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**From:** [REDACTED]  
**Sent:** Friday, June 08, 2018 3:52:34 PM  
**To:** [REDACTED]  
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**Subject:** CF 6448951 - advice from CC:NTA

Thanks for your patience while I delved deep into this case and coordinated with the payment experts in Counsel. Unfortunately, the advice you previously received from CC:SBSE was in fact correct. IRM 5.19.14.3.4(10) advises that payments are to be applied in date order. Thus, the IRS properly used a payment date of 4/15 for the individual, which was earlier than the payment date for the corporation's payment on 10/6. Consequently, the individual is not entitled to a refund.

For purposes of the application of an overpayment credit, the overpayment is considered available for offset on its availability date, which is determined by the dates of the payments constituting the overpayment. See Luque v. Comm'r, T.C. Memo. 2016-128. See also IRM 20.2.4.3, *Availability Dates for Overpayments* (March 5, 2015). The overpayment in this case was a result of withholding, so you need to determine the date the withholding was considered paid.

Under section 6513(b), the IRS credits withholding to a taxpayer's account on the date the tax return for that year is due. The credits are applied as of the due date without regard to any extension of time to file and whether the return is filed timely or late. Therefore, an overpayment comprised of prepayment credits, such as withholding, is available to be used as an offset as of the date the return is due, even if the return is filed or processed after the original due date. See Luque. See also IRM 20.2.4.3.1, *Availability Dates for Overpayments-Payment and Credit Types* (March 5, 2015).

I'm sorry this isn't the result you were hoping to receive. And again, my apologies for the delay in responding, but I wanted to be sure the subject matter experts thoroughly studied this. Please let me know if you have any questions.