

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

March 11, 2004

Number: **200429009**
Release Date: 7/16/04
Third Party Contact:
Index (UIL) No.: 6402.04-03
CASE-MIS No.: TAM-164348-03, CC:PA:APJP:B01

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference: No conference held

LEGEND:

Taxpayer =
A =

ISSUE: Whether timely refund claims lacking proper signatures should be rejected by the Service because of that defect, despite the taxpayer's corrective efforts.

CONCLUSION: No. The taxpayer cured the signature defect following the original submission of the claims. Assuming the Service has no other objections to processing the claims, the Service should now consider the claims on their merits.

FACTS:

On September 15, , three amended corporate income tax returns on IRS Form 1120X were filed on the taxpayer's behalf, relating to the taxable years ending December 31, , July 31, and December 31, . The filing for claimed an increased net operating loss, while the filings for and claimed refunds due to the carryback of that loss. The refund claims reflected in the amended returns were timely with respect to the period of limitations provisions of section 6511 of the Internal Revenue Code.

Each Form 1120x was signed on September 14, _____, by A, a certified public accountant, who was not an officer or employee of the taxpayer. As of that date, A held a power of attorney from the taxpayer (on IRS Form 2848) to represent the taxpayer in “tax matters” for at least one of the three years represented by the Forms 1120X. This power of attorney, however, included no wording granting authority to A to sign tax returns for the taxpayer. An agreement between the taxpayer and A executed approximately three years before the filing of the Forms 1120X stated that A was authorized to pursue the filing of refund claims for the taxpayer. Within approximately three months of the execution of this agreement, the taxpayer had reduced its number of employees to the point that it had virtually no remaining corporate staff.

Following the filing of the Forms 1120X (and the expiration of the period of limitations on refund claims for the years involved), the taxpayer executed a new power of attorney in A's favor. This power of attorney (on IRS Form 2848) was executed July 26, 1999, and stated that A was authorized to sign amended tax returns for the taxpayer for certain taxable years, including the ones covered by the Forms 1120X. Approximately two years after the original filing of the Forms 1120X described above, the forms were re-submitted to the Service, this time bearing the signature of the taxpayer's president.

The Service has not disallowed the refund claims reflected on the Forms 1120X for either of the taxable years involved. Pending the resolution of the signature issues related to those forms, the Service has not considered the claims on their merits.

LAW AND ANALYSIS:

Section 6061(a) provides in relevant part that any return or other document required to be filed under the internal revenue laws shall be signed in accordance with forms or regulations prescribed by the Secretary of the Treasury.

Section 6062 provides in relevant part that corporate income tax returns shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act.

Section 1.6062-1(a)(1) of the Income Tax Regulations states that corporate income tax returns must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to sign. The sole exception in these regulations is that income tax returns required to be made by an agent for a foreign corporation shall be signed by the agent.

Section 1.6062-1(b) of the Income Tax Regulations provides generally that statements and other documents required to be made by or for corporations under subtitles A or F of the Code with respect to income tax must be signed in accordance with applicable regulations, forms, or instructions.

Section 6402 provides generally that the Secretary (within the applicable period of limitations), may credit the amount of an overpayment of tax, including interest, against any internal revenue tax liability of the person who made the overpayment and shall refund the balance to the person.

Section 301.6402-3(a)(3) of the Regulations on Procedure and Administration states that corporate income tax refund claims filed after June 30, 1976, shall be made on Form 1120X, assuming the corporation previously filed Form 1120 for the year (s) involved.

The tax return signature rules in section 1.6062-1(a)(1) are irrelevant to Form 1120X because section 6402 does not require amended returns and they are accepted solely as a matter of administrative policy. See *Dover Corp. & Subsidiaries v. Commissioner*, 148 F.3d 70 (2nd Cir. 1998). Nevertheless, the instructions to Form 1120X provide that the form must be signed by the taxpayer's president, vice president, treasurer, assistant treasurer, chief accounting officer or any other corporate officer authorized to sign.

The individual who signed the Forms 1120X in the present case falls into none of these categories. A is not the taxpayer's president, vice president, treasurer, assistant treasurer, chief accounting officer or any other corporate officer authorized to sign. In light of this defect in the claims as originally filed on September 15, , the Service had no obligation to process the claims.

However, case law sets forth an "informal claim doctrine" regarding flawed refund claims such as the ones involved here. A notice fairly advising the Commissioner of the nature of a refund claim, which the Commissioner could reject because it violated the formal requirements of the regulations, will nevertheless constitute a claim where the formal defects are corrected by amendment after the lapse of the statutory period. *United States v. Kales*, 314 U.S. 186, 194 (1941); cf. *Rainbow Electric Co. v. United States*, 536 F.Supp. 176 (D. Mont. 1982)(unsigned refund claim properly disallowed where taxpayer did not respond to repeated requests from Service to correct defect).

On July 26, 1999, the taxpayer executed a revised power of attorney purporting to grant signature authority to A with respect to refund claims. Approximately two years after the original filing of the Forms 1120X, the forms were resubmitted to the Service with the signature of the taxpayer's president. In the present case, the "formal defect" – the lack of a proper signature – was corrected when the taxpayer resubmitted the claims with the signature of its president. Moreover, the actions following the filing of the imperfect amended returns were consistent with the written agreement entered into prior to the expiration of the period of limitations that authorized A to pursue the filing of refund claims. Assuming that the original Forms 1120X adequately advised the Service of the nature of the taxpayer's refund claim, the taxpayer has satisfied the standard described in *Kales*.

Therefore, despite the signature defects posed by those claims, the taxpayer should be treated as having filed a refund claim prior to the running of the statute of limitations. *See also Arch Engineering Co., Inc. v. United States*, 783 F. 2d 190, 192 (Fed. Cir. 1986)(held, there are no rigid guidelines for an informal claim except that such claims must have a written component and “should adequately apprise the Internal Revenue Service that a refund is sought and for certain years”). Assuming that the Service had no reason other than the signature defects to decline to process the taxpayer’s refund claims for taxable years and those claims should now be considered on their merits.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.