

Office of Chief Counsel
Internal Revenue Service
Memorandum

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subject: Statute of Limitations for Filing a Claim for Refund - Taxpayer Killed in a Combat Zone

This memorandum responds to your e-mail dated June 15, 2004, requesting our assistance in determining the statute of limitations for filing a claim for refund in a situation where a taxpayer was killed in a combat zone.

LEGEND

Year 1	=	
Year 2	=	
Year 3	=	
Year 4	=	
Year 5	=	
Year 6	=	
Year 7	=	
Year 8	=	
Year 9	=	
Year 10	=	
Year 11	=	
Year 12	=	

Year 13	=	
Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
Date 5	=	
Date 6	=	
Date 7	=	

ISSUES

Issue 1: How does section 692 apply to multiple periods of service in a combat zone?

Issue 2: How does section 7508(a) affect the statute of limitations on filing a claim for refund under section 6511 when the taxpayer served in and out of combat zones and then died while serving in a combat zone?

CONCLUSIONS

Conclusion: Under section 692 a taxpayer qualifying under section 692 is not subject to tax for any year starting with the first year that the taxpayer served in a combat zone.

Conclusion: Section 7508(a)(1)(E) suspends the statute of limitations for filing a claim for refund for the period in which the taxpayer served in a combat zone as a member of the United States Armed Forces, and for the next 180 days thereafter. The next 180 days run consecutively, regardless of a subsequent overlapping period of service in a combat zone. The taxpayer's service in the combat zone ends on the taxpayer's date of death, and the statute of limitations for filing a claim for refund is tolled for the next 180 days after the death.

FACTS

The facts as you indicated them are as follows: Taxpayer began serving in the United States Armed Services in Afghanistan on July 1, Year 11. He served there until October 31, Year 11, and then he returned to serve in Afghanistan on January 1, Year 12, and he was killed in Afghanistan on March 23, Year 12. Prior to his death, Taxpayer and his wife filed joint income tax returns on or before April 15 of the year that the returns were due.

In March Year 13, Taxpayer's wife filed a claim for refund for Years 2 through 10. The claims for refund were filed on the following dates:

<u>Taxable Year</u>	<u>Date Claim for Refund Filed</u>
Year 2	Date 1
Year 3	Date 3

Year 4	Date 3
Year 5	Date 5
Year 6	Date 5
Year 7	Date 6
Year 8	Date 2
Year 9	Date 7
Year 10	Date 7

She indicated that her husband had been serving in combat zones, on and off, since January 1, Year 1; and based on I.R.C. § 692(a), she is entitled to a refund of all taxes paid for Years 1 through 10. Taxpayer's wife has not substantiated her claim that Taxpayer served in combat zones prior to his service in Afghanistan, which commenced in July Year 11. Taxpayer's wife indicated that Taxpayer served in "combat zones" during the following dates:

- January 1, Year 1 through July 31, Year 1
- September 1, Year 2 through December 31, Year 2
- March 1, Year 3 through May 31, Year 3
- August 1, Year 3 through December 31, Year 3
- January 1, Year 4 through January 31, Year 4 - Iceland
- February 1, Year 8 through February 28, Year 8
- August 1, Year 10 through November 30, Year 10
- July 1, Year 11 through October 31, Year 11 - Afghanistan
- January 1, Year 12 through March 23, Year 12 (date of death) - Afghanistan

Except as indicated above, Taxpayer's wife did not provide any information on the location of the "combat zone" in which Taxpayer served.¹

LAW AND ANALYSIS

Section 692

Section 692 provides that income tax will not be imposed on an individual that dies while in active service as a member of the U.S. Armed Forces serving in a combat zone

¹ Afghanistan was considered a combat zone during the period Taxpayer served in the US Armed Forces there. Iceland was not, however, a combat zone during Year 4 when Taxpayer served in the US Armed Forces there.

for the taxable year of the date of death, as well as any prior taxable year ending on or after the first day the individual served in a combat zone (*emphasis added*). If any income tax was assessed against, and collected from, the individual during the period for which income tax will not be imposed, the assessment will be abated, and any tax collected will be credited or refunded as an overpayment.

