



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

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL (LMSB AREA 4)
NATURAL RESOURCES

FROM: ASSISTANT CHIEF COUNSEL
(ADMINISTRATIVE PROVISIONS & JUDICIAL PRACTICE)

SUBJECT: Statute of Limitations under I.R.C. §§ 6501 and 6511

This responds to your request for assistance in the above captioned case. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 13 =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

Date I =

Date J =

Date K =

Date L =

Date M =
Date N =
Date O =
Date P =

Amount a =
Amount b =
Amount c =
Amount d =
Amount e =

ISSUES

1. Under the circumstances described herein, when does the period of limitations on assessment expire with respect to Taxpayer's taxable years Year 1, Year 2, Year 3, and Year 4?
2. Under the circumstances described herein, did Taxpayer file a timely refund claim for Year 3?

CONCLUSIONS

1. Under the circumstances described herein, the period of limitations on assessment for Taxpayer's taxable years Year 1, Year 2, Year 3, and Year 4 will expire on Date O.
2. Under the circumstances described herein, Taxpayer filed a timely refund claim for Year 3.

BACKGROUND

Taxpayer, a domestic corporation, timely filed its income tax return, Form 1120, for each of the years at issue. Each return was filed on September 15 of the year following the close of the taxable year pursuant to an extension under section 6081. During 1993, the Service initiated an audit of the Year 1, Year 2, Year 3, and Year 4 taxable years. To verify the foreign tax credits claimed by Taxpayer, the Service requested a copy of the computer software used by Taxpayer in the preparation of its Year 1, Year 2, Year 3, and Year 4 tax returns. Taxpayer refused to provide the software to the Service.

On Date A, the Service issued a designated summons to Taxpayer, formally requesting the same information it had previously requested informally. Taxpayer refused to comply with the summons and, on Date B, the Service initiated a suit

seeking enforcement of the designated summons. A magistrate ruled against the Government. On Date D, the district court entered an order adopting the opinion of the magistrate.

The Government had 60 days to appeal the district court's adverse ruling to the Fifth Circuit Court of Appeals. The Government decided not to appeal and the district's court order became final on Date F.

Prior to the filing of the suit to enforce the designated summons, Taxpayer executed several consents (Forms 872) to extend the assessment period for all of the years at issue. The last of these agreements extended the statute until Date C. Although, at that time, Taxpayer informed the Service that it would not consent to additional extensions, Taxpayer executed additional consents after the conclusion of the summons litigation.

The first of these consents executed after the summons litigation was signed by Taxpayer in April of Year 13 and by the Service on Date G. This consent extended the statute of limitations for all of the years at issue until Date I. Subsequent consents further extended the assessment period until Date O.

The Service completed examination of Taxpayer's Year 1, Year 2, Year 3, and Year 4, in the fall of Year 13. Although, at that time, the Service proposed deficiencies for two of the four years at issue, subsequent adjustments resulted in a deficiency for Year 2 only. The adjustments to the other three years resulted in overpayments. The overpayment for Year 3 was primarily due to the shifting of income from foreign sources between the various income categories defined in section 904 of the Internal Revenue Code. The shifting allowed Taxpayer to claim an increased amount of foreign tax credit.

With respect to the Year 3 tax year, Taxpayer was able to claim an additional \$a in foreign tax credits (FTCs). This additional amount was composed of the following:

FTC carryforward from Year 2	\$b
FTC carryback from Year 4	c
Additional Year 3 FTC	d

Due to these additional credits, the Service determined an overpayment of \$e for Year 3. The Service and Taxpayer orally discussed the adjustments in December Year 13, and at that time, Taxpayer agreed to the refund for Year 3. On Date J, the Service issued a Form 4549-A, *Income Tax Examination Changes*, to Taxpayer. The Form reflected deficiencies for Year 2 and Year 4 and overpayments for Year 1 and Year 3. This report was superceded by a revised Form 4549-A, issued on Date K, which reflected a deficiency only for Year 2, and overpayments for Year 1, Year

3, and Year 4. Both the initial and the revised Form 4549-A reflected an overpayment for Year 3 of \$e.

