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From: [REDACTED]

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To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: FW: EO CASE ASSIGN: POSTU-121624-21 - CARES Act Refundable Minimum Tax Credit Issue

You asked us how section 53(e) of the Internal Revenue Code applies in the following situation. Taxpayer-organization (Taxpayer) is an exempt entity that is subject to income tax on unrelated business activity. Taxpayer's income for such activity is calculated at the same rate as the corporate rate under Code section 11, and Taxpayer was subject to alternative minimum tax (AMT) and accrued the section 53 minimum tax credit. Taxpayer, which has a _____ year end, filed an original Form 990-T for the short-year ending _____ requesting a refund of \$ _____, which included a \$ _____ prepayment carried over from the _____ return plus a credit of \$ _____ reported on Form 8827, *Credit for Prior Year Minimum Tax - Corporations*. Taxpayer merged into a related organization on _____ and therefore had a short year ending _____. As a result, taxpayer prorated the refundable minimum tax credit on line 6 of Form 8827 and determined it to be \$ _____.

Following the passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), Taxpayer filed an amended return (Form 990-T), which included a Form 8827 on which Taxpayer calculated the refundable minimum tax credit on line 6 in the amount of \$ _____. Taxpayer thus requested a refund of 100% of the refundable minimum tax credit.

Section 2305 of the CARES Act amended section 53(e) of the Code to allow a corporation to claim for its taxable years beginning in 2018 and 2019 the refundable credit for AMT incurred by the corporation in prior taxable years (refundable minimum tax credit). Section 2305 of the CARES Act also authorizes an election under which a corporation can claim the entire amount of the refundable minimum tax credit in the corporation's first taxable year that begins in 2018.

The question presented is whether Taxpayer's refundable minimum tax credit for its short taxable year ending _____ must be prorated under paragraph (4) of subsection (e) when Taxpayer made an election under paragraph (5).

Section 53 (e)(4), states that in the case of any taxable year of less than 365 days, the AMT refundable credit is prorated in an amount based on the ratio of the number of days in the tax year to 365. Once a taxpayer makes the (e)(5) election, paragraph (1) of subsection (e) does not apply because of the express language in subparagraph (A) of subsection (e)(5). As a result, paragraph (2) also does not apply because that paragraph contains the following qualifying language: “. . . For purposes of paragraph (1), the AMT refundable credit amount is . . .” And because paragraph (2) doesn't apply, neither does paragraph (4) because the only effect of such paragraph is to limit the refundable credit amount under subsection (e)(2) in short year situations. No provision limits or negates the effect of paragraph (3) of subsection (e) and thus the credit allowed is treated as a credit allowed under subpart C and therefore fully refundable. As result, Taxpayer is entitled to a refund of 100 percent of the refundable minimum tax credit for its year ending .

Please let us know if you need anything further.

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