

ID: CCA_2016052416400604

UILC: 6611.00-00, 6611.04-00, 6611.07-
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Number: **201625017**

Release Date: 6/17/2016

From: [REDACTED]
Sent: Tuesday, May 24, 2016 4:40:06 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: IRC 6601(e)(4)

I am following up on an email I sent you on March 21st, discussing whether a claim for refund made by a withholding agent on a Form 1042 for amounts that it paid to the IRS is subject to the 180-day interest free period in section 6611(e)(4). I discussed the issue with ACC:I and they indicated that such refunds to a withholding agent do not arise from overpayments “resulting from tax deducted and withheld under either chapter 3 or 4” as stated in 6611(e)(4). This is because in these situations in which the withholding agents are entitled to refunds (or credits), they have not actually withheld the amounts for which the refund is claimed. Rather, the withholding agent should only be receiving a refund if it paid the taxes from its own funds. In a case in which the withholding is actually applied, then a refund or credit should be provided only to the beneficial owner or the taxpayer subject to withholding (i.e., a case in which section 6611(e)(4) would apply). Note that this advice does not apply to claims for refund made by certain withholding agents on Form 1042, to the extent permitted for chapter 3 or 4 purposes, that make claims for collective refund on Form 1042 on behalf of their account holders, partners, owners, or beneficiaries for amounts that were actually withheld.

The above conclusion with respect to a withholding agent’s claim for refund is based on section 1464, which states that “when there has been an overpayment of tax under [chapter 3] any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.” Treas. Reg. 1.1464-1(a) similarly provides that the refund or credit of an overpayment actually withheld at the source under chapter 3 shall be made to the taxpayer from whose income the amount of such tax was in fact withheld. To the extent that the overpayment was not in fact withheld at the source but was paid by the withholding agent, the overpayment shall be made to the withholding agent. With respect to chapter 4, section 1474 generally provides that refunds for amounts deducted and withheld are to be made to the beneficial owner of the payment to which the tax is

attributable, and those refunds should be made as if such tax had been deducted and withheld under chapter 3.

Given this legal background and the fact that overpayments refunded to withholding agents for amounts paid out of their own funds do not actually result from amounts deducted and withheld under chapter 3 or 4, we now conclude that the 180-day period in section 6611(e)(4) should not be applied to withholding agents that make refund claims for amounts that they have paid from their own funds rather than by withholding as required under chapter 3 or 4 and instead, the 45-day period of section 6611(e)(1) should be applied.

Please let me know if you would like to discuss.

Thanks,