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[Third Party Communication:

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**From:**

**Sent:** Wednesday, August 26, 2015 11:22:39 AM

**To:**

**Cc:**

**Bcc:**

**Subject:** RE: Background Facts re: SLL carryback claim

Hi

I'm sorry it's taken me a while to get back to you on this. But after discussing your question with another interest expert and with attorneys who work on refund claim issues, we have decided we agree with the Service that the taxpayer needs to file an 1120X here. The second form 1139 was definitely untimely under section 6411 because it was filed more than one year after the close of the tax year. We considered whether the first or second 1139 should be treated as informal claim for refund, which would mean it would be treated as if a refund claim were filed on the date of the 1139. However, section 6411 expressly provides that an application for a tentative carryback adjustment shall not constitute a claim for credit or refund. See also Treas Reg 1.6411-1(b)(2). In addition, numerous courts have expressly held that a Form 1139 cannot serve as an informal claim. See EMAX Fin. Group LLC v. USVI, 2012 WL 1190470 at \*6 (citing cases). Because this case involves the 2012 tax year, the section 6511 period of limitations on claiming a refund has not yet expired, and the taxpayer can now file the 1120X.

This means that the date of the claim will be the date the taxpayer files the 1120X. Section 6611(b)(2) provides that in the case of a refund, overpayment interest is paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days. The interest-free period preceding the issuance of the refund is known as the back-off period. In the case of a refund caused by a carryback of a net operating loss, the overpayment is deemed to have been made on the filing date of the loss year return (so here, the filing date of the 2012 return). Section 6611(e)(2) provides that if the overpayment is refunded within 45 days after a claim is filed, then no interest runs from the date the claim is filed to the date the refund is made. It's unclear to us why the taxpayer is saying that interest should be calculated from November 7, 2013 when in fact the overpayment interest should run from the date the 2012 return was filed. If the Service pays the claim within 45 days, then interest only runs to the filing date of the 1120X. If the Service does not pay the claim within 45 days then overpayment interest will continue to run until the refund is made (minus the back-off period)

I hope this is helpful - please let me know if you have any further questions or would like to discuss.

Thanks,