

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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subject: Taxpayer Refund Period of Limitations for Overpayment Attributable to NOL

Taxpayer =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 10 =  
Year 11 =  
Year 12 =  
Date 1, Year 10 =  
Date 1, Year 12 =  
Amount 1 =  
Amount 2 =  
Amount 3 =  
Amount 4 =

This Chief Counsel Advice responds to your request for assistance asking whether Taxpayer's claim for refund was timely where Taxpayer carried back a Year 11 net operating loss (NOL), reducing income in the carryback year, which generated a minimum tax credit in the carryback year that Taxpayer carried forward to create an overpayment in a third year. You asked whether the limitations period for claiming a refund was open in that third year, and in particular whether the special period of limitations for refunds of overpayments attributable to NOL carrybacks applies to Taxpayer's overpayment. For the reasons explained below, we conclude that the period for claiming a refund was open and Taxpayer's claim for refund was timely filed.

## ISSUE

Whether a claim for refund is timely where the overpayment at issue arises from an NOL carryback that triggers payment of alternative minimum tax, which in turn generates a minimum tax credit, which is carried forward to create the overpayment. Specifically, is such a claim for refund “attributable to” the NOL for purposes of the special period of limitations under section 6511(d)(2)?

## CONCLUSION

Yes, the overpayment is “attributable to” the NOL for purposes of section 6511(d)(2), and the claim for refund is timely.

Limited caselaw supports an interpretation of the phrase “attributable to” an NOL carryback to include any overpayment that results from a chain of causation beginning with an NOL carryback. The legislative history of section 6511(d)(2) and its predecessor statute also supports this interpretation. The legislative history also shows that section 6501(h)—the assessment period of limitations counterpart to section 6511(d)(2)—should be read consistently with section 6511(d)(2), and caselaw under section 6501(h) supports tracing deficiencies through a chain back to an originating NOL. Therefore, the overpayment is attributable to the NOL carryback if it can be traced through a chain of causation to the NOL carryback.

## FACTS

In Year 10, Taxpayer entered into settlement agreements resolving present and future asbestos personal-injury claims. The agreement was approved on Date 1, Year 10. As a result of this agreement, Taxpayer paid a total of Amount 1, Amount 2 of which was paid in Year 11. Taxpayer’s Amount 2 payment generated an NOL in Year 11 of which approximately Amount 3 qualified as a product-liability specified liability loss under former section 172(b)(1)(C) and (f)(1)(A) (2015) that could be carried back to each of the ten years before the loss year.<sup>1</sup> On Date 1, Year 12, Taxpayer filed an amended return carrying the Year 11 NOL back to Year 1. The NOL carryback triggered an Amount 4 alternative minimum tax (AMT) liability for Year 1, which Taxpayer paid (before the NOL carryback, Taxpayer owed no AMT for its Year 1). Paying the AMT for Year 1 generated a minimum tax credit (MTC) that Taxpayer carried

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<sup>1</sup> Former section 172(b)(1)(C) and 172(f)(1)(A) permitted extended carryback periods for a broad class of “specified liability losses” arising by operation of federal or state law. These carryback provisions were repealed by section 13302(b)(2) and (c)(2) of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, effective for tax years ending after December 31, 2017.

forward to Year 3 pursuant to former section 53 (it could not be used in Year 2),<sup>2</sup> resulting in an overpayment and claim for refund in Year 3. On Date 1, Year 12, Taxpayer filed a claim for refund of the Year 3 overpayment under section 6511(d)(2) as “attributable to” the NOL carryback from Year 11. When the refund claim was filed, the general period of limitations under section 6511(a) for Year 3 had expired.

## LAW AND ANALYSIS

### 1. Overview

Section 6511 sets forth the periods of limitations that apply to claims for credits and refunds. The general period of limitations requires a taxpayer to make a claim for credit or refund of overpaid tax within three years after filing a return or two years after paying the tax, whichever is later. I.R.C. § 6511(a). Sections 6511(d)(2)–(4) provide special periods for cases in which a credit or refund results from overpayments that are “attributable to” certain tax events. In particular, section 6511(d)(2) provides that if a “claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback,” then in lieu of the general three-year period for filing claims for credit or refund, which runs from the date of filing of the return for the year of the overpayment, the period generally “shall be that period which ends three years after” the due date of the return for the year in which the loss arose.

