



OFFICE OF  
CHIEF COUNSEL

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

January 13, 2004

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CONEX-169691-03/CC:ITA:B4  
UIL 61.09-09

[REDACTED]

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Dear [REDACTED]:

This letter is in response to your inquiry dated December 3, 2003, on behalf of your constituent, [REDACTED]. He wants an explanation about the tax treatment of a severance pay repayment.

As [REDACTED] points out, severance pay is taxable. Accordingly, the employer properly withheld income tax from the payment. Although [REDACTED] disability pay was nontaxable, he repaid the taxable severance pay to receive the disability pay.

A taxpayer who receives taxable severance pay and repays it in a later year to receive nontaxable disability payments is entitled to an itemized deduction for the amount repaid, including the portion attributable to withheld income tax. For a taxpayer who uses the cash receipts and disbursements method of accounting, the repayment would be deductible only in the year of repayment.

If [REDACTED] did not claim the deduction on his federal income tax return for any of the years of repayment, he can file a claim for refund of any amount overpaid within the period of limitations set by the Internal Revenue Code. Pursuant to § 6511 of the Internal Revenue Code, a claim must be filed within 3 years of the date the return is filed or 2 years of the date of payment, whichever is later. The law does not allow the IRS to waive the timeliness requirement. If [REDACTED] filed and paid his taxes by the due dates, he can file claims for any deductions of amounts repaid during 2000, 2001, or 2002 not previously claimed as deductions on those returns.

For your information, I am enclosing a copy of Rev. Rul. 79-322, 1979-2 C.B. 76, which describes a situation similar to [REDACTED]. We are also enclosing Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, which addresses claims for refund.

I hope this information is helpful. If you or [REDACTED] have questions or need further assistance, please call [REDACTED], Identification Number [REDACTED], at [REDACTED].

Sincerely,

Robert A. Berkovsky  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures (2)