



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR MARY TSENG KLAASEN
CC:SB:5:DEN:1

FROM: Pamela W. Fuller
Senior Technician Reviewer
CC:PA:APJP:B1

SUBJECT: Replacement Refund Check

This Chief Counsel Advice responds to your memorandum dated March 6, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer
Year 1

ISSUES

Whether the Service has the authority under section 6402 of the Internal Revenue Code ("Code") to issue Taxpayer a replacement refund?

CONCLUSIONS

The Service lacks the authority under section 6402 to issue Taxpayer a replacement refund check.

FACTS

Taxpayer went to a Volunteers Income Tax Assistance ("VITA") site to have her Year 1 tax return prepared and filed. According to Taxpayer, she requested that her refund be direct deposited and provided the VITA volunteer with her routing transit number (RTN) and account number. Taxpayer did not receive her refund

and claims that the volunteer entered a RTN and account number different from the one she provided. Taxpayer has a copy of the return prepared by the VITA volunteer; however, Taxpayer's copy does not contain any information in the direct deposit section of the return.

Taxpayer contacted the Service when she did not receive her refund. Taxpayer was advised to and did file Form 3911, Taxpayer Statement Regarding Refund. The Service traced Taxpayer's refund and determined that the refund was paid to the bank account number and RTN designated on the return filed with the Service. The Service also determined that the account number and RTN did not belong to Taxpayer. The Service attempted to but was not able to recover the refund from the bank or the third party. Thus, the Service told Taxpayer that there was nothing further the Service could do.

Taxpayer contacted Taxpayer Advocate Service for assistance in obtaining a replacement refund.

LAW AND ANALYSIS

Section 6402(a) of the Code provides that in the case of an overpayment, the Secretary, within the applicable period of limitations, may credit the amount of the overpayment against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

An "overpayment" is the amount by which payments made by the taxpayer exceed the correct tax liability. Jones v. Liberty Glass Co., 332 U.S. 524 (1947), 1948-1 C.B. 102. The Service is authorized to make a refund only if an overpayment exists. Lewis v. Reynolds, 284 U.S. 281 (1932). An overpayment will not exist once the amounts overpaid by the taxpayer have been refunded to the taxpayer and the account no longer shows a credit balance. Whether an overpayment has been refunded to the taxpayer is a question of fact.

The government generally enjoys a presumption of official regularity in its acts. United States v. Ahrens, 530 F.2d 781, 785 (8th Cir. 1976). However, this presumption is rebuttable. In the context of paper refund checks, the Service bears the burden of showing that the refund check was issued and cashed. Once the Service has satisfied its burden, the burden shifts to the taxpayer to show that the refund was lost, stolen, or never received. Bolnick v. Commissioner, 44 T.C. 245 (1965), acq. 1980-1 C.B. 1.

In the context of direct deposit, the Service satisfies its burden by showing that it refunded the overpayment to the bank account number and RTN designated by the taxpayer in his or her return. The taxpayer then has the burden to show that the

refund was lost, stolen, or deposited to an account other than the account he or she designated. If the Service caused the refund to be misdirected, the Service may issue the taxpayer a replacement refund. However, if the taxpayer or taxpayer's representative caused the refund to be misdirected, the Service may not issue a replacement refund. Internal Revenue Manual section 21.4.1.4.7.

In this case, the Service paid the refund to the bank account number and RTN designated on the return filed with the Service. Taxpayer's copy of the return does not contain any information in the direct deposit section. Because Taxpayer cannot show that the refund was deposited to an account other than the account she designated, Taxpayer has not satisfied the burden of proof. Consequently, the Service does not have the authority under section 6402 to issue Taxpayer a replacement refund.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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 call if you have any further questions.