

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

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to: Barbara J. Fiebich
Director, Specialty Exam Policy

from: Stephanie Bland
Branch Chief, CC:PSI:7

subject: Statute of limitations to file a claim for refund of the vaccine tax

This responds to your request for non-taxpayer specific legal advice regarding the statute of limitations for filing a claim for refund of excise tax paid on vaccines. This advice may not be used or cited as precedent.

ISSUE

Whether § 6511 of the Internal Revenue Code is a bar to filing a refund claim pursuant to § 4132(b) when a vaccine is returned more than three years after the relevant Form 720, Quarterly Federal Excise Tax Return, was filed and more than two years from the time the tax was paid on the returned vaccine.

CONCLUSION

Section 6511 is not a bar to filing a refund claim pursuant to § 4132(b)(2) when a vaccine is returned more than three years after the relevant Form 720 was filed and more than two years from the time the tax was paid on the returned vaccine. However, the refund claim must meet the criteria in § 6416(a).

FACTS

The taxpayer, a manufacturer of taxable vaccines, sold vaccines to a customer. The taxpayer paid the § 4131 vaccine tax on these sales. More than three years from the time the taxpayer filed its Form 720 on which it reported the tax it paid on these