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[Third Party Communication:

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From: [REDACTED]

Sent: Friday, July 24, 2015 8:55:10 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: assistance/coordination of excessive refund interest and SOL -

After our discussion last week, I spoke with [REDACTED] about the 10 year period that someone [REDACTED] mentioned to you. We think that they may have been referring to the collections period in section 6502. Section 6502(a) generally provides that when an assessment of tax has been timely made, tax may be collected within 10 years after assessment of the tax. Section 6601(g) provides that interest under section 6601 on any tax can be collected at any time during the period within which the tax to which such interest relates may be collected. However, section 6601 governs interest on underpayments and nonpayments of tax, but it does not apply to an excess refund of overpayment interest.

In a situation involving an excessive refund of overpayment interest, such as the one you described in this case, the Service could collect the excessive refund by (1) voluntary payment, (2) offset of the same type of tax from the same tax period, or (3) filing suit to recover the erroneous refund. Per section 6532(b), a suit to recover an erroneous refund must be instituted within 2 years after making the refund. You mentioned that the taxpayer is unwilling to make a voluntary payment and that there are no offsets available, which means a suit for an excess refund would be the only option for the government to collect the excess refund. However, this suit would need to be instituted within 2 years of when the refund was made, or within 5 years if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact. If the refund was made on [REDACTED], the 2 year period has expired. Because it does not appear there was any fraud or misrepresentation on the part of the taxpayer, the 5-year period does not apply. Thus, the government may not institute a suit to recover the erroneously paid overpayment interest.

Please let us know if you have further questions.

Thanks,