

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: March 10, 2008

to: Associate Area Counsel (Laguna Nigel)
(CC:LM:CT)

from: Chief, Branch 4
(Procedure & Administration)

subject: Reconsideration of Refund Determination

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

Whether the Service may reconsider a refund claim for which it has already issued a disallowance.

CONCLUSIONS

The Service may reconsider a refund claim for which it has already issued a disallowance; however, the reconsideration of the disallowance does not extend the 2 year limitations period for the taxpayer to file a refund suit.

FACTS

A filed a refund claim for income taxes for two tax years. The Service issued a 30 day letter proposing to deny the claim, which A protested. On the same date that A filed its protest, the Technical Services Territory Manager issued a final determination disallowing the claim, unintentionally never giving the taxpayer the opportunity to meet with Appeals.

Appeals and the taxpayer have reached a settlement with respect to a number of later years that were before Appeals when A filed the protest involved in this case. The later years and the years in this case involve the same issues. Both the taxpayer and the

Service would like the Service to reconsider the notice of disallowance and settle the case consistent with the Appeals settlement for prior years.

LAW AND ANALYSIS

Your question concerns whether the Service has the right to reconsider its earlier determination disallowing the taxpayer's refund claim. Section 6532, Period of Limitations on [Refund] Suits, provides that the taxpayer must file a suit for refund within 2 years from the date the Service mails the disallowance of the taxpayer's claim for refund. I.R.C. 6532(a)(1). Under section 6532(a), "any consideration, reconsideration, or action by the Secretary with respect to the [administrative] claim following the mailing of a notice. . . of disallowance shall not operate to extend the period within which suit may be begun." I.R.C. 6532(a)(4); Treas. Reg. 301.6532-1(d).

Section 6532(a)(4)'s language stating that any reconsideration of a claim that has been disallowed does not extend the period of limitations for filing a refund action in federal court, presupposes that the Service may reconsider a disallowed claim. Any other interpretation of the statutory language would render the provision meaningless. If the Service does not have the authority to reconsider its determination disallowing a claim, there is no reason to have a statutory provision that provides that the redetermination does not extend the limitations period.

In this case, both the Service and the taxpayer want the Service to "reconsider" its disallowance. To make the taxpayer file an action in federal court because of the Service's mistake would waste the time and money of the taxpayer, the United States, and the court. The Service may reconsider the taxpayer's claim, but if the taxpayer wishes to file an action in federal court, it must do so within two years of the date of the Service's sending of the original disallowance of the claim.

Please call Procedure & Administration, Branch 4 at (202) 622-3630 if you have any further questions.