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[Third Party Communication:

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Date of Communication: Month DD, YYYY]

Number: **201520010**

Release Date: 5/15/2015

From: [REDACTED]

Sent: Thursday, April 23, 2015 10:21:34 AM

To: [REDACTED]

Cc:

Bcc:

Subject: advice for your TAO

Hi [REDACTED]. This relates to the TAO issued in [REDACTED]. Thanks for your patience while I looked into this further and coordinated with the subject matter experts in Counsel.

You have indicated that the IRS agrees that the amended return filed by the taxpayer reflects the correct tax liability. The amended return reflects a refund of tax. The penalties and interest were calculated based on the tax reported on the original return. Thus, the penalties and interest that have been assessed are excessive, as the taxpayer's true tax liability is much lower, which would have resulted in lower penalties and interest. IRC section 6404(a)(1) authorizes the IRS to abate the unpaid portion of an assessment that is excessive in amount. While the statute specifies "unpaid" assessments, Counsel's view is that IRC section 6404(a)(1) is permissive and that the IRS is not prohibited from abating the paid portion of assessments.

The timing of a claim for credit or refund has no effect on the IRS's authority to abate an assessment. Thus, although the refund of tax reported on the amended return is time-barred under IRC section 6511 (the amended return was not filed within 3 years from the filing of the original return and the taxpayer full-paid the liability when he filed the original return), the IRS may still abate the penalties and interest that exceed the true amount of penalties and interest the taxpayer owes. As a result of the payments of penalties and interest that the taxpayer has been making each month, the taxpayer has overpaid the penalties and interest. The amended return should be treated as a claim for refund for the penalties and interest paid in the two years prior to the date the amended return was filed, to the extent those amounts exceed what the taxpayer actually owed.

Please share this e-mail with the IRS to bring closure to this case. The Counsel subject matter experts in CC: [REDACTED] have seen this e-mail and concur that the taxpayer is entitled to a refund of penalties and interest as described above.

Thanks. Let me know if you have any further questions.