

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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date: May 30, 2012

to: Doris Kenwright
program manager
()
Attn: Rose Kincade

from: Associate Chief Counsel
(Procedure & Administration)

subject: Application of Overpayment Requested on Original Return

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

LEGEND

Legend:

A
Year 1
Year 2
Year 3
Year 4

Amount A
Amount B
Amount C
Amount D
Amount E
Amount F
Amount G
Amount H

Amount M
Amount N
Amount P
Amount Q
Amount R

Date 1
Date 2
Date 3
Date 4

ISSUE

Whether taxpayer's request to apply an overpayment to particular periods may be honored.

CONCLUSION

Taxpayer's request may be honored.

FACTS

Taxpayer A is the subject of a Notice of Proposed Deficiency dated September 8, 2005, asserting adjustments to tax and section 6662 penalties as follows:

Year	Amount	Penalty
1	A	B
2	C	D
3	E	F
4	G	H

Taxpayer appears to have filed a protest and the years appear to be pending in Appeals. The amounts of the proposed deficiencies have not been assessed.

In 2011, taxpayer filed its 2010 tax return pursuant to an extension on Date 1, reporting it was due a refund of Amount M. In correspondence dated Date 2 and Date 3, and on its 2010 return filed on Date 1, taxpayer requested the Service apply the 2010 overpayment as an "advance payment" of the Year 2 and Year 3 proposed deficiencies and requested the Service credit the payment as of Date 4, the due date of its 2010 return. The Service declined to honor this request, and the funds were returned to the taxpayer. Taxpayer subsequently returned the funds to the Service and repeated its request that the refund be applied as an advance payment of the Year 2 and Year 3 proposed deficiencies, with a credit date of Date 4.

Taxpayer continues to request that Amount M be allocated among the Year 2 and Year 3 tax and interest liabilities as follows. It requests we apply Amount N million to the tax and Amount P to the interest for Year 2. It further requests we apply Amount Q to the tax and Amount R to the interest for Year 3. Applying these amounts as requested would not discharge either of the proposed liabilities for Years 2 or 3.

LAW AND ANALYSIS

Section 6402 provides that the Service may credit overpayments against “any liability” the taxpayer has for an internal revenue tax. The authority is not limited to credits against assessed liabilities. The Service has taken the position that it will make such credits in situations where the amount of the unassessed liability has been determined with specificity, such as by a notice of deficiency or a proof of claim in bankruptcy. Rev. Rul. 2007-51, 2007-2 C.B. 573; Rev. Rul. 2007-52, 2007-2 C.B. 575. Here, the taxpayer’s request that the overpayment amounts be treated as advance payments against tax liabilities for Years 2 and 3, provides sufficient specificity for the Service to make the requested credits.

Even prior to the enactment of section 6603, Service practice permitted taxpayers to make an advance payment of a proposed deficiency. Reg. Section 301.6213-1(b)(3) provides, in pertinent part, that if “any payment is made before the mailing of a notice of deficiency, the ... director of the regional service center is not prohibited by section 6213(a) from assessing such amount, and such amount may be assessed if such action is deemed to be proper.” Language explicitly implementing this regulatory language appeared in Rev. Proc. 63-11, 1963-1 C.B. 497, and was carried forward into Rev. Proc. 84-58, 1984-2 C.B. 501. When Rev. Proc. 2005-18, 2005-1 C.B. 798, was promulgated, it focused on the legislative changes made to the cash bond deposit procedure, and neglected to mention that no changes were intended to the advance payment procedures.

Since the Service Center had the discretion to apply the overpayment as requested by the taxpayer, at the time the overpayment arose, we recommend you now allocate the amounts as requested by the taxpayer as of the date of the overpayment, Date 1. The Service may assess the amounts of the advanced payments pursuant to section 6213(b)(3).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.