When an NOL carryback reduces income in the carryback year, as it did here for Year 1, and that reduction in income, in turn, frees up or creates a credit that is carried to another year and generates an overpayment in that other year, here, Year 3, the issue of whether the overpayment in the other year is “attributable to” the net operating loss carryback under section 6511(d)(2) has been subject to inconsistent interpretations for many years.

One interpretation is that an overpayment is only “attributable to” the tax attribute *immediately causing* the overpayment (here, the MTC carryforward for Year 1), and not to attributes further up a causal chain, an interpretation referred to in this memorandum as “immediate cause.” A second interpretation is that an overpayment is “attributable to” any tax attribute to which the overpayment can be traced, referred to in this memorandum as “tracing.” A third interpretation, the “originating cause” view, is that the overpayment is *only* attributable to the tax attribute that originally started the chain of causation (here, the NOL carryback from Year 11).

Neither the Code nor the regulations define how the term “attributable to” in section 6511 should be interpreted.

Accordingly, the primary interpretive sources are caselaw and legislative history.

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<sup>2</sup> The corporate AMT (and, in turn, the ability to carry forward the corporate AMT under section 53) was repealed by section 12001(a) of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, effective for tax years beginning after December 31, 2017.

a. Caselaw considering “attributable to” under the refund provisions of section 6511

Only one case has squarely addressed the question of whether, under section 6511(d)(2), an overpayment is “attributable to” an NOL carryback that frees up a credit that is carried to another year and creates the overpayment. *Marshalltown Savings and Loan Assn. v. United States*, 92-1 USTC P50,100 (S. D. Iowa 1991). In *Marshalltown*, the taxpayer filed a refund claim for the 1980 tax year on January 12, 1987. The claim was based on a net operating loss for 1985 that was carried back to 1979 under former section 172. The NOL carryback freed up an investment tax credit (ITC) in 1979 that the taxpayer sought to carry forward to 1980 to generate the refund. When the refund claim was filed, the general limitations period for 1980 had expired but the section 6511(d)(2) period for 1980 remained open if the refund was, through the ITC, “attributable to” the NOL. *Marshalltown* held that the 1980 overpayment was “attributable to” the NOL carryback from 1985 under section 6511(d)(2) (in effect holding it was attributable to the originating cause), the opinion contains no analysis and is an order that was not officially reported and thus of little or no precedential value, (although it has been discussed in at least two other cases).

Section 6511(d)(3), a provision of section 6511 that also includes the language “attributable to,” was addressed in *Trusted Media Brands, Inc. v. United States*, 2017-2 USTC P50, 359 (S.D.N.Y. 2017), *aff’d*, 899 F.3d 175 (2d Cir. 2018). The district court construed the term “attributable to” as part of an alternative rationale to support the conclusion that the taxpayer’s refund claim was time-barred. The taxpayer relied on section 901(a) and Treas. Reg. §1.901-1(d), which cross-references the extended ten-year limitations period in section 6511(d)(3), to amend its 2002 return on December 14, 2011 and change its treatment of creditable foreign taxes from a foreign tax credit (FTC) for 2002 to a foreign tax deduction.<sup>3</sup> Taxpayer change increased the taxpayer’s NOL for 2002, which the taxpayer carried back to 1997, freeing up FTCs for that year that the taxpayer carried back to 1995 to generate the overpayment for which it claimed a refund.

In its primary holding, the district court adopted the government’s argument that the ten-year limitations period under section 6511(d)(3) did not apply to allow a refund to be claimed based on a *deduction* for foreign taxes. Rather, the court held that section 6511(d)(3) was limited to refund claims “attributable to” foreign tax *credits*.<sup>4</sup> Because the taxpayer was arguing that the 1995 overpayment was attributable to a

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<sup>3</sup> Taxpayers may generally elect to claim a credit under section 901 for foreign taxes paid or to deduct those taxes from income under section 164. The credit and deduction are mutually exclusive. I.R.C. § 275(a)(4); Treas. Reg. § 1.901-1(h)(2).

<sup>4</sup> Because the extended period under section 6511(d)(2) for claiming a 1995 refund based on an NOL carryback from 2002 had expired by December 14, 2011 under any interpretation of “attributable to,” the taxpayer did not rely on, and the court did not consider, application of that statute.

foreign tax deduction in 2002 and not a foreign tax credit, the district court held that section 6511(d)(3) did not apply to extend the statute for ten years from 2002. Taxpayer holding does not interpret the phrase “attributable to” in sections 6511(d)(2) or (3).

