



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler  
Assistant Chief Counsel (Field Service)  
CC:DOM:FS

SUBJECT: The applicability of I.R.C. § 7503 to extend the three year  
look back period of I.R.C. § 6511 for a claim for refund  
mailed three years after the due date of the return

This Field Service Advice responds to your memorandum dated November 16,  
1999. Field Service Advice is not binding on Examination or Appeals and is not a  
final case determination. This document is not to be cited as precedent.

LEGEND

X =  
Y =

Year 1 =  
Year 2 =  
Year 3 =

Date 1 =

\$a =

ISSUES

- 1) Whether the "timely mailing equals timely filing" rule of I.R.C. § 7502 can be applied to X and Y's joint income tax return for Year 1 when the return

contains a claim for refund and is mailed on April 15, Year 3, but is not received by the Service until April 17, Year 3.

- 2) Whether X and Y's withheld income tax for Year 1, which was deemed paid on April 15, Year 2, was paid within the three year look back period of I.R.C. § 6511(b)(2)(A), where the due date of X and Y's income tax return for Year 1, was April 15, Year 2, which was a Saturday, and the Service received X and Y's joint income tax return for Year 1 on April 17, Year 3.

## CONCLUSIONS

- 1) I.R.C. § 7502 cannot be applied to X and Y's joint return to deem the return/claim for refund filed on the date of mailing because I.R.C. § 7502 only applies to documents with a United States postmark on or before the due date of the document. The due date of X and Y's income tax return for Year 1 was April 17, Year 2. X and Y did not mail their joint income tax return until April 15, Year 3, which is well past the due date of the return. Therefore, I.R.C. § 7502 cannot be applied to the return/claim for refund to deem the mailing date as the filing date.
- 2) I.R.C. § 7503 extended the due date of X and Y's income tax returns for Year 1 to Monday, April 17, Year 2 because April 15, Year 2 was a Saturday. However, I.R.C. § 7503 cannot be applied to the return/claim for refund filed by X and Y because I.R.C. § 7503 only applies if the act is actually performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. X and Y did not file their joint return/claim for refund until April 17, Year 3, which is three years after the next succeeding day from the Saturday that the return was due.

## FACTS

The due date of X and Y's federal income tax returns for Year 1 was April 15, Year 2. This due date was extended by I.R.C. § 7503 to April 17, Year 2, because April 15, Year 2, was a Saturday. X and Y did not request an extension of time to file their return. X and Y mailed a joint return for the Year 1 tax year on April 15, Year 3, which was a Wednesday. The Service did not receive the tax return for Year 1 until April 17, Year 3, which was a Friday. The Year 1 return indicated an excess of withholding credits in the amount of \$a, for which X and Y claimed a refund. The Service issued a claim disallowance letter to X and Y on Date 1. This claim disallowance letter stated that the grounds for the disallowance was that the claim was filed late.

## LAW AND ANALYSIS

I.R.C. § 6511(a) states that a claim for refund must be filed within three years from the time the return is filed or two years from the time the tax was paid, whichever occurs later. I.R.C. § 6511(b)(2)(A) further limits the period to file a claim for refund by stating that the amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.

I.R.C. § 6513(b) states that any tax actually deducted and withheld at the source during any calendar year shall be deemed to have been paid by the taxpayer on the 15<sup>th</sup> day of the fourth month following the close of the taxable year. Thus, the amounts withheld for the Year 1 tax year were deemed paid on April 15, Year 2.

A refund of a taxpayer's withholding and estimated taxes is allowed if the taxpayer files an original delinquent return/claim for refund more than two years, but less than three years after the due date of the return. Dixon v. United States, 7 Cl. Ct. 377 (1985); I.R.C. § 6511(b)(2)(A). Therefore, X and Y's claim for refund would be timely filed if it was filed within the period equal to three years, plus the period of any extension of time for filing the return from April 15, Year 2.

1) Whether I.R.C. § 7502 can be applied to X and Y's joint income tax return for Year 1 when the return contains a claim for refund and is mailed on April 15, Year 3, but is not received by the Service until April 17, Year 3.

Treas. Reg. § 301.6402-3(a) provides that an original income tax return may constitute a claim for refund and that "such claim shall be considered as filed on the date on which such return...is considered as filed." Therefore, it is necessary to determine when a return is filed in order to determine whether the taxpayer is entitled to a refund.

I.R.C. § 7502 provides that if any return, claim, statement, or other document is properly mailed on or before the due date of the document, but the document is received by the Service after the due date, the date of mailing will be considered the date on which the document was filed. I.R.C. § 7502 only applies where the use of the United States postmark date would make an otherwise late return or claim timely. I.R.C. § 7502(a)(2)(A)(i). In the case at issue, I.R.C. § 7502 cannot be used to establish the mailing date of April 15, Year 3, as the filing date, because the due date of the return was April 15, Year 2. Thus, the return was not mailed on or before the due date of the return, and I.R.C. § 7502 cannot be applied to the return. Therefore, the filing date of the return is April 17, Year 3.

