



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

OFFICE OF
CHIEF COUNSEL

January 18, 2002

Number: **200218005**
Release Date: 5/3/2002
CC:PA:APJP:B2
GL-144358-01
UILC: 6511.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
(SMALL BUSINESS/SELF EMPLOYED)
CC:SB:6:OKL

FROM: Assistant Chief Counsel (Administrative Provisions and
Judicial Practice) CC:PA:APJP

SUBJECT: Refund of Embezzled Funds

This Chief Counsel Advice responds to your memorandum dated October 23, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Corporation A =

Corporation B =

Taxpayer =

ISSUES

1. Under section 6402, may Corporation A receive a refund of the money that an employee of Corporation A fraudulently paid from Corporation A's checking account to the Service for purported tax liabilities of Corporation B?
2. If Corporation A can receive a refund under section 6402, what is the limitation on that refund under section 6511?

GL-144358-01

CONCLUSIONS

1. Yes, under section 6402 Corporation A can receive the refund for the taxes paid by Corporation A for the purported tax liability of Corporation B.
2. Sections 6511(a) and 6511(b)(2)(A) limit the refund Corporation A may receive to \$, the overpayment of Corporation B's 1999 tax liability (assuming Corporation A files a claim for refund of the 1999 tax by April 15, 2002). Refunds for the tax liability paid in 1997 and 1998 are barred by section 6511(a), which requires a claim for refund to be filed within 3 years from the date the return was filed or within 2 years from the time the tax was paid, whichever is later.

FACTS

Taxpayer pled guilty to charges that he fraudulently procured six checks totaling \$ from his employer, Corporation A. The checks were each made payable to the Internal Revenue Service. Instead of mailing the checks to the Service for application to any tax liabilities owed by Corporation A, Taxpayer mailed the checks to the Service as estimated tax payments for Corporation B, a corporation he controlled.

For the taxable years ended January 31, 1997, January 31, 1998, and January 31, 1999, Taxpayer filed false corporate income tax returns on behalf of Corporation B. Those tax returns reported tax liabilities in the total amount of \$ (\$, \$ and \$, for the taxable years ended January 31, 1997, January 31, 1998, and January 31, 1999, respectively).

With application of the substantial tax deposits which had been fraudulently made for those years, Taxpayer, through Corporation B, recovered refunds of corporate income tax in the total amount of \$ (\$, \$ and \$, for the taxable years ended January 31, 1997, January 31, 1998, and January 31, 1999, respectively). The total funds retained by the Service as purported tax liabilities of Corporation B is \$. Corporation B, however, actually had no income tax liability. Taxpayer's Petition to Enter Plea of Guilty states that Corporation B had no legitimate business income or expenses and that the entity was used solely to obtain the funds which had been fraudulently obtained from Corporation A.

LAW AND ANALYSIS

Section 6402 authorizes the Service to issue a refund to the person who (as a result of fraud) paid the tax liability of another corporation. Section 6402(a) states, "In the case of any overpayment, the Secretary, within the applicable period of

GL-144358-01

limitations, may credit the amount of such overpayment, including interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) refund any balance to such person.” In the present case, Corporation A paid a total of \$ toward Corporation B’s purported tax liability. The Service refunded to Corporation B overpayments of \$.06 on July 28, 1997, \$ on February 2, 1998, \$185,724.71 on June 15, 1998, and \$ on March 8, 1999. The Service retained the amount of total alleged liabilities claimed by Corporation B of \$, \$ and \$, for the taxable years ended January 31, 1997, January 31, 1998, and January 31, 1999, respectively. The Service later ascertained, as a result of Taxpayer’s Guilty Plea, that Corporation B had no tax liability. Because Corporation A is the person that made the payments, the Service may refund the overpaid tax remaining in Corporation B’s account to Corporation A. The amount that can be refunded, however, is limited by section 6511.

Section 6511(a) provides that a Taxpayer must file a claim for credit or refund within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. The last payment made for the tax year ended January 31, 1997 was on December 1, 1997. Corporation B filed a delinquent return for the tax year ended January 1, 1997, on May 19, 1997. The later of three years from the date of filing a return or two years from payment with respect to the tax year ended January 31, 1997, was May 19, 2000. Thus, the time to file a claim for refund regarding the tax period ended January 31, 1997, has expired.

For the tax year ended January 31, 1998, payments were made on December 1, 1997 and April 12, 1998. Corporation B filed a return for the 1998 tax year by April 15, 1998, the due date of the return. For purposes of section 6511(a), any return filed prior to its due date is deemed filed on the due date. I.R.C. § 6513(a). The later of three years from the date of filing a return or two years from payment with respect to the tax year ended January 31, 1998, was April 15, 2001.¹ Thus, the time to file a claim for refund regarding the tax period ended January 31, 1998, has also expired.

For the tax year ended January 31, 1999, the payment of tax and the date Corporation B is deemed to have filed its return are both April 15, 1999. Thus, a claim for refund by Corporation A will be timely if filed by April 15, 2002. I.R.C. § 6511(a).

¹ Under I.R.C. § 7503, the period to file a claim for refund did not actually expire until April 16, 2001, because April 15, 2001 was a Sunday.

GL-144358-01

Even when a claim for refund is timely under section 6511(a), section 6511(b)(2)(A) limits the amount of a refund or credit to the amount of tax paid within three years (plus the period of any extension of time for filing) before the filing of the claim. Under section 6513(b)(2), any amount paid as estimated income tax for any taxable year is deemed to have been paid on the last date prescribed for filing the return under section 6012 (determined without regard to extension). For the tax year ended January 31, 1999, payments were made on June, 23, 1998, October 22, 1998, and January 8, 1999. Under section 6513(b)(2), these estimated income tax payments for the tax year ended January 31, 1999, are deemed made on April 15, 1999, the due date of the return. Accordingly, as long as Corporation A files a claim for refund by April 15, 2002, for the tax period ended January 31, 1999, section 6511 would allow a refund of the \$ _____ remaining in Corporation B's account.

Please call if you have any further questions, please contact Branch 2 of the Administrative Provisions & Judicial Practice Division at

By: Curtis G. Wilson
ASHTON P. TRICE
Senior Technician Reviewer
Branch 2