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From: [REDACTED]

Sent: Tuesday, April 14, 2015 8:49:16 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: Request for Assistance on Whether a Taxpayer can Supplement/Amend a timely filed claim for refund based upon an overpayment credit still present in their account.

You asked for our advice on whether a timely filed refund claim can be supplemented/amended based upon an overpayment credit remaining in a taxpayer's account.

A timely filed protective refund claim may be supplemented or amended up until the point at which final action is taken on that claim. Final action can be allowance as well as disallowance of a claim. See FSA 200121008 and IRS CCA 200547011, and cases cited therein. Once a claim is allowed in full or disallowed, there is no longer a claim in existence to amend or supplement.

Allowance of the claim can be via refund paid to a taxpayer or by credit applied to another tax liability; the relevant IRC provisions applicable to refunds use the terms refund and credit interchangeably. Under section 6402(a), upon determination of an overpayment, the Service may either apply it to a tax liability or refund it to the taxpayer. The taxpayer may also elect to carry a credit forward to apply to estimated taxes. See also sections 6511(b)(1); 7422(a).

If a claim has been allowed in full, final action has been taken on the claim and there is no longer an existing claim which can be supplemented or amended. The fact that the claim may have been allowed via credit rather than a check paid to the taxpayer does not make a difference; this was still final action taken with respect to the refund claim for the particular periods and that refund claim ceases to exist. The determination of the overpayment amount establishing the credit amount to be carried forward would be final action on those refund claims. There is no authority for the position that an overpayment credit remaining in a taxpayer's account, because it was carried forward from an overpayment determined in an earlier year, somehow keeps a refund claim for that earlier year pending. The refund claim for the earlier year would be closed and there is no authority for the Service to go back and redetermine the amount of that overpayment.

Please let me know if we can be of further assistance.