Since I.R.C. § 7502 does not apply to treat the United States postmark date as the date the return is filed, X and Y cannot rely on the application of I.R.C. § 7502 to

the refund claim that was included in the delinquent return. Where a claim for refund also constitutes a return and is mailed after the prescribed return filing date, the return is not deemed filed until actually received by the Service. King v. United States, 495 F. Supp. 334 (D. Neb. 1980); Hartwick v. United States, 83-2 USTC ¶ 9504 (W.D.N.Y. 1983). A claim for refund cannot be separated from the return on which it was made. Treas. Reg. § 301.6402-3(a); Becker v. Department of Treasury, 823 F. Supp. 231 (S.D. N.Y. 1993).

Even if I.R.C. § 7502 could be applied to treat the refund claim as filed on the United States postmark date, the limitations of I.R.C. § 6511(a) would preclude a refund in the case at issue. In Christie v. United States, No. 3-90-285 (D. Minn. 1991), aff'd in an unpublished opinion, No. 91-2375MN (8<sup>th</sup> Cir. 1992), the court reasoned that the tax return had not been filed by the taxpayer as of the filing date of the claim, because section 7502 does not apply to a return mailed three years after its due date. This meant that the two year rule of section 6511(a) would apply to the claim for refund. In other words, section 6511(a) would provide a limitation on the filing of a claim for refund to a period not greater than two years from the time the tax was paid. Thus, the claim would be barred under section 6511(a) in the case at issue, because the overpayment of tax was considered made on April 15, Year 2, more than two years prior to the filing of the refund claim, and the court would accordingly lack jurisdiction under the provision of section 7422(a).

Because section 7502 cannot be applied to the return/claim for refund, the filing date of the return/claim for refund is April 17, Year 3. The taxes withheld from wages were deemed paid on April 15, Year 2 and the return/claim for refund was filed over three years later on April 17, Year 3. Thus, the claim is not timely, unless there is a period of extension to be added to the three year look back period pursuant to I.R.C. § 6511(b)(2)(A).

2) Whether X and Y's withheld income tax for Year 1, which was deemed paid on April 15, Year 2, was paid within the three year look back period of I.R.C. § 6511(b)(2)(A) pursuant to I.R.C. § 7503, where the due date of X and Y's income tax return for Year 1, was April 15, Year 2, which was a Saturday, and the Service received X and Y's joint income tax return for Year 1 on April 17, Year 3.

I.R.C. § 7503 states that "when the last day prescribed under authority of the internal revenue laws for performing any act falls on a Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday." In the case at issue, the last day prescribed for timely filing an income tax return for the Year 1 tax year was April 15, Year 2. April 15, Year 2, fell on a Saturday, so a Year 1 federal income tax return would have been considered timely, if it was filed on April 17, Year 2.

Rev. Rul. 75-344, 1975-2 C.B. 487, and Rev. Rul. 81-269, 1981-2 C.B. 243, state that:

The purpose of section 7503 is to extend the time for filing a document when the last day for filing the document would be a Saturday, Sunday, or legal holiday. Section 7503 does not change the date prescribed for performing an act, nor does it provide that an act performed on the day following a Saturday, Sunday, or legal holiday will be deemed to have been performed on the actual due date.

GCM 36001, 1-256-73 (Sept. 23, 1974), further states that I.R.C. § 7503 is an automatic statutory extension of time for filing a tax return due to be filed on a Saturday, Sunday, or legal holiday. The Tax Court held in the case Winkler v. Commissioner, 56 T.C. 844, 847 (1971), that the underlying purpose of I.R.C. § 7503 is to extend the time for filing a document when the last day for filing would, under the general rule, be a day on which the office in which the document had to be filed was closed. Therefore, I.R.C. § 7503 is considered to be a period of extension to be included in determining the limitation period of I.R.C. § 6511(b)(2)(A)

I.R.C. § 6511(b)(2)(A) states that the refund shall not exceed the portion of tax paid within the three years immediately preceding the filing of the claim plus the period of any extension. If I.R.C. § 7503 applies in this case, then X and Y would have been given a two day extension to file their return. Thus, the claim for refund would have been timely filed if the two day extension was added to the three year limitation period, because the claim for refund was filed three years and two days from the date the taxes were paid.

Thus, the question becomes whether I.R.C. § 7503 applies to this case. I.R.C. § 7503 states that the performance of any act shall be considered timely if it is performed on the next succeeding day, which is not a Saturday, Sunday, or legal holiday. Rev. Rul. 74-235 clarifies I.R.C. § 7503 by stating that “section 7503 of the Code only applies if the act is actually performed on the next succeeding day.” In the case at issue, X and Y’s federal income tax return was due on April 15, Year 2. This date was a Saturday, so the next succeeding day was Monday April 17, Year 2. X and Y did not file their income tax return for Year 1 on April 17, Year 2. Instead, X and Y waited until April 17, Year 3, three years later, to file their joint return with the claim for refund. Because X and Y did not file their return on the next succeeding day, Monday April 17, Year 2, I.R.C. § 7503 does not apply to this case and X and Y did not obtain a two day extension until April 17, Year 3. Therefore, X and Y did not timely file a claim for refund and the Service properly denied their claim.

Please call if you have any further questions.