On Date M, Taxpayer executed a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*, with the deficiency and overpayment amounts as shown on the March Form 4549-A.

LAW & ANALYSIS:

Statute of Limitations on Assessment

Generally, the Service has 3 years from the date of the filing of the taxpayer's return to examine the return and assert a deficiency. I.R.C. § 6501(a). The taxpayer and the Service, however, may agree to extend the assessment period beyond the 3 years. I.R.C. § 6501(c)(4). To be effective, the agreement extending the assessment statute must be in writing, signed by the taxpayer and an authorized agent of the Commissioner, and entered into before the expiration of the original period of limitations of assessment or the period previously agreed upon. I.R.C. § 6501(c)(4)(A). In addition, for extension requests made after Date I, the Service is required to inform the taxpayer of the taxpayer's right to refuse to extend the period or limitations or to limit such extension to particular issues or a particular period of time, on each occasion the Service requests an extension from the taxpayer. I.R.C. § 6501(c)(4)(B).

In addition to extensions, the running of the period of limitations on assessment may also be suspended by operation of law. See generally I.R.C. § 6503. Unlike an extension, which generally operates to lengthen the period of limitations under the terms of an agreement, a suspension tolls or freezes the limitations period by law until some date or event in the future, at which time the limitations period begins to run again. See Olds & Whipple, Inc. v. United States, 22 F. Supp. 809 (Ct. Cl. 1938) (unexpired portion of the limitations period begins to run again sixty days after the final tax court decision); Continental Oil Co. v. United States, 14 F. Supp. 533 (Ct. Cl. 1936) (unexpired portion of the waiver period is added to the suspension period). As relevant here, section 6503(j) (previously section 6503(k)(1)) provides for a suspension of the statute of limitations on assessment during the judicial enforcement period of a designated summons issued by the Service in connection with an examination of a corporate taxpayer under the Service's coordinated examination program. I.R.C. § 6501(j). The term "designated summons" describes summonses issued to large corporations that meet the specific requirements of section 6503(j). A designated summons must be issued at least 60 days prior to the expiration of the assessment period (including any extensions) and identified as a "designated summons." I.R.C. § 6503(j)(2)(A)(ii) and (iii). Only one designated summons may be issued with respect to any taxable year. I.R.C. § 6503(j)(2)(B).

The mere issuance of a designated summons does not suspend the assessment period. Rather, the period is suspended during the time that the corporation and the Service are in court litigating the issue of whether the taxpayer must comply with the summons. Specifically, the statute of limitations is suspended for the period that commences when a lawsuit is brought in court either to enforce or quash the designated summons and ends on the date there is a final resolution of the taxpayer's response to the summons. I.R.C. § 6503(j). For this purpose, the term "final resolution" means the same as it does in section 7609(e)(2)(B). See H.R. Rep. No. 101-881 (1990). In general, this means that no court proceeding remains pending (*i.e.*, the appeal period has expired) and that the taxpayer has complied with the designated summons to the extent required by the court. Id.; see also Treas. Reg. § 301.7609-5. If the court requires additional compliance with the summons, the statute of limitations is further suspended for an additional 120 days after the final resolution. I.R.C. § 6503(j)(1)(B). If additional compliance is not required, the assessment period will in no event expire until the 60th day after the final resolution. I.R.C. § 6503(j)(1)(A). Thus, the Service will always have at least 60 days after the final resolution of the summons enforcement proceedings to conclude the audit and assert a deficiency against the taxpayer.

In this case, the designated summons was issued to Taxpayer on Date A. At that time, the statute of limitations on assessment for the years under audit was due to expire (pursuant to an extension under section 6501(c)(4)) on Date C; more than 60 days after the issuance of the summons. Taxpayer did not comply with the summons, and the Service initiated a proceeding to enforce the summons on Date B. On Date D, the district court entered an order finding that Taxpayer did not have to comply with the designated summons. The order became final on Date F.