Because section 692 provides that the period of nontaxation begins with the “first day the individual served in a combat zone,” as opposed to “the first day the individual served in the combat zone,” if an individual qualifying under section 692 served in more than one combat zone before his or her death, tax will not be imposed for the years preceding the death, beginning with the tax year that the individual first served in a combat zone. This is consistent with Rev. Rul. 69-301, 69-1 C.B. 183, in which the taxpayer at issue served in a combat zone in 1950 (Korea), and then he died 16 years later in a different combat zone (Vietnam). The taxpayer was not serving in a combat zone for the years between his service in Korea and his service in Vietnam. Under section 692, his income for the years 1950 through 1966 was not taxable.

Although many years may elapse between an individual’s first service in a combat zone and the individual’s service in the combat zone where he or she died, claims for refund based on section 692 must be filed within the statute of limitations on filing a claim for refund under section 6511(a). See Rev. Rul. 69-301, 1969-1 C.B. 183.

Sections 6511 and 7508(a)

Section 6511(a) generally provides that claims for refund must be filed within 3 years from the date the return was filed or two years from the date the tax was paid, whichever period expires later. In addition, under section 7508(a)(1)(E) the period for filing a claim for refund will be extended for the period that an individual served as a member of the U.S. Armed Forces in a combat zone, and for the next 180 days thereafter.

In this case, the evidence shows that Taxpayer served in a combat zone from July Year 11 to November Year 11 and from January Year 12 through March Year 12, when he died in the combat zone. Thus, under section 692, income tax will not be imposed on Taxpayer for Years 11 and 12.

With regard to the earlier years, if there is evidence that the Taxpayer served in a combat zone in a year prior to Year 11, then under section 692, income tax will not be imposed on Taxpayer for the first year that he served in a combat zone and for every year thereafter until the date of his death. Claims for refund for those years, however, will be limited by the statute of limitations in section 6511(a), as suspended by section 7508(a), if applicable.

In determining the expiration date for the statute of limitations for filing a claim for refund for the years prior to Year 11, we will **assume** that Taxpayer first served in a combat zone as a member of the armed forces in Year 1, and that his service in Year 10 was

also in a combat zone. Thus, under section 692, no income tax will be imposed on Taxpayer for the Years 1 through 12, and any amounts imposed will be refunded as an overpayment, subject to the statute of limitations under section 6511(a), as modified by section 7508(a)(1)(E).

Taxpayer always filed his returns on or before April 15 of the year that the returns were due. Under section 6513, returns filed before their original due date (i.e., without regard to extensions) are deemed filed on the due date. Thus, even if Taxpayer filed his returns before April 15 every year, he would have three years from April 15 of that year to claim a refund for the preceding tax year. For example, if the taxpayer mailed his Year 9 return to the IRS on February 1, Year 10, the return is deemed filed on April 15, Year 10, and the claim for refund is timely if made on or before April 15, Year 13 (this is without any adjustments to the three-year period based on section 7508(a)). Thus, regardless of the application of section 7508(a), Taxpayer's claims for refund for Years 9 and 10, which were filed on Date 7, were filed timely.

Year 8

In addition, Taxpayer's claim for refund for Year 8 was also filed timely. The analysis of the statute of limitations for filing that claim for refund is as follows:

Taxpayer's Year 8 return was filed or deemed filed on April 15, Year 9. The normal statute of limitations under section 6511(a) for a claim for refund for Taxpayer's Year 8 tax year expired on April 15, Year 12. Under section 7508(a)(1)(E), however, the 3-year statute of limitations under section 6511(a) for filing a claim for refund ("statute of limitations") for Taxpayer's Year 8 tax year was suspended from August 1, Year 10 through November 30, Year 10 (time spent in a combat zone). On August 1, Year 10, Taxpayer had 1 year and 258 days left on his statute of limitations for the Year 8 tax year. After Taxpayer returned from the combat zone, the statute of limitations was further suspended from December 1, Year 10 through May 29, Year 11 (180 days from the date he left the combat zone). The statute of limitations started running again from May 30, Year 11 through June 30, Year 11. On July 1, Year 11, there was 1 year and 226 days left on Taxpayer's statute of limitations for the Year 8 tax year. On July 1, Year 11, Taxpayer entered another combat zone and stayed in the combat zone until October 31, Year 11. He then re-entered the combat zone on January 1, Year 12, and he stayed there until his death on March 23, Year 12. Because there are less than 180 days between November 1, Year 11 and December 31, Year 11, Taxpayer's statute of limitations was suspended from July 1, Year 11 through March 23, Year 12, and for the next 180 days. Thus, Taxpayer's statute of limitations was suspended through September 19, Year 12. At that point, Taxpayer's statute of limitations started to run again, and there was still 1 year and 226 days left on the statute of limitations. Accordingly, Taxpayer's statute of limitations for the Year 8 tax year will expire on May 3, 2005. Taxpayer's claim for refund for the Year 8 tax year was filed on Date 2, so that claim for refund was timely.