In the alternative, the government in *Trusted Media* argued that because the immediate cause of the 1995 overpayment was the foreign tax credit carryback, the refund claim was only “attributable to” the 1997 foreign tax credits and not the 2002 NOL (which was increased by changing foreign tax credits to deductions). Because the refund claim was not filed until 2011, the extended ten-year limitations period in section 6511(d)(3), measured from the due date of the 1997 return, had run. The district court agreed with this alternative immediate-cause argument, but the Second Circuit affirmed on the basis of the primary holding without addressing it.

In *Electrolux Holdings, Inc. v. United States*, 491 F.2d 1327 (Fed. Cir. 2007) the Federal Circuit appeared to reject the interpretation of section 6511(d)(2) that allows overpayments to be traced through a chain of causation to a NOL carryback, but as the court pointed out, the overpayment at issue in *Electrolux* did not actually arise from a chain of causation. In *Electrolux*, the taxpayer had long-term capital losses in 1994 that it sought to carry back to 1993 (it had no additional capital gains in 1991 and 1992) under section 1212(a)(1)(A) for a refund and then to carry forward the long-term capital losses from 1994 not used up in 1993 to the 1995 through 1998 tax years to generate overpayments and refunds in those years. The government agreed that the limitations period for 1993 remained open because the refund for that year was “attributable to” the 1994 loss carryback under section 6511(d)(2). The government argued, however, that the 1995 refund was not attributable to the loss carryback.<sup>5</sup> Recognizing that *First Chicago Corp. v. Commissioner*, 742 F.2d 1102 (7th Cir. 1984), *rev’g* 80 T.C. 648 (1983)<sup>6</sup> and *Marshalltown* supported the view that overpayments originating from an NOL carryback can be traced to the carryback under section 6511(d)(2), the Federal Circuit distinguished *First Chicago* and *Marshalltown* from *Electrolux* as cases involving a true chain of causation. In a true chain-of-causation scenario, an NOL carryback releases another tax attribute (such as a foreign tax credit, minimum tax credit or general business credit) in the carryback year that is carried to another year to create an overpayment. In *Electrolux*, the court ruled that the long-term capital losses arrived at 1995 by means of a single tax mechanism—a carryforward from 1994—and that it was the loss in 1994 and not the carryback to 1993 that led to the loss being carried forward to 1995 to generate the overpayment. The present case, in contrast, involves

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<sup>5</sup> The taxpayer had signed an agreement under section 6511(c) to extend the deficiency and refund limitations period for 1994, but had not signed any agreement for 1995, so the limitations period for 1995 under section 6511(a) had lapsed at the time of the taxpayer’s refund claim. For 1996-1998, the general refund limitations period in section 6511(a) remained open, so those tax years were not at issue.

<sup>6</sup> Discussed *infra*.

an NOL and a minimum tax credit carryforward, and is therefore analogous to *First Chicago* and *Marshalltown* from which the *Electrolux* court distinguished its case.

b. Caselaw considering “attributable to” under the parallel deficiency provisions of section 6501

The Seventh Circuit has held that “attributable to” in section 6501(h) should be interpreted broadly to encompass a tax attribute to which a deficiency can be traced. *First Chicago*, 742 F.2d 1102. In *First Chicago*, the taxpayer received a tentative refund for 1971 as a result of carrybacks (investment tax credits (ITC) and capital losses) from 1974. The IRS later determined that the taxpayer had a deficiency in 1972 because the reduction in income tax liability in 1971 from the carrybacks reduced a minimum tax credit carryover from 1971 to 1972, resulting in an increase in the taxpayer’s minimum tax liability for 1972. In a split opinion, the Tax Court had rejected the government’s argument that the assessment was timely because the deficiency for 1972 was attributable to the carrybacks. The majority opinion reasoned that the assessment period of limitations under section 6501(h) (and section 6501(j), relating to ITC carrybacks) would only apply to underpayments where the carrybacks were the immediate cause of the deficiency. The Tax Court’s dissenting opinion, which the Seventh Circuit adopted, reasoned that because the deficiency for 1972 could be traced through the 1971 AMT carryforward to the 1974 carrybacks (the originating cause), the deficiency was “attributable to” the carrybacks even though the carrybacks were not the immediate cause. The dissent cited language in the 1945 legislative history to section 6501 regarding the scope of “attributable to” with respect to a taxpayer’s ability to claim refunds, consistent with that history’s statements that the refund limitations period and deficiency assessment provisions of sections 6511 and 6501 were to be read consistently.