At the time the Service initiated the judicial proceeding to enforce the designated summons, only 3 days remained on the assessment statute as extended under section 6501(c)(4). Once the judicial proceedings were initiated, however, the statute was suspended or tolled until the final resolution of the lawsuit. See Meridian Wood Products Co. v. United States, 725 F.2d 1183 (9th Cir. 1984) (Section 6503(a) operates to suspend an extended limitations period as well as the "normal" limitations period contained in Section 6501(a)); Ramirez v. United States, 538 F.2d 888 (Ct. Cl. 1976) (an extension agreement providing for expiration of the limitations period on a certain date was held subject to Section 6503(a)); Lansburgh v. United States, 699 F. Supp 279 (S.D. Fla. 1988) (Section 6503 suspension of the limitations period suspends all limitations periods in section 6501--ordinary as well as extended).

In this case, the assessment period was suspended or tolled from Date B, until Date F; when the statute began to run again. Although the statute was no longer suspended after Date F, section 6503(j)(1)(A) specifically provides that the assessment period "shall in no event expire before the 60th day after the close of

the suspension.” Therefore, at the conclusion of the summons litigation, the Service had at least until Date H, to finalize the audit and assert any deficiency against Taxpayer.

Prior to Date H, however, Taxpayer and the Service agreed to further extend the limitations period, which remained unexpired. An authorized official of the Service countersigned the agreement on Date G. Under the agreement, the period of limitations on assessment was due to expire on Date I. Subsequent timely consents further extended the statute until Date O. Thus, the Service has until Date O, to assess the agreed upon deficiency for the Year 2 tax year.

Statute of Limitations on Refund Claim

Generally, to be timely, a claim for credit or refund of an overpayment of any tax (in respect to which the taxpayer is required to file a return) must be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later. I.R.C. § 6511(a); Treas. Reg. § 301.6511(a)-1. If, however, the taxpayer and the Service agree to extend the period for making an assessment pursuant to section 6501(c)(4) and such agreement is made within the period set forth in section 6511(a), the period for filing a claim for credit or refund “shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).” I.R.C. § 6511(c)(1).

In this case, Taxpayer and the Service executed several consents to extend the assessment period. With respect to the Year 3 tax year, the first of these agreements was executed on January 29, 1993, prior to the expiration of the 3-year period set forth in section 6501(a) and within the period prescribed in section 6511(a). This agreement extended the period for assessment for the Year 3 tax year until December 31, 1994. Subsequent agreements between the Service and Taxpayer further extended the assessment period until Date C. On Date B, the Service commenced a lawsuit seeking enforcement of the designated summons, thereby leaving the assessment statute open until the 60th day after the final resolution of the lawsuit. I.R.C. § 6503(j). At the conclusion of the lawsuit, the assessment statute for the Year 3 tax year was due to expire on Date H. On Date G, prior to the expiration of the assessment period, the Taxpayer and the Service executed another agreement pursuant to section 6501(c)(4) further extending the assessment period. Additional agreements further extended the assessment period until Date O.

In the prior section of this memorandum we concluded that the statute of limitations on assessment as extended under section 6501(c)(4) was suspended during the summons litigation by operation of section 6503(j). The question that we need to

address now is whether that suspension also extended the time for filing a timely refund claim pursuant to section 6511(c)(1). We believe that it did.

To determine the applicable period of limitations on credit or refund under section 6511(c)(1), one must consider the provision in its entirety. United States v. Ron Pair Enterprises, 489 U.S. 235 (1989). Reading only a portion of the statute leads to inconsistent and often incorrect interpretations. Dole v. United Steelworkers, 494 U.S. 26, 35 (1990) (Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme). For instance, if one were to read only the phrase “[i]f *an agreement* under the provisions of section 6501(c)(4) . . . is made . . . ,” one would likely conclude that only one of multiple agreements extending the assessment period counts for purposes of section 6511(c)(1). Such a reading, however, would be inconsistent with the reference to “the agreement or any extension thereof” in section 6511(c)(1). Likewise, the fact that the statute does not refer to a suspension of the assessment period under section 6503 does not necessarily mean that the suspension must be ignored when determining the applicable statute of limitations for filing a claim for refund.

