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From: [REDACTED]

Sent: Thursday, October 31, 2013 9:45:01 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE:

This responds to your OVDI inquiry from September 26, 2013.

In this situation, the statute of limitations under section 6511 on issuing the refund has expired. Under section 6511(c)(1), when there is an extension of the limitations period on assessment due to a valid extension under section 6501(c)(4), the taxpayer has 6 months from the expiration of that extended assessment period under section 6501(c)(4) to claim a refund. Here, the Service received the taxpayer's statutory extension (Form 872) prior to the expiration of the assessment period for [REDACTED], but failed to execute the Form 872 prior to the expiration of the [REDACTED] assessment period. After the [REDACTED] assessment period expired, the taxpayer filed a claim for refund for [REDACTED].

There is no authority that holds for the proposition that a Form 872 is effective once received by the Service, or that an extension is otherwise effective prior to execution by the Service. See Reg. 301.6501(c)-1(d). Case law indicates that the 872 must be signed by both the taxpayer and the Service prior to the expiration of the statute of limitations in order to be effective. See, e.g., *King v. Commissioner*, T.C. Memo. 2006-112 (while Form 872 need not be dated, it must be signed by both the taxpayer and the Service prior to the expiration of the limitations period under section 6501). As there is no valid extension, the taxpayer had to file the claim for refund within the normal period of limitations within section 6511 for it to be considered timely filed. (The taxpayer's period of limitations to file a claim for refund does not get extended by section 6511(c)(1) merely by submitting a Form 872 to the Service.) While this is unfortunate, the provisions of sections 6501(c)(4), reg. 301.6501(c)-1(d), and 6511 are explicit.

Our research has also found no CCA, SCA or FSA that holds for the proposition that there is some sort of equitable remedy when the Service doesn't act promptly. This is not like the suspension of interest under section 6404(e), when there is a ministerial act that does not occur timely. Even if you could draw the corollary, the decision to execute a statute extension would never be considered "ministerial" for this purpose.