Year 7

With regard to the Year 7 tax year, that claim for refund was also timely. Taxpayer's statute of limitations for the Year 7 year would have normally expired on April 15, Year 11. Following the analysis above, however, Taxpayer's statute of limitations for Year 7 was suspended on August 1, Year 10, on which date Taxpayer had 258 days remaining on his statute of limitations for the Year 7 year. Taxpayer's statute of limitations was suspended until May 29, Year 11, and then it ran from May 30, Year 11 through June 30, Year 11. Thus, on July 1, Year 11, Taxpayer had 226 days remaining on his statute of limitations for the Year 7 tax year. Taxpayer's statute of limitations was again suspended from July 1, Year 11 through September 19, Year 12. At that point, the 226 days remaining on Taxpayer's statute of limitations for Year 7 started to run again. Thus, Taxpayer's statute of limitations for the Year 7 year expired on May 2, Year 13. Taxpayer filed his claim for refund on Date 6. Thus, the claim for refund was timely.²

Year 1 Through Year 6

Taxpayer's claims for refund for the tax years Year 1 through Year 6, however, were not timely filed. For tax year Year 6, the statute of limitations would normally expire on April 15, Year 10. Taxpayer, however, spent February Year 8 in a combat zone. On February 1, Year 8, Taxpayer had 2 years and 74 days left on his statute of limitations for the Year 6 tax year. The statute of limitations was suspended for the month of February, and for the next 180 days (i.e., through August 27, Year 8). Taxpayer's statute of limitations on filing a claim for refund then started to run again, and it ran through July 31, Year 10, at which point Taxpayer had 101 days left on his statute of limitations for the Year 6 tax year. Then, according to the analysis above, Taxpayer's statute of limitations was suspended from August 1, Year 10 through May 29, Year 11, and then it ran from May 30, Year 11 through June 30, Year 11. As of that date, Taxpayer had 69 days left on his statute of limitations for the Year 6 tax year. Taxpayer's statute of limitations was again suspended from July 1, Year 11 through September 19, Year 12. Then Taxpayer's statute of limitations began to run again, and it would have expired on November 27, Year 12. November 27, Year 12 was Thanksgiving Day, a legal holiday, so under section 7503, if Taxpayer had filed a claim for refund on November 28, Year 12, it would have been deemed timely. Taxpayer's claim for refund for the Year 6 tax year was not filed, however, until Date 5. Thus,

² Note that if Taxpayer served in Afghanistan from August 1, Year 10 through November 30, Year 10, the claim for refund for the Year 7 tax year was not timely. The discrepancy in expirations dates results from the fact that Afghanistan was declared a combat zone by Executive Order as of September 19, Year 10. The statute of limitations is only suspended under section 7508(a) for periods of service in a combat zone. Thus, from August 1, Year 10 through September 18, Year 10 the Taxpayer would not have served in a combat zone. Thus, there would be 49 fewer days on the statute of limitations for filing a claim for refund for the Year 7 year (i.e., the statute of limitations for Year 7 would have expired on Date 4). Taxpayer's claim for refund for the Year 7 tax year was filed on Date 6. Thus, in this circumstance, the claim for refund would not be timely. This assumes, however, that the claim for refund was not mailed on or before Date 4. If the claim for refund was mailed on or before Date 4, then it would be timely under section 7502. See attached sheet detailing calculations for this scenario.

Taxpayer's claim for refund for the Year 6 tax year was not timely filed, nor were any of the claims for refund for years preceding Year 6 that were filed in March Year 13.

If you have any questions, please contact Bridget Tombul at (202) 622-7679.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

N/A

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) 622-7679 if you have any further questions.