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From:

Sent: Thursday, December 01, 2011 11:27:20 AM

To:

Cc:

Subject: mitigation

I am a little uncomfortable with your first paragraph. I'm providing the following language for your consideration. Please let me know if you would like to discuss this further.

This letter is in response to your inquiry regarding a potential refund claim for the taxable year. The statute of limitations for claiming a refund for the year has expired. Therefore, the year is closed. While in some circumstances, the mitigation provisions found in I.R.C. §§ 1311-1314 can provide an exception to the statute of limitations, those circumstances are not applicable here.

In order for mitigation to apply, a determination, as defined by section 1313(a) must exist. The determination is generally a Court opinion, a closing agreement, or a final disposition on a claim for refund. That determination must be described by one of the circumstances of adjustment listed in section 1312. It is our understanding that for taxable year , [taxpayer] did not claim a deduction available at the time. This deduction was not claimed in another year and is not being disallowed. Therefore, paragraph (4) of section 1312 does not apply. There are no other circumstances of adjustment that would apply to these facts. Additionally, were section 1312(4) to apply, section 1311(b)(2)(B) requires that the year of the claim, , be open on the date that the claim was first made for the year that is the subject of the determination (or). It does not appear this requirement has been satisfied. While there are additional requirements that must be met in order for mitigation to apply, it does not appear necessary to go into further detail at this time.