*First Chicago* establishes two points. First, it interprets section 6501(h)—which is parallel to section 6511(d)(2) and uses the phrase “attributable to” language—broadly, allowing deficiencies to be traced to a tax attribute beyond the immediate cause of the deficiency. Second, the opinion recognizes that the legislative history of the 1945 Act that supports reading sections 6511(d)(2) and 6501(h) consistently. Therefore, *First Chicago*’s interpretation of the term “attributable to” under section 6511(h) supports a finding that the same term in section 6511(d)(2) should be interpreted to permit an overpayment that can be traced to a tax attribute other than the immediate cause of the overpayment.

In *Herman Bennett Co. v. Commissioner*, 65 T.C. 506 (1975), the Tax Court addressed cascading tax attributes in the context of section 6501(j), which provides a special assessment limitations period for “any portion of a credit carryback from a taxable year attributable to,” among other items, an NOL carryback from a subsequent taxable year. The taxpayer in *Herman Bennett* incurred an NOL in 1969, which it carried back to 1966. The NOL carryback released an ITC for 1966, which the taxpayer carried back to 1963 to generate a refund in that year, which was, after it was paid, determined to be erroneous because the maximum ITC had already been allowed for 1963. The court

held that the limitations period for assessing the erroneous refund remained open because the released ITC was “attributable to” the 1969 NOL.<sup>7</sup> Rejecting the taxpayer’s effort to isolate the refund to its “source” or immediate cause (*i.e.*, the ITC carryback), the court noted that “the issue is whether the investment credit carryback may be traced directly to the net operating loss carryback.” *Id.* at 510.

## 2. Legislative History

### a. Legislative History of Section 6511(d)(2)

Consistent with caselaw supporting the view that an overpayment can be attributable to a tax attribute other than the immediate cause, the legislative history of section 6511(d)(2) shows Congress’s intent that the phrase “attributable to” be interpreted to include an overpayment that arises from a chain of causation originating from an NOL carryback. The predecessor to section 6511(d)(2) was enacted as part of the Tax Adjustment Act of 1945, P.L. 79-172 (the Act). Section 5(b) of the Act added section 322(b)(6) to the 1939 Code to provide that if a claim for credit or refund relates to an overpayment attributable to an NOL carryback or an unused excess profits credit carryback, then in lieu of the general limitations period, the period is three years from the due date of the return for the year of the NOL or unused excess profits credit that results in the carryback. Section 5(e) of the Act added a corresponding provision relating to deficiency assessments. Taxpayer latter provision, which is the predecessor to current section 6501(h), provided that a deficiency attributable to an NOL carryback or an unused excess profits credit carryback may be assessed at any time before the expiration of the period in which a deficiency may be assessed for the year of the claimed NOL or unused excess profits credit resulting in such carryback. See 1945 C.B. 537-538.

The House Committee report for the Act included the following discussion of these amendments:

For purposes of section 322(b)(6), as well as for purposes of all other amendments made by the bill, an overpayment of excess profits tax *resulting from an unused excess profits credit carry-back which itself is produced, or which is increased in amount, by a net operating loss carry-back, is to be considered as attributable to the net operating loss carry-back* to the extent it is produced or increased. In such case, therefore, the period within which claim for credit or refund of excess profits tax may be filed, or credit or refund allowed or made, will be coextensive with the period within which claim for credit or refund may be filed, or credit or refund allowed or made, with respect to the year of the net operating loss.

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<sup>7</sup> The government can recover an erroneous refund by bringing suit against the taxpayer within the time period set forth in section 6532(b) or, if the assessment limitations period under section 6501 remains open, by making an assessment under section 6201.

H. Rep. 79-849, 79th Cong. 1st Sess. 1945 C.B. 585-587 (emphasis added). The House Committee report shows that Congress intended the words “attributable to” to encompass not only claims relating directly to the carryback year but also claims relating to other years to which a freed-up credit from the carryback year was carried. Taxpayer intent supports an interpretation of section 6511(d)(2), as the successor section to section 322(b)(6), that considers an overpayment arising from a chain of causation begun by an NOL carryback to be attributable to the NOL carryback. Because the phrase “attributable to” has remained unchanged from its enactment as section 322(b)(6), the legislative history of the Act supports this interpretation of section 6511(d)(2).<sup>8</sup>

b. Legislative History of Section 6501(h)

In addition to the express explanation of the scope of the phrase “attributable to” in the legislative history of section 6511(d)(2), the legislative history of section 6501(h) also establishes that Congress intended there to be symmetry between the limitations period for the assessment of deficiencies attributable to NOL carrybacks and the limitations period for credit or refund of overpayments attributable to NOL carrybacks.

