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From:

Sent: Thursday, May 02, 2013 11:36:00 AM

To:

Cc:

Subject: RSED

You have asked for our views on your suggestions for computing RSED dates, specifically

- No change to the current three years from the statutory deadline for filing the return (generally April 15) when there is no extension of time to file.
- When there is an extension of time to file, the RSED should be three years after THE EARLIER OF the extension due date OR the return-received date (currently, the RSED date is set to three years after the extended deadline and remains at that date even if the taxpayer files prior to the extension date).

We agree with your suggestions. The section 6511 rules are so complicated that the system cannot currently be programmed to figure out every situation. But the above suggestion in the second bullet should prevent many erroneous refunds and allow time for manual computation of more complicated scenarios.

We also thought to explain here why the proposal to refigure the RSED to three years from the date returns are actually filed could result in barred refunds going out, as you correctly pointed out in your October 2, 2012 email to

:

Secondly, the three years from the date the return was actually filed is a problem. If the computer is change [sic] to this requirement, IRS computer generated refund will go out any time the taxpayer files an original return regardless of the statutory deadline. For example, the taxpayer files an original return for the 2008 tax year on January 1, 2012, the taxpayer would have 3

years (January 1, 2015) to file a timely claim for refund and our programming change would allow the refund to go out.

Just to go a bit further with your example, a claim may be jurisdictionally timely under § 6511(a), but barred under § 6511(b)(2). In your example, Taxpayer first filed a 2008 return on 1-1-2012; the RSED was set to 1-1-2015 (as it would be if it were set only on the date of filing). Now let's assume Taxpayer had withholding, which was deemed paid on 4-15-2009, and that Taxpayer then filed an amended return on or before 1-1-2015, say on 7-15-2014. If the RSED were set at 1-1-2015, the IRS computer-generated refund would go out, and it would, in fact, be timely under § 6511(a). But the claim still may be barred under § 6511(b)(2), depending on when the taxes Taxpayer is claiming were paid. If Taxpayer's 7-15-2014 claim was for withholding paid on 4-15-2009, that claim would be barred under § 6511(b)(2) (because the taxes were paid more than three years before the 7-15-2014 claim filing date). This is true EVEN THOUGH THE CLAIM WOULD BE TIMELY UNDER § 6511(a). A case that discusses the differences between § 6511(a) and § 6511(b) is Boeri. I have attached that opinion if you care to read it.

So, to avoid claims barred by 6511(b)(2), it is better not to have the RSED refigured to three years from whenever the return was filed, as you rightly suggest. The safest bet, then, is to keep the RSED 3 years from the statutory deadline or, if that deadline is extended, to the earlier of the extended due date or the return received date.

During our recent conversation this week, you and I worked through a scenario that involved how § 6511(b)(2) works and you asked me to provide an example in writing. An example is attached. Please do not hesitate to call
 at _____ or me if you have further questions.

ATTACHMENT 1

2009 tax year, return due 4/15/2010.
 Withholding of \$1,000, deemed paid on 4/15/2010
 Taxpayer gets extension to 10/15/2010
 Sends \$500 with extension.
 TP files return on 9/30/2011;
 Pays another \$600 with return. He still owes \$1,800.

On 1/5/2012, he pays \$350
On 3/5/2012, he pays \$350
On 6/5/2013 he pays the remaining \$1,100

TP files amended return on 7/20/2014, requesting the entire \$3,900 back, arguing that he mistakenly reported an inheritance that he was not required to pay tax on.

IRS agrees that he should not have paid that tax, but we have to look at § 6511 to see whether he is entitled to refund.

Under § 6511(a), tp has until 9/30/2014 to claim a refund, so his 7/20/2014 claim is timely.

Under 6511(b)(1), he can get no refund after the expiration of time under 6511(a), but, as we know now, the 6511(a) period has not expired.

Under 6511(b)(2), the amount of the credit or refund can't exceed the portion of tax paid between the date he filed his claim (7/20/2014) and going back 3 years (to 7/20/2011), plus the period of any extension of time for filing (he had a 6-month extension, so we are now at 1/20/2011).

He can get no tax back if he paid it before 1/20/2011, so he gets back \$2,400:

- \$600 tax paid on 9/30/11.
- \$350 paid on 1/5/2012;
- \$350 paid on 3/5/2012;
- \$1,100 paid on 6/5/2013

He cannot get back the \$1,000 withholding of 4/15/2010 or the \$500 paid on 10/15/2010