From:
Sent: Monday, October 27, 2008 2:18 PM
To:
Cc:
Subject: Dishonor of Checks;

We were asked to address whether the five year erroneous refund suit period of IRC 6532(b) should be automatically applied, in the sense of a categorical application, to a circumstance in which checks in payment of a tax are dishonored but a refund is made before posting of the dishonor.

The five year period applies where an erroneous refund is induced by fraud or misrepresentation of a material fact. The existence of a payment is a material fact. Where a check is received as a payment, the taxpayer's assertion that the payment is good continues until the payment becomes final and the funds are received by the Service, or until notice of dishonor is received.

The question, though, also relates to whether there was an inducement. That requires something similar to a request. We believe that there should not be an automatic (categorical) application of the five year period where the refund was not requested on a return claiming a payment that is subsequently dishonored. We are not foreclosing a case-by-case determination, but conclude only that an automatic (categorical) application of the five year period appears inappropriate.

As to a claim to a refund on a return claiming a payment that is subsequently dishonored, statistics were provided which suggested that there were a number of accounts in which this circumstance had occurred. In our review of some of those transcripts, however, what was shown was a payment by check of a tax reported on the return, without a claim for refund, with that check subsequently dishonored, and a refund resulting from some other action preceding the posting of the dishonor. We note that it seems unusual that a payment check would be submitted with a return claiming a refund. While we are not foreclosing a case-by-case determination, we again conclude that an automatic (categorical) application of the five-year period appears inappropriate.