

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Marion K. Mortensen
Associate Area Counsel
CC:SB:5:SLC
Attn: R. Craig Schneider

from: Tiffany P. Smith
Assistant to the Branch Chief
CC:PA:APJP:B01

subject: Section 6611(g)

This Chief Counsel Advice responds to your memorandum dated January 29, 2004. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Year 1
Year 2
Amount a
Amount b
Amount c
Amount d

ISSUE

Whether the taxpayer's Form 1120X, Amended U.S. Corporation Income Tax Return, constitutes a processible return for purposes of I.R.C. § 6611(g) when the Internal Revenue Service (Service) received it on September 19, 2002.

CONCLUSION

We conclude that the taxpayer's Form 1120X constituted a processible return for purposes of I.R.C. § 6611(g) when the Service received it on September 19, 2002.

FACTS

On September 13, _____, the taxpayer filed a Form 1120X for Year 2. The Year 2 Form 1120X corrected the amount of a taxable loss for Year 2. Also on September 13,

the taxpayer filed a Form 1120X for Year 1. The Year 1 Form 1120X reflected a net adjustment which decreased the amount of taxable income by Amount a. The Year 1 Form 1120X also carried back a Year 2 net operating loss (NOL). The NOL carryback resulted in an alternative minimum tax (AMT) overpayment of Amount b. The Service received the Year 1 Form 1120X on September 19, _____.

The Year 1 Form 1120X was sent to the statute of limitations function for review of the net adjustment. The statute of limitations function determined that the adjustment which decreased taxable income by Amount a was barred by the statute of limitations (the statute of limitations was not closed, however, for NOL carrybacks from open years). The statute of limitations function then forwarded the Year 1 Form 1120X to the technical group for review of the AMT adjustment.

The technical group recalculated the AMT adjustment without allowing the Amount a decrease in taxable income. The technical group originally calculated the effect of the barred adjustment to be Amount c (35% regular tax rate x Amount a). The taxpayer, however, calculated the effect of the barred adjustment to be Amount d (20% AMT rate X Amount a). Pursuant to several telephone conversations between the technical group and the taxpayer, the technical group realized its error and agreed with the taxpayer's calculation. After reaching an agreement with the taxpayer, the technical group asked the taxpayer to submit revised AMT and refund calculations reflecting the agreed adjustment. The facts provide that the technical group was able to calculate the effect of the barred adjustment without the revised calculations.

On April 24, _____, the taxpayer faxed revised AMT and refund calculations to the Service. The taxpayer revised the calculations by crossing out certain entries on the original forms and writing in new numbers. The taxpayer did not send new forms. In addition, the taxpayer did not re-sign the original forms.

On April 30, _____, the Service refunded the AMT overpayment to the taxpayer, without interest. The Service did not consider the Year 1 Form 1120X to be in processible form, for purposes of I.R.C. § 6611(g), until the taxpayer faxed the revised AMT and refund calculations to the Service. The Service refunded the overpayment within 45 days of the date the taxpayer faxed the revised AMT and refund calculations. The Service did not allow interest on the refund pursuant to I.R.C. § 6611(e)(2).

On May 19, _____, the taxpayer filed a Form 843, Claim for Refund and Request for Abatement, requesting overpayment interest on its AMT refund. The taxpayer argues that the original Year 1 Form 1120X was in processible form for purposes of I.R.C. § 6611(g) when it was mailed to the Service on September 13, _____; and, therefore, the taxpayer is entitled to interest on the refund.

LAW AND ANALYSIS

I.R.C. § 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under I.R.C. § 6621.

I.R.C. § 6611(e)(2) provides that if a taxpayer files a claim for a credit or refund for any overpayment of tax, and such overpayment is refunded within 45 days after such claim is filed, no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

I.R.C. § 6611(g) provides that for purposes of I.R.C. § 6611(e), a return shall not be treated as filed until it is filed in processible form. A return is in processible form if: (1) it is filed on a permitted form; and (2) it contains the taxpayer's name, address, identifying number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

According to your request for advice, the Year 1 Form 1120X was filed on a permitted form and contained the taxpayer's name, address, identifying number, and the required signature. Thus, the only remaining issue is whether the Year 1 Form 1120X contained sufficient information to permit the mathematical verification of the tax liability shown on the return.

The Court of Appeals for the Federal Circuit has described the mathematical verification test as follows:

Mathematical verifiability requires sufficient information to permit IRS to recalculate and corroborate the mathematics and data reported by the taxpayer. Thus, under section 6611, a taxpayer must submit, in good faith, all the required forms with the required signatures and enough underlying data for IRS to verify the tax liability shown on the return. The information must be sufficient to enable IRS to calculate the tax liability without undue burden.

The Columbia Gas System, Inc. v. United States, 70 F. 3d 1244, 1246 (Fed. Cir. 1995).

In this case, the Year 1 Form 1120X contained sufficient information for the Service to verify the taxpayer's tax liability, even though the Form 1120X contained the Amount a adjustment. This is evidenced by the fact that the Service was able to perform the calculations prior to receiving the revised forms and calculations from the taxpayer. As a result, we conclude that the taxpayer's Year 1 Form 1120X constituted a processible return for purposes of I.R.C. § 6611(g) when the Service received it on September 19, . The Service did not refund the overpayment within 45 days of September 19, , thus, the taxpayer is not barred from receiving overpayment interest under I.R.C. § 6611(e).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.