As stated above, section 6503 operates to suspend the period of limitations on assessment—ordinary as well as extended. Lansburgh v. United States, 699 F. Supp. 279 (S.D. Fla. 1988). Section 6511(c)(1) provides that, if the taxpayer and the Service agree to extend the period of limitations on assessment pursuant to section 6501(c)(4), the “period for filing claim for credit or refund . . . shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).” In this case, Taxpayer and the Service executed a number of extensions under section 6501(c)(4). Prior to the summons litigation, the assessment period, as extended under section 6501(c)(4), was due to expire on Date C. Thus, without the section 6503(j) suspension of the assessment period, Taxpayer had until March 31, 1997 (6 months after Date C), to file a timely claim for refund.

This simplified analysis and conclusion, however, ignores the fact that the extensions of the assessment period executed by Taxpayer and the Service after the conclusion of the summons litigation were executed while the period of limitations under section 6501 was unexpired. In other words, the limitations period previously agreed upon had not expired when a new consent was signed. Thus, pursuant to the plain language of section 6511(c)(1), there was a continuous chain of extensions that must be considered when determining the period of limitations on credit or refund.

For these reasons, we conclude that, under the facts of this case, the period of limitations for filing a claim for credit or refund under section 6511(c)(1) is due to expire on Date P (six months after Date O). The analysis does not end here,

however. Because Taxpayer's Year 3 overpayment is attributable to foreign tax credits, we must also consider the impact of section 6511(d)(3).

Section 6511(d)(3) sets forth a special period of limitations for filing a claim for credit or refund of an overpayment attributable to foreign tax credits. As in effect for the years at issue, section 6511(d)(3)(A) provided that in lieu of the 3-year period of limitations set forth in section 6511(a), the period for filing a claim for such credit or refund is 10 years from the date prescribed by law for filing the return "for the year with respect to which the claim is made." The 10-year period applies in lieu of the 3-year period prescribed in section 6511(a). I.R.C. § 6511(d)(3)(A). The period is determined without regard to any extension of time for filing the return. Treas. Reg. § 301.6511(d)-3.

It is the Service's position that the phrase "the year with respect to which the claim is made" under section 6511(d)(3)(A), as in effect for the years at issue, refers to the year in which the foreign taxes were actually paid or accrued and not to the year to which the foreign taxes were carried under section 904(c). See Rev. Rul. 84-125, 1984-2 C.B. 125; Rev. Rul. 77-487, 1977-2 C.B. 429.¹ In the instant case, Taxpayer's refund claim for Year 3 consists of foreign taxes paid or accrued in Year 2, Year 3, and Year 4. Thus, the 10-year period of limitations under section 6511(d)(3)(A) for claiming the foreign taxes paid or accrued in Year 2 is Date E (10-years from the due date of the Year 2 return). The period of limitations for claiming the foreign taxes paid or accrued in Year 3 is Date L. And the period of limitations for claiming the foreign taxes paid or accrued by Taxpayer in Year 4 is Date N.

The question that arises in this case is whether the 10-year period set forth in section 6511(d)(3)(A) may be further extended by operation of section 6511(c)(1). We believe that it may.

As in effect for the years at issue, section 6511(d)(3)(A) provided that, in lieu of the 3-year period of limitation prescribed in subsection (a), the period for filing a refund

¹ In Ampex v. United States, 620 F.2d 853 (Ct. Cl. 1980), the U.S. Court of Claims held that, under section 6511(d)(3)(A) as in effect for the years at issue, the 10-year limitation period is determined by reference to the year of the overpayment rather than the year in which the foreign taxes are paid or accrued. Here, the timeliness of Taxpayer's refund claim under section 6511(c) would not be affected if the 10-year limitation period were determined by reference to the year of the overpayment rather than the year in which the applicable foreign taxes are paid or accrued. In addition, we note that The Taxpayer Relief Act of 1997 amended section 6511(d)(3)(A) by substituting "the year in which such foreign taxes were actually paid or accrued" for "for the year with respect to which the claim is made," effective for taxes paid or accrued in tax years beginning after August 5, 1997. P.L. 105-34, section 1056(a) (1997).

