

ID: CCA-711136-09

Number: **201027055**

Office:

Release Date: 7/9/2010

UILC: 6532.00-00

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**From:**

**Sent:** Wednesday, July 01, 2009 11:36 AM

**To:**

**Cc:**

I've looked into your question of whether a notice of disallowance of a refund claim that does not include the name of one of the joint taxpayers that filed the claim is effective to start the two-year limitations period for filing a refund suit with respect to the unnamed taxpayer, under section 6532(a)(1).

I was not able to find any authority exactly on point. However, the case law indicates that whether a notice of disallowance operates to start the suit limitations period depends on the circumstances of a particular case. See, e.g., *In re Long-Distance Telephone Service Federal Excise Tax Litigation*, 539 F. Supp. 2d 281 (D.D.C. 2008). Generally, the courts have held that where the notice of disallowance puts a taxpayer on notice that the IRS has denied his refund claim, the notice operates to start the limitations period. For example, the IRS need not use any particular form to indicate that the claim is being disallowed. *A.G. Reeves Steel Construction Co. v. Weiss*, 119 F.2d 472 (6th Cir. 1941), *cert. denied*, 314 U.S. 677 (1941). Even if there is an error in the notice (as there was in this case), the notice may still be deemed effective. *Means v. United States*, 1999 WL 1034761 (Fed. Cl. 1999) (unreported). Some other cases that address the flexibility afforded to the IRS in this regard are *Smith v. United States*, 478 F.2d 398 (5th Cir. 1973), and *Miller v. United States*, 117 F.3d 1414 (table)(4th Cir. 1997).

In your case, I am not aware of any circumstances that would make notice to one of the joint taxpayers of the claim's disallowance ineffective to put the other, unnamed taxpayer on notice that the claim had been denied. Assuming the notice of disallowance issued in your case clearly identified the claim that was in actuality filed by the taxpayers jointly, I would think it would operate to put both taxpayers on notice that the IRS had denied the claim with respect to both of them, not just with respect to the named taxpayer. (Even if it did not, of course, under section 6532(a)(1) the unnamed taxpayer would only have six months from the date of claim filing before the limitations period for filing suit would commence.) If circumstances exist in your case that would suggest that the unnamed taxpayer might for some reason not be aware of the claim's denial, because he was not named in the notice of disallowance, then perhaps an argument could be made that the notice of disallowance does not operate to trigger the running of the two-year limitations period with respect to him.

I hope this is helpful. Please feel free to call or e-mail me with any further questions.

