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Cc:

Subject: RE: penalties

Attachments: [CCA 200243019, 2002 WL 31402475, GCM 34856, 1972 WL 32476, 1998 IRS NSAR 5915, 1998 WL 1993228-]

Under 6501 (h), if the year in which the NOL arose is still open for assessment , then the year to which the NOL is carried back is also open for purposes of assessing a deficiency attributable to the carryback. The limitation under 6501 (h) is that the deficiency must relate to the loss carryback and the statute is not extended for items not so related.

Section 6501 (k) is broader. Under 6501 (k), the period of assessment under section 6501 (h) is still open to recover deficiencies attributable to the carryback and the assessment period is still open to recover a deficiency that is unrelated to the carryback. By seeking a refund under 6411, the taxpayer opens the door for the IRS to recover a deficiency that is unrelated to the carryback. The amount the IRS can recover under 6501 (k) is limited to the amount of the refund less amounts assessed under 6501 (h) (deficiencies attributable to the NOL carryback). See Treas. Reg. § 301.6501 (m)-1 (a)(2) Please note that 6501 (k) was originally designated as section 6501 (m) and was redesignated in 1984.

I found an old GCM that looked at the issue of interest (and a cursory reference to penalties) and whether it was included in the word "amount that may be assessed." The conclusion in that document was that interest was outside of the tax that could be assessed and was not so limited by the language in 6501 (m). Thus, it would appear that interest and penalties can be assessed within the limitations period, but the amount is not restricted by the refund amount claimed.

Attached please find some resources that may be helpful.

Thanks,