claim for an overpayment attributable to foreign tax credits is 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made (determined without regard to extensions). Treas. Reg. § 301.6511(d)-3(a). Accordingly, to the extent a refund claim relates to an overpayment that is attributable to foreign tax credits, section 6511(d)(3)(A) modifies section 6511(a) by replacing the 3-year period of limitation contained in section 6511(a) with a 10-year limitation period measured by reference to the year in which the applicable foreign taxes were paid or accrued. See Rev. Rul. 84-125, 1984-2 C.B. 125; Rev. Rul. 77-487, 1977-2 C.B. 429. The references in section 6511(c) to section 6511(a) should be read to incorporate the section 6511(d)(3)(A) modification of section 6511(a).

This conclusion is supported by the legislative purpose underlying the enactment of section 6511(d)(3)(A). Prior to the enactment of section 6511(d)(3)(A), Congress became aware that taxpayers often could not reach final determinations of their foreign tax liabilities within the general 3-year period of limitations. See, e.g., House Hearing on Proposed Revisions of the Internal Revenue Code Before the Committee on Ways and Means, 80th Cong. 1278, 1303, 3636 (1947). Section 6511(d)(3)(A) addressed this problem by providing taxpayers with a longer 10-year period in which to resolve their foreign tax liabilities for a particular year and claim a refund based on such foreign tax liabilities. See Hart v. United States, 585 F.2d 1025, 1028 (Ct. Cl. 1978). There is no indication in the legislative history that by allowing taxpayers a longer period of time to claim a refund attributable to foreign tax credits, Congress intended to override section 6511(c)(1) and preclude a taxpayer from extending the period for claiming a refund of an overpayment attributable to foreign tax credits. See S. Rep. No. 83-1622, at 586 (1954); H.R. Rep. No. 83-1337, at A415 (1954); H.R. Conf. Rep. No. 83-2543, at 79 (1954).

This conclusion is also compelled by section 6511(b)(1) and the reference thereto in section 6511(c). Section 6511(b)(1) requires refund claims to be filed within the period prescribed by section 6511(a). Therefore, unless the reference to section 6511(a) in section 6511(b)(1) incorporates the modification to section 6511(a) made by section 6511(d)(3)(A), a taxpayer would be barred from claiming a refund within the 10-year limitation period of section 6511(d)(3)(A) if the claim were not also within the period expressly described in section 6511(a). This result is clearly inconsistent with section 6511(d)(3)(A). Thus, the reference to section 6511(a) in section 6511(b)(1) must incorporate the section 6511(d)(3)(A) modification to section 6511(a). Since section 6511(c) extends the period “provided in subsections (a) and (b)(1),” the reference to subsection 6511(a) must also incorporate the section 6511(d)(3)(A) modification to section 6511(a).

The period for claiming a refund for an overpayment attributable to foreign tax credits, therefore, may be extended under section 6511(c)(1) if a taxpayer enters into an agreement pursuant to section 6501(c)(4) to extend the assessment period

for the year of the overpayment within the period prescribed in section 6511(a) as modified by section 6511(d)(3)(A). In particular, in the case of an overpayment attributable to foreign tax credits, if the taxpayer has entered into an agreement pursuant to section 6501(c)(4) to extend the assessment period for the year of the overpayment prior to the expiration of the 10-year period (or periods) applicable for claiming a refund of such overpayment, the period to file the refund claim will not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

Here, there is an overpayment for Year 3 attributable to foreign tax credits for foreign taxes paid or accrued in Year 2, Year 3, and Year 4. The initial agreement to extend the assessment period for Year 3 was entered into prior to the expiration of each of the applicable 10-year periods of limitation for filing a refund claim attributable to the overpayment. Further, as explained above, the initial limitations period was properly extended by subsequent consents until Date O. Accordingly, the period of limitations for filing a timely refund claim under section 6511 is due to expire on Date P (six months after Date O). Because the Form 870 that Taxpayer executed on Date M constitutes a claim for refund, Taxpayer has filed a timely claim.

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Please contact us at 202-622-4940 if you have any further questions.

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