Subsection (e) of section 5 of the bill adds a new subsection (d) to section 276 of the Code, relating to the period within which assessments may be made. Such new section 276(d) provides that a deficiency attributable to a net operating loss carry-back or an unused excess profits carry-back, including those amounts which may be assessed pursuant to the provisions of section 3780(b) and (c), may be assessed at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the taxable year of the claimed net operating loss or unused excess profits credit resulting in such carry-back. *Thus, as in the case of credits or refunds, the period for making assessments is made coextensive with the period within which assessments may be made with respect to the taxable year of the claimed loss or unused excess profits credit.*

H. Rep. 79-849, 79th Cong. 1st Sess. 1945 C.B. 588 (emphasis added).

Section 6501(h) is the successor to former section 276(d) and is the companion provision to section 6511(d)(2), the successor to former section 322(b)(6).<sup>9</sup> Section 6501(h) provides the special limitations period for an assessment of a deficiency attributable to the application to the taxpayer of a net operating loss

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<sup>8</sup> See *Commissioner v. Bilder*, 369 U.S. 499, 505 (1962) (“So too the conclusion in this case, which turns on the construction of the identical words re-enacted as part of s 213, must be based on an examination of the legislative history of this provision of the 1954 Code.”); see also *Hart v. United States*, 585 F.2d 1025, 1029 (Ct. Cl. 1978).

<sup>9</sup> Section 6501(h) was inadvertently omitted when the 1954 Code was enacted, but was added retroactively by the Technical Amendments Act of 1958, P.L. 85-866.



carryback or a capital loss carryback, which parallels section 6511(d)(2)'s special period for a refund of an overpayment attributable to the same. Because Congress intended treatment of the limitations periods for assessments and refund claims attributable to NOLs to be the same, the term "attributable to" in section 6511(d)(2) is best interpreted in the same way that that term in section 6501(h) is interpreted.

c. "Attributable to" in Section 6511(d)(3) and (4)

Two other subparagraphs of section 6511(d) include the phrase "attributable to"—sections 6511(d)(3) and (d)(4). Nothing in either section should be construed to contradict interpreting "attributable to" across the statutory scheme of assessment and refund periods of limitation to permit tracing of an overpayment through a chain of causation to an originating tax attribute. Section 6511(d)(3) provides, in part, that when "the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country," the limitations period is ten years from the due date of the return for the year in which the foreign taxes were paid or accrued. Although both provisions include the phrase "attributable to," unlike section 6511(d)(2), the legislative history of section 6511(d)(3) does not indicate how the enacting Congress intended for section 6511(d)(3) to operate when an FTC causes a chain of causation. Taxpayer lack of guidance in the Congressional record neither supports nor detracts from the view that an overpayment arising from a chain of causation originating with an FTC carryback should be attributable to the FTC carryback under section 6511(d)(3).

Section 6511(d)(4) was enacted in 1962, 17 years after section 6511(d)(2), and provided an extended limitations period for claims related to overpayments attributable to investment tax credit carrybacks (now labeled business credit carrybacks). Section 6511(d)(4) now provides, in a parenthetical added in 1967, that, when an NOL or capital loss (CL) carryback gives rise to a credit that is carried back to an earlier year, the refund period of limitations is three years from the loss year:

If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback *(or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year)* or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later.

I.R.C. § 6511(d)(4) (emphasis added).

The parenthetical in section 6511(d)(4) could be construed to preclude a similar interpretation of “attributable to” in section 6511(d)(2), as the latter provision lacks comparable parenthetical language addressing credits released by NOLs or capital loss carrybacks. Arguably, if a broad reading of “attributable to” were intended, there would be no need for Congress to have included the emphasized parenthetical in section 6511(d)(4) because section 6511(d)(2) would be broad enough to encompass the cases described in that parenthetical. The parenthetical is better understood, however, as simply illustrating that under the amendment enacted in 1967, taxpayers could now carry back excess credits freed up by NOL carrybacks and not as suggesting that a contrary meaning should be read into section 6511(d)(2) and (d)(3). When section 6511(d)(4) was first enacted, in the Revenue Act of 1962, P.L. No. 87-834, Congress simultaneously amended section 46(b)(3) of the Code to permit a three-year carryback of any excess credit. But the Act specifically provided that such a carryback would not apply in a cascading scenario where the excess credit arose by reason of an NOL carryback. I.R.C. § 46(b)(3) (1964). Section 2(a) of The Bank Holding Company Act of 1967, P.L. 90-225, then revised the substantive carryback rules to permit a credit freed by an NOL carryback to itself be carried back and simultaneously revised section 6511(d)(4) by inserting the above-referenced parenthetical.

