



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR M. K. MORTENSEN, ASSOCIATE
DISTRICT COUNSEL ROCKY MOUNTAIN
DISTRICT (SALT LAKE CITY) CC:WR:RMD:SLC
Attn: Mark Howard

FROM: /s/ Richard Goldstein for
DEBORAH A. BUTLER
ASSISTANT CHIEF COUNSEL
(FIELD SERVICE) CC:DOM:FS

SUBJECT: INTEREST ON OVERPAYMENTS CREDITED
AGAINST OUTSTANDING TAX LIABILITIES

This Field Service Advice responds to your memorandum dated March 1, 2000. 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

Taxpayer =
\$a =
\$b = \$
\$c = \$
\$d = \$
\$e = \$
\$f = \$
\$g = \$

TL-N-1320-00

\$h = \$

\$i = \$

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 11 =

Year 13 =

ISSUE

Whether interest is allowed on the portion of the taxpayer's overpayments of tax for Year 1 through Year 5, inclusive, credited against its Years 6 and 7 tax liabilities for the periods from September 15, Year 6, to March 15, Year 7, and September 15, Year 7, to March 15, Year 8, respectively.

CONCLUSION

Interest is not allowed on the portion of the taxpayer's overpayments of tax for Year 1 through Year 5, inclusive, credited against its Years 6 and 7 tax liabilities for the periods from September 15, Year 6, to March 15, Year 7, and September 15, Year 7, to March 15, Year 8, respectively.

FACTS¹

¹ The facts set forth herein are taken from your request for advice, the attachments thereto, and conversations we have had with Mr. Howard. Inasmuch as we have not conducted any independent investigation of the facts, we express no

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TL-N-1320-00

Taxpayer is a corporation that files its returns based on a fiscal year ending on the 30th of June. The Service audited taxpayer's returns for Years 1-7, inclusive. In Year 11, the Service determined that the taxpayer had deficiencies in tax for Years 6 and 7, but that it overpaid its taxes for Years 1-5, inclusive, resulting in a net overpayment of \$a. Taxpayer waived the restrictions on assessment of the additional tax due for Years 6 and 7, and the Service credited the overpayments of tax for Years 1-5, inclusive, to the extent necessary, against Taxpayer's deficiencies in tax for Years 6 and 7 before refunding the balance. The Service paid interest to the Taxpayer on the portions of the overpayments of tax credited against the Taxpayer's outstanding tax liabilities from the overpayment date until the 15th of September for Years 6 and 7, respectively, the dates on which Taxpayer's returns were due to be filed without regard to any extension of time to file.

Year 6

Taxpayer timely filed its Year 6 return. On that return, Taxpayer reported a tax liability of \$b and payments and credits of \$c. Taxpayer elected to have its reported overpayment for Year 6 credited against its estimated tax liability for Year 7. Inasmuch as Taxpayer had full paid its first two installments of estimated tax for Year 7, the reported overpayment for Year 6 was credited against Taxpayer's estimated tax liability for Year 7 on March 15, Year 7, the due date for the third installment of estimated tax for Year 7.

In Year 11, the Service determined that Taxpayer's actual tax liability for Year 6 was \$d, an amount less than \$c, but greater than \$b, which resulted in a deficiency in tax for Year 6 of \$d - \$b. The Service, therefore, credited portions of the overpayments of tax for Years 1-5, inclusive, against Taxpayer's deficiency in tax for Year 6, and paid interest to the Taxpayer on these amounts from the overpayment date until September 15, Year 6, the date on which Taxpayer's return was due to be filed without regard to any extension of time to file. In Year 13, Taxpayer filed a refund claim alleging that it was entitled to overpayment interest on the credited amounts for the period from September 15, Year 6, until March 15, Year 7, because the underpayment to which the overpayment was credited was not due and unpaid before March 15, Year 7.

¹(...continued)

opinion on their accuracy. We recommend that you confirm your facts, and, to the extent that you uncover material differences, you may need to request supplemental advice.

TL-N-1320-00

Year 7

Taxpayer timely filed its Year 7 return. On that return, Taxpayer reported a tax liability of \$e and payments and credits of \$f. Taxpayer elected to have its reported overpayment, \$i ($\$f - \e), for Year 7 credited against its estimated tax liability for Year 8. Inasmuch as Taxpayer had full paid its first two installments of estimated tax for Year 8, the reported overpayment for Year 7 was credited against Taxpayer's estimated tax liability for Year 8 on March 15, Year 8, the due date for the third installment of estimated tax for Year 8.

In Year 11, the Service determined that Taxpayer's actual tax liability for Year 7 was \$g, an amount greater than both \$e and \$f, which resulted in a deficiency of \$h ($\$g - \e). The Service, therefore, credited portions of the overpayments of tax for Years 1-5, inclusive, against Taxpayer's deficiency in tax for Year 7, and paid interest to the Taxpayer on these amounts from the overpayment date until September 15, Year 7, the date on which Taxpayer's return was due to be filed without regard to any extension of time to file. In Year 13, Taxpayer filed a refund claim alleging that it was entitled to overpayment interest on \$i of the credited amounts for the period from September 15, Year 7, until March 15, Year 8, because the underpayment to which the overpayment was credited was not due and unpaid before March 15, Year 8.

