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**From:** [REDACTED]

**Sent:** Thursday, May 19, 2016 3:04:02 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** RE: follow-up on advice you provided to TAS re: identity theft and erroneous refunds

Thanks for your patience while I studied this more closely and asked CC:PA to weigh in.

The IRS offset the refund claimed on the identity theft return to cover the erroneous refund. The advice from SBSE Counsel addressed whether it was appropriate to make the offset based on an identity theft return, and concludes that yes, it was appropriate. When the IRS did the offset and then subsequently reversed it, that created a nontax liability for the taxpayer. The IRS may use common law offset to recover that liability. With respect to common law offset, courts have generally applied the 2-year IRC section 6532(b) ERSED. Thus, the 2-year IRC section 6532(b) ERSED began running when the IRS offset the refund claimed on the identity theft return. At the conclusion of the examination in 2015, the IRS then offset the refund claimed on the taxpayer's return (the good return). That offset was within 2 years of the offset based on the identity theft return, so it was timely. Thus, there was no violation of the 2-year ERSED.

Unless you have any further questions, I am closing my file on this case.

Thanks.