The original language in former section 46 makes clear that Congress was aware of the prospect of cascading refund claims, albeit in a context when the potential for conflicting limitations periods was limited. In that context, the better interpretation of the parenthetical added to section 6511(d)(4) in 1967 is as reflecting the expansion of section 46 to include credit carrybacks caused by NOL carrybacks, but not as otherwise modifying, limiting, or commenting on how “attributable to” should be interpreted in other parts of section 6511.

Furthermore, to read the parenthetical in section 6511(d)(4) as limiting the scope of the term “attributable to” in section 6511(d)(2) would create a conflict within section 6501 on how to interpret “attributable to” there. The 1967 Act that added the parenthetical to section 6511(d)(4) also added comparable language to the assessment limitations statute by amending section 6501(j), governing deficiencies attributable to credit carrybacks (initially, ITC carrybacks and, later, general business credit carrybacks).<sup>10</sup> The added language clarifies that when a deficiency is attributable to a general business credit carryback that is, in turn, attributable to an NOL carryback from a subsequent taxable year, the assessment period for the year of the NOL applies to the deficiency attributable to the credit carryback. I.R.C. § 6501(j). Any argument that the section 6511(d)(4) parenthetical limits the scope of the term “attributable to” would contradict the Seventh Circuit’s interpretation of the term in the context of section 6501(h), which interpretation the Seventh Circuit adopted despite comparable language in section 6501(j). *First Chicago*, 742 F.2d at 1102.

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<sup>10</sup> “[O]r with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.” I.R.C. § 6501(j)(1).

Understood in this context, neither section 6511(d)(3) nor the parenthetical in section 6511(d)(4) should be construed as inconsistent with an interpretation of “attributable to” that permits tracing the overpayment through a cascading chain to an originating tax attribute.

### 3. Revenue Rulings

In Rev. Rul. 71-533, the IRS addressed a situation in which a taxpayer incurred an NOL in 1969, which the taxpayer carried back to 1966. The NOL carryback freed up FTCs originally claimed for 1966, which the taxpayer then carried back to 1964 to generate a refund. Without considering whether the overpayment could also be considered attributable to the NOL carryback, the ruling concluded that the refund claim was subject to the ten-year limitations period of section 6511(d)(3), which ran from the 1966 taxable year in which the creditable foreign taxes were originally claimed as a credit. The ruling referenced Rev. Rul. 68-150, which held that the period in section 6511(d)(3)(A) applies to “claims for credit or refund based on the correction of mathematical errors in the computation of taxes subject to the provisions of that section ... or any other adjustments to the size of the foreign tax credit.”

Recently, Rev. Rul. 2020-8 suspended Rev. Rul. 71-533 and suspended Rev. Rul. 68-150 in part because these earlier revenue rulings may not reflect the correct interpretation of section 6511(d)(2) as discussed in this memorandum.

### Conclusion

Although not uniform, caselaw generally supports an interpretation of the phrase “attributable to” to include the tax attribute that started a chain of causation resulting in an overpayment. In addition, the legislative history of section 6511(d)(2) and its predecessor statute shows that Congress intended the term “attributable to” in that section to encompass any overpayment that can be traced to the NOL carryback when an NOL carryback begins a chain of causation involving other tax attributes. Furthermore, *First Chicago* and the legislative history of section 6501(h) show that the term “attributable to” should be construed alike in both sections 6501 and 6511 for assessing deficiencies or allowing refunds arising from NOL and capital loss carrybacks.

Because Taxpayer’s Year 3 overpayment can be traced through a chain of causation arising from the Year 11 NOL carryback, the overpayment is “attributable to” the NOL for purposes of section 6511(d)(2), and Taxpayer gets the benefit of the special period of limitations under section 6511(d)(2). Therefore, Taxpayer’s refund claim is timely.

Please call Marshall French at (202) 317-6845 or Isaac Brooks Fishman at (202) 317-6844 if you have any further questions.