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[Third Party Communication:

UILC: 6211.00-00, 6662.00-00,
6676.00-00

Date of Communication: Month DD, YYYY]

Number: **202514004**

Release Date: 4/4/2025

From: [REDACTED]

Sent: Wednesday, April 26, 2024 8:58:25 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Request for advice on large erroneous refund and associated penalty

Hi [REDACTED],

There would be an underpayment in this case resulting from the refund. The refund constituted a rebate, because the refund was made on the ground that the income tax imposed for the year was less than the amount shown as tax on the taxpayer's original return for that year. See IRC § 6211(b)(2); Clayton v. Commissioner, T.C. Memo. 1997-327, aff'd without published opinion, 181 F.3d 79 (1st Cir. 1998).

Therefore, the calculation should be:

[Amount of tax imposed] – ([Amount of tax shown on return] + [amounts not so shown previously assessed]) – [amount of rebates made]

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underpayment equal to the amount of refund constituting a rebate.

Refunds that constitute rebates are subject to deficiency procedures, and therefore a SNOD would be appropriate. If the section 6662 penalty does apply and if, for whatever reason, the Service doesn't seek the 6662 penalty, it wouldn't be able to seek the 6676 penalty. Just because we declined to seek the section 6662 penalty doesn't mean that the underpayment isn't subject to the section 6662 penalty for purposes of applying section 6676(d) ("This section *shall not apply* to any portion of the excessive amount of a claim for refund or credit which is subject to a penalty imposed under part II of subchapter A of chapter 68." (emphasis added)).

I hope that this helps – please let us know if you have any other questions.

[REDACTED]

[REDACTED]