Service's authority to offset against a taxpayer's outstanding federal tax liability, the authority as to whether the Service may reverse an offset once the transaction has been completed is discussed under the section 7811 regulations.

Section 7811 authorizes the Service to exercise its discretion in issuing a refund of an overpayment in cases when the taxpayer is in a condition of significant hardship. This offset bypass refund is authorized even though the taxpayer owes unpaid taxes, which the refund may be offset against. However, section 301.7811-1(c)(3) permits offset bypass refunds only where an overpayment exists.

Section 301.7811-1(c)(3) of the Regulations on Procedure and Administration provides that in the absence of an overpayment, there is no authority under which the Service may release sums which have been credited against the taxpayer's liability and deposited into the Treasury of the United States.

The Service's internal guidance also instructs on the general rule prohibiting the Service from reversing an offset to honor a hardship refund request. See IRM 21.4.6.9.2(1)h, which directs the Service not to reverse an offset to honor an offset

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bypass refund hardship request. See also IRM 1.2.7.9.3.5.12.2, which informs service centers that:

District or Service Center Taxpayer Advocates cannot refund an amount owed to the IRS if the refund has offset to the balance due. District or Service Center Taxpayer Advocates can provide a full refund prior to the 23C date of the return reflecting the overpayment.

2. Whether there is an exception to the general prohibition on reversing an offset if the Service is not authorized to issue a refund of a portion of an overpayment because the overpayment has already been credited to the taxpayer's account to satisfy a prior outstanding tax liability.

An exception to the general prohibition on reversing an offset is the judicially created doctrine known as clerical error. Succinctly stated, whenever an action occurs because of mistake of fact or bookkeeping error, that mistake can be corrected so long as this does not prejudice the taxpayer. See Crompton-Richmond Co. v. United States, 311 F.Supp. 1184 (S.D.N.Y. 1970). At least one other court has come to the same result by deeming the mistaken action as not being what it purported to be ("Clerical errors are by their nature not errors in judgment but merely inadvertencies"), which essentially permitted the correction to occur. Matter of Bugge, 99 F.3d 740, 745 (5th Cir. 1996)(citing NTN Bearing Corp. v. United States, 74 F.3d 1204 (Fed. Cir. 1995)). See also IRM 21.4.6.9.1(1)(b), which states, in relevant part, that the Service may reverse an offset to "[c]orrect IRS initiated processing errors, such as math errors, data input errors, or misapplied payments."

Whether the clerical error doctrine applies depends on the specific facts of the situation. Under the facts set out above, the offset occurred because of a processing error during the handling of the taxpayer's request for an offset bypass. In this situation, because the Service is authorized to reverse an offset to correct a related processing error, the Service may reverse the offset and issue a refund to the taxpayer based on significant hardship.

Please call if you have any further questions.

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