

ACKNOWLEDGED SERVICE CENTER ADVICE, MAY BE DISSEMINATED

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**Internal Revenue Service
memorandum**

date: FEB 20 1998

to: Gerald S. Younger, Program Analyst, Customer Service
Operations, T:C:O:A:C

from: Chief, Branch 2 (General Litigation) CC:EL:GL:Br2

subject: Significant Service Center Advice

This responds to your request for Significant Advice dated December 10, 1997.

Disclosure Statement

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Issue

When a tax payment is received from a taxpayer after the period of limitation for collection has expired, can the payment be left in the account for the expired period?

Conclusion

Such a payment is an overpayment which should not be retained in the account for the expired period, but should be refunded to the taxpayer, credited to another tax period, or transferred to an excess collection account as appropriate.

Background

This is in response to your request for our advice as to the proper procedure for disposition of tax payments received from a taxpayer after the period of limitation for collection for the tax period has expired. You have informed us that in such situations the Service sends a notice to the taxpayer explaining that the collection period has expired and so the taxpayer is under no obligation to make the payment. The

taxpayer is asked whether the taxpayer still wishes to apply the payment to the account even though it is not legally required, or whether the taxpayer wants the payment refunded or credited to a liability for another tax period. However if the taxpayer does not respond, the issue arises of how to account for the payment. Pursuant to current Service Center instructions, the payment should be transferred from the expired period (to which it is originally applied) to an account titled "Excess Collection."

You state that attempting such a transfer creates administrative problems because the current system does not permit a payment to be routinely transferred from a tax period for a closed period, since the balance in a closed period is always listed as zero. Such an attempted transfer creates an "unpostable condition" which is administratively difficult to resolve. 1/ You, thus, ask whether it is permissible to leave such payments in the expired account, and not transfer them to an excess collection account.

Discussion

This question involves the receipt of a payment for a tax period after the period for collection of such tax liability has expired pursuant to I.R.C. § 6502. Pursuant to this provision, a tax must be collected within 10 years after assessment of the tax. Any payment of a tax which is collected after the expiration of this period of limitation is an overpayment which entitles the taxpayer to a credit or refund. I.R.C. §§ 6401, 6402.

If in connection with the collection of a tax, the Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation thereunder, the taxpayer can bring a civil action for damages against the Service. I.R.C. § 7433.

We conclude that the current Service Center guideline to transfer the overpayment out of the expired tax period in the absence of a taxpayer response is the proper procedure. Retaining the tax payment in the account for the closed tax period arguably violates the prohibition on collection after the expiration of the collection period. This could be considered an intentional disregard of section 6502 in connection with the collection of tax, which could as a

1/ You also state that a systemic change to be implemented in January 1999 will resolve this problem by permitting the unpostable condition to be bypassed. Thus, this will only continue to be a problem until the new systemic change is implemented.

theoretical matter subject the Service to a damages action under section 7433. 2/ We, thus, conclude that the current guideline should not be discarded in order to reduce the administrative problems of effecting the transfer. Instead, an administrative means of transferring the funds should be implemented.

We also note that in the interests of customer service, it is important in these situations to ensure that the Service has taken reasonable and appropriate steps to properly locate the taxpayer and to ensure that the taxpayer understands his or her right to receive a refund or credit. In some cases it may be appropriate to attempt a telephone call since some taxpayers may not read or understand the written notices.

This request for advice has been assigned to Mitchel S. Hyman and he may be contacted at (202) 622-3620 if you have any further questions. Thank you for consulting with us.

/s/
KATHRYN A. ZUBA

cc: Arlene Blume, TSS Supervisor
Room 4510, CC:DOM:FS

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2/ It is unlikely, however, that a taxpayer who has not responded to Service inquiries will bring such a damages action.