LAW AND ANALYSIS

Section 6611(a) of the Internal Revenue Code provides that, "[i]nterest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621." In the case of a credit, such interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken. Sec. 6611(b)(1). The term "due date," as used in section 6611(b)(1), means the last day fixed by law or regulations for the payment of the tax determined without regard to any extension of time. Treas. Reg. § 301.6611-1(h)(2)(i). Section 6611(b)(1) is to be read strictly and literally. Felixson v. United States, 60-1 USTC ¶ 11,930 (S.D. Cal. 1960), and cases cited therein.

Section 6151(a) provides that a person required to make a return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return determined without regard to any extension of time for filing the return. Returns of corporations under section 6012 (relating to income tax under subtitle A) made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year. Sec. 6072(b).

TL-N-1320-00

Section 6601(a) provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest will be paid on the amount from such last date to the date paid. Underpayment interest is not a penalty, but is intended to compensate the government for the delay in the payment of tax. Avon Products, Inc. v. United States, 588 F.2d 342, 343 (2d Cir. 1978) and cases cited therein. Thus, reading section 6601(a) broadly, interest is imposed only when the tax is both due and unpaid. Id.

In Revenue Ruling 99-40, 1999-40 I.R.B. 441 (Oct. 4, 1999), the Service held that, when a taxpayer elects to apply a reported overpayment to the succeeding year's estimated taxes, the overpayment is applied, for purposes of determining interest on a deficiency, to unpaid installments of estimated tax due on or after the date(s) the overpayment arose, in the order in which they are required to be paid to avoid an addition to tax for failure to pay estimated income tax under sections 6654 or 6655 with respect to such year. The deficiency, therefore, becomes due and unpaid, and interest begins to accrue on that portion of a subsequently determined deficiency for the overpayment return year that is less than or equal to the reported overpayment as of the date on which the overpayment is applied to the succeeding year's estimated taxes. Id.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

The periods of mutual indebtedness with respect to the overpayments and underpayments of tax in this case did not begin until March 15, Year 7, and March 15, Year 8, respectively, the dates on which underpayment interest began to accrue on the taxpayer's deficiencies for years 6 and 7. Paying interest on the overpayments of tax until March 15, Year 7, and March 15, Year 8, respectively, therefore, would appear consistent with the principle that interest is fundamentally a charge or compensation for the use or forbearance of another's money. See, e.g., Deputy v. DuPont, 308 U.S. 488, 498 (1940); Old Colony R. Co. v. Commissioner, 284 U.S. 552, 560 (1932). The Service, however, may not pay interest on an overpayment, except as permitted by statute. United States, ex. rel. Angarica v. Bayard, 127 U.S. 251 (1888).

Section 6611(b)(1) allows interest on an overpayment credited against an underpayment only until the due date for the payment of tax for the underpayment year without regard to any extensions of time. This reading of the statute is supported by the regulations, which provide that for purposes of this section, the term "due date" means the last day fixed by law or regulations for the payment of the tax determined without regard to any extension of time. Treas. Reg. § 301.6611-1(h)(2)(i). Section 6611(b)(1) is to be construed strictly and literally, notwithstanding equities that appear strong and contrary. See, e.g., Felixson v. United States, 60-1 USTC ¶ 11,930 (S.D. Cal. 1960), and cases cited therein.

TL-N-1320-00

The Felixson court was confronted with an issue similar to the one present in this case. In that case, the taxpayer argued that additional overpayment interest was due because, notwithstanding the equities of terminating interest on the date that the mutuality of indebtedness arises, interest accrued on the overpayment until the date on which the underpayment was assessed, not the date that the tax was due. While the court found logic in the government's argument that interest should not accrue after the date on which the mutual indebtedness arose, it was constrained by the plain language of the statute, as in effect for the year at issue, which required interest to be paid to the date of the assessment of that amount.² Id.

We realize that, if read broadly, section 6611(b)(1) may allow interest on an overpayment credited against an underpayment which it antedates until the date on which the underpayment was both due and unpaid, see, H. Rept. No. 775, 85th Cong., 1st Sess., § 72 (July 9, 1957) and S. Rept. No. 1983, 85th Cong., 2^d Sess., § 87 (July 28, 1958)(in the case of an overpayment which antedates the due date of an underpayment, interest will run on the overpayment until such date that the mutuality of indebtedness arises). The courts have, nevertheless, instructed us to construe section 6611(b)(1) literally. Felixson v. United States, 60-1 USTC at ¶ 11,930. The provisions of positive law in this case are unequivocal: Interest on an overpayment credited against an underpayment is allowed only until the due date for the payment of tax for the underpayment year without regard to any extensions of time. We, therefore, cannot pay interest on the overpayment beyond that date. See, e.g., United States, ex. rel. Angarica v. Bayard, 127 U.S. at 251.

In the case of a corporation, the due date for the payment of income tax is the 15th day of the 3rd month following the close of the taxable year. In this case, the taxpayer's fiscal year closes on June 30th. Thus, the taxpayer is required to pay its tax no later than September 15th. Accordingly, overpayment interest on the amounts credited against the taxpayer's years 6 and 7 underpayments, therefore, is paid only until September 15th of Year 6 and 7, respectively. Please call the Field Service Division at (202) 622-7820 if you have any further questions

cc:

² For overpayments credited prior to January 1, 1958, section 6611(b)(1) provided that, in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount.