

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:WAS:RCH:TL-N-3904-01

CMDRees

date: **JUN 29 2001**

to: KEN HEWETT, Team Manager, Wheaton, Maryland

from: CHERYL M.D. REES
Senior Attorney (LMSB)

subject: [REDACTED]
Statute of Limitations on Net Carryback Claim

This is in response to the request for advice you forwarded to us on June 18, 2001.

ISSUES

1. Whether the return of [REDACTED] for its short taxable year ending [REDACTED] was due on [REDACTED] or on [REDACTED].

2. Whether the statute of limitations remained open when the taxpayer filed claims for refund for its [REDACTED] and [REDACTED] taxable years on the ground that it sustained a net operating loss for its taxable year ended [REDACTED] which it was entitled to carry back.

CONCLUSION

1. The return of [REDACTED] for its short taxable year ending [REDACTED] was due on [REDACTED].

2. The statute of limitations remained open when the taxpayer filed claims of refund for its [REDACTED] and [REDACTED] taxable years on the ground that it sustained a net operating loss for its taxable year ended [REDACTED] which it was entitled to carry back.

FACTS

[REDACTED]
[hereinafter referred to as [REDACTED]], a calendar year taxpayer, timely filed its returns for its [REDACTED] and [REDACTED] taxable years, under extension, on [REDACTED] and [REDACTED].

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respectively.

On [REDACTED], [REDACTED] was acquired by [REDACTED]. [hereinafter referred to as [REDACTED]], also a calendar year taxpayer. The Service determined that [REDACTED] acquired the outstanding stock of [REDACTED] in a strictly cash transaction that did not qualify as a tax-free reorganization as defined in I.R.C. § 368.

On [REDACTED], [REDACTED] filed a Form 7004 requesting an automatic extension to file its return for its taxable period ending [REDACTED] on or before [REDACTED]. [REDACTED] also timely filed a Form 7004 requesting an automatic extension to file its return for its taxable period ending [REDACTED] on or before [REDACTED].

On its consolidated return for its taxable year ending [REDACTED], [REDACTED] claimed a total net operating loss of \$ [REDACTED]. The claims [REDACTED] filed for refund due to the NOL carryback from its short year to its [REDACTED] and [REDACTED] taxable years were received by the Service on [REDACTED] and [REDACTED], respectively. The examining agent determined that the taxpayer was entitled to refunds in the amounts of \$ [REDACTED] and \$ [REDACTED], for its [REDACTED] and [REDACTED] taxable years, respectively. He prepared the case as a Joint Committee case and sent it for review. The case was returned from review prior to submission to the Joint Committee for further consideration based upon the reviewer's conclusion that it was not processable because the statute of limitations had run on both of the NOL carryback claims prior to their submission to the Service.

ANALYSIS

ISSUE 1

If [REDACTED] had terminated its taxable year ending [REDACTED] for some other reason than to merge with another consolidated group, its return for its taxable year ending [REDACTED] would have been due on [REDACTED], the 15th day of the third month following the close of its short taxable year. See I.R.C. § 6072(b).

Since [REDACTED] was acquired by [REDACTED], however, the provisions of the Code and regulations regarding consolidated returns will determine the date on which [REDACTED]'s return was due. I.R.C. § 1502 directs the Secretary to prescribe regulations regarding affiliated corporations that file consolidated returns. I.R.C. § 1502. Treasury Regulation §§ 1.1502-75 and 1.1502-76 set forth the provisions governing the time for filing consolidated

returns and returns for short periods not included in consolidated returns. See, Treas. Reg. § 1.6072-2(f).

If [REDACTED] had not been acquired by [REDACTED], the original due date for filing its return for its taxable year ending [REDACTED] would have been [REDACTED]. Of course, this is the same due date [REDACTED] had for its taxable year ending [REDACTED]. Since both entities timely filed Forms 7004 requesting automatic extensions to file their returns on or before [REDACTED], the due dates of both returns became [REDACTED].

In order to determine whether the provisions of Treasury Regulation § 1.1502-76(c)(1) or (c)(2) apply, we must determine whether the consolidated group filed a consolidated return on or before the original due date for the filing of [REDACTED]'s return, including extensions of time. Compare Treas. Reg. § 1.1502-76(c)(1) with Treas. Reg. § 1.1502-76(c)(2). In this case, the result would be the same no matter which provision applies because the due date of the consolidated return and of the subsidiary's return are the same¹.

Treasury Regulation § 1.1502-76(c)(1) applies if [REDACTED] filed a consolidated return on or before the due date of [REDACTED]'s return, including extensions of time and determined without regard to any change of its taxable year required due to its acquisition by [REDACTED]. That due date was [REDACTED]. It is our understanding that [REDACTED] did file its return on or before [REDACTED]. If so, subsection (c)(1) applies and [REDACTED]'s return for its short taxable year ending [REDACTED] was due to be filed on or before [REDACTED], the due date of the consolidated return. See Treas. Reg. § 1.1502-76(c)(1).

If [REDACTED] had not filed its return on or before [REDACTED], however, Treasury Regulation § 1.1502-76(c)(2) would have applied. In that case, [REDACTED] would have also been required to file the return for its short year ending [REDACTED] or a return for its complete taxable year ending [REDACTED] on or before [REDACTED], the original due date of its return, including the extension it requested. See Treas. Reg. § 1.1502-76(c)(2).

Thus, under either Treasury Regulation § 1.1502-76(c)(1) or (c)(2), the return for [REDACTED] for its short taxable year ending [REDACTED] was [REDACTED].

¹ Note that it is the due date, not the actual filing date of the return that controls.

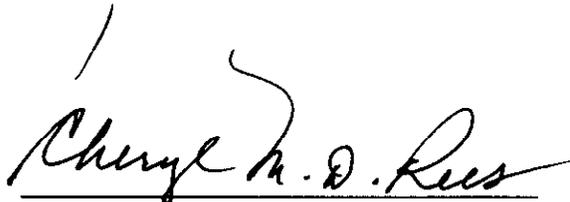
[REDACTED]
ISSUE 2

The statute of limitations on [REDACTED]'s claims remained open only if the claims fell within the provisions of I.R.C. §§ 6511(a), 6511(c), or 6511(d)(2)(A). I.R.C. § 6511 provides rules governing the periods within which claims for credit or refund must be made. I.R.C. § 6511(d)(2) provides for a special period of limitations for net operating loss carrybacks. The special period ends three years after the time prescribed by law for filing the return for the taxable year of the net operating loss which results in the carryback or the period prescribed in I.R.C. § 6511(c) in regard to the same loss year. I.R.C. § 6511(d)(2)(A); Treas. Reg. § 301.6511(d)-2.

As discussed above, the time prescribed by law for [REDACTED] to file a return for its year ended [REDACTED], the year in which the net operating loss arose, was [REDACTED]. Three years from that date was [REDACTED]. Since the claims [REDACTED] filed for refund due to the NOL carryback from its short year to its [REDACTED] and [REDACTED] taxable years were received by the Service on [REDACTED] and [REDACTED], respectively, they were timely filed under the provisions of I.R.C. § 6511(d)(2)(A).

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If you have questions, please contact me at (804) 916-3947.



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