



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

OFFICE OF
CHIEF COUNSEL

January 18, 2002

Number: **200216017**
Release Date: 4/19/2002
CC:PA:APJP:BR 1/POSTF-151087-01
UILC: 6611.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
HEAVY MANUFACTURING, CONSTRUCTION, AND
TRANSPORTATION
CC:LM:MCT:DET

FROM: Curt G. Wilson
Assistant Chief Counsel
Procedure and Administration

SUBJECT: TL-N-5198-00

This Chief Counsel Advice responds to your memorandum dated June 8, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Company	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=

Year 11	=	
Year 12	=	
Year 13	=	
Year 14	=	
Year 15	=	
<u>A</u>	=	\$
<u>B</u>	=	\$
<u>C</u>	=	\$
<u>D</u>	=	\$
<u>E</u>	=	\$
<u>F</u>	=	\$
<u>G</u>	=	\$
<u>H</u>	=	\$
<u>I</u>	=	\$
<u>J</u>	=	\$
<u>K</u>	=	\$
<u>L</u>	=	\$
<u>M</u>	=	\$
<u>X</u>	=	\$
<u>Y</u>	=	\$
<u>Z</u>	=	\$

ISSUES

(1) Whether Company is entitled to overpayment interest on abated deficiency interest before Date 8.

(2) Whether Company may apply overpayment interest as a credit in full payment of a subsequent deficiency arising from a carry back recoupment for the same year and type of tax.

CONCLUSIONS

(1) Company is entitled to overpayment interest on abated deficiency interest before Date 8.

(2) Company may not apply overpayment interest as a credit in full payment of a subsequent deficiency arising from a carry back recoupment for the same year and type of tax.

FACTS

Issue (1):

Company filed a claim requesting a refund in excess of X regarding an interest computation of its Year 4 tax liability. This recomputation resulted from the Year 15

resolution of a claim involving foreign tax credit carry back from the Year 8 taxable year. The primary basis for Company's claim is that the Internal Revenue Service's ("Service") Year 15 recomputation of its Year 4 tax liability improperly applied credits from Year 4 to Year 1, Year 5, and Year 8 to pay off both the tax and accrued, but unposted deficiency interest.

The origin of this claim was Company's timely filing of its Year 4 federal income tax return, Form 1120, in Year 5 with a tax of Z. The Service is certain that the tax in the amount of Z was timely paid.

As a result of a pending Service adjustment to the Year 4 tax liability, Company made an advance payment totaling M on Date 1. This payment was posted to Company's account and put Company's Year 4 tax module in a credit balance position for the first time. In July and August of Year 11, the Service assessed an additional K of tax and H of deficiency interest. This deficiency interest was posted on Date 1, and the tax was posted on Date 2. After this assessment of tax and deficiency interest, Company's Year 4 tax module had a zero balance.

On Date 5, Company again made an advance payment totaling C, which posted to Company's account on that same date. On Date 6, the Service assessed tax of B and deficiency interest of A for a total of C. At this time, Company's Year 4 tax module was again in zero balance.

In Year 15, the Service reached agreement on Company's refund claim for the Year 4 tax period, which involved carry backs and carry forwards encompassing the Year 1 through Year 10. This claim resulted in a total tax abatement of E for Company's Year 4 tax year. The abatement was a combination of a general tax abatement and the allowance of a Year 5 carry back. At the time of the Year 15 adjustment, the Examination, Support, and Processing Division ("ESP") attempted to correct the "previously assessed" deficiency interest. The "previously assessed" deficiency interest then totaled I. ESP recomputed the "corrected" deficiency interest on the Date 2 deficiency, after reducing by this subsequent E abatement of tax. ESP's recomputed "corrected" deficiency interest totaled F. ESP took the difference of the "previously assessed" and "corrected" interest, and abated D of deficiency interest.

These Year 15 postings left Company's Year 4 tax module with a credit balance of G. No interest was paid on this credit. Instead the credit balance was transferred out of the Year 4 tax module to pay off the debit balances (tax and accrued, but unposted interest) on the Years 1,5,6 and 8 tax modules. The Year 4 credit was transferred out to these other modules using the availability dates of the last payments coming into the Year 4 module.

Both the Service and Company agree that only amounts needed to satisfy tax deficiencies for Years 1,5,6 and 8 should have reduced the G credit balance in the Year 4 tax module. Thus, a credit balance should have remained in Company's Year 4 module as of the module credit availability dates of Dates 1 and 5. However, D of this credit balance represented abated deficiency interest.

Issue (2):

Company filed a refund claim for L pertaining to its Year 12 tax liability. This claim arises from a dispute concerning mechanically when unposted allowable interest can be credited against a debit balance for the same taxable year and the same type of tax. Company asserts it may offset a debit “tax” balance with accrued and unposted allowable interest, as of the date the account goes back into debit balance. The Service asserts that no overpayment can exist until all the liability is satisfied, and thus, unposted allowable interest is not available to satisfy the deficiency.

Company’s Year 12 tax module started with a debit balance of J on Date 3. Deficiency interest started running on Date 3, as the Company’s Year 12 refund was issued on Date 3. On Date 4, the Year 12 module went into credit balance because of an allowed carry back from Year 13. The adjustment and the associated credit-interest on the Year 13 carry back of Y to Year 12 was not processed by the Service until Date 9.

As a result of the recouped carry back from Year 14, Company’s Year 12 module went back into debit balance on Date 7. Company’s claim asserts that credit interest for Year 12 accruing for the period it had a credit balance, i.e., Date 4 until Date 7, is available to pay off the debit balance created by the recoupment of the Year 14 carry back. Company’s proposed offset would put the module back into a credit balance position, and as a result, no additional deficiency interest would accrue.

LAW AND ANALYSISIssue (1):

Company is entitled to interest on the overpayment for its Year 4 taxable year. Company’s Year 4 Form 1120 account became overpaid as a result of a payment made by Company on Date 5, and a payment made by Company on Date 1. The overpayment was offset from Company’s account to pay accrued but unassessed deficiency interest on its Year 1, Year 5 and Year 8 accounts. Treas. Reg. § 301.6611-1(h)(2)(v) states that “[i]n the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date of such interest is the earlier of the assessment date of such interest or December 31, 1982.” As a result, Company is entitled to overpayment interest from Date 1 until Date 8, and from Date 5 until Date 8. *See, Freuhauf Corporation v. United States*, 477 F.2d 568 (Ct. Cl. 1973), *Tami Sportswear v. United States*, (74-2 USTC 9662). The recent decision in *United States v. St. Joe Minerals Corp.* (DC ED Mo.) (September 28, 2001) reinforces this view.

Issue (2):

Section 6402 of the Code provides that the Secretary may credit the amount of any overpayment, including interest allowed thereon, against any tax liability on the part of the person who made the overpayment and refund the balance. Because it is within the sole discretion of the Secretary to determine whether Company’s overpayment

interest may be credited to a subsequent deficiency for the same tax year, Company may not apply overpayment interest as a credit in payment of a subsequent deficiency arising from a carry back recoupment for the same year and type of tax.

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please contact [REDACTED] at 202-622-4910 if you have any further questions.