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From: [REDACTED]

Sent: Monday, May 07, 2018 3:19:31 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: advice in #6358477 (identity theft, offset, and claim for refund)

Hi [REDACTED] Thanks for your patience. I've closely studied this case, as well as discussed the facts with several of my Counsel colleagues who have extensive experience with ID theft cases. Unfortunately, we agree with SBSE Counsel that the taxpayers are not entitled to a refund. Because they had no filing requirement, the "3 years from the time the return was filed" timeframe in section 6511(a) isn't applicable. Consequently, their claim must have been filed within 2 years from the date the tax was paid. In this case, the tax was paid on [REDACTED], when

[REDACTED], when the IRS offset their [REDACTED] refund to the [REDACTED] balance due. So any claim for refund would have had to be filed by [REDACTED].

Two points of clarification: (1) The last paragraph in the SB/SE Counsel opinion is perhaps a little confusing, as it assumes that the return filed by the thief was really the taxpayers' return and applies the section 6511 analysis accordingly. Yet it is my understanding that these taxpayers did not have a filing requirement. In addition, SB/SE Counsel doesn't explain that the taxpayers get the *longer* of the 3-year/2-year timeframe in section 6511(a). (2) Before you close out this case, be sure you have explored with the taxpayers whether there is anything that could be a timely informal claim for refund. Did the taxpayers contact the IRS between the date of the offset and [REDACTED], to indicate they wanted a refund of the amount offset? There needs to be something in writing; the writing requirement can be satisfied in certain circumstances by IRS records (e.g., suppose the taxpayers called the IRS and any case history documented by the IRS reflects the taxpayers wanted the offset amount back – that could be sufficient – I would want to see the documentation).

I'm sorry this isn't the result for which you were hoping, but section 6511 bars relief for these taxpayers unless you can advocate that they filed a timely informal claim for refund by [REDACTED].

Please let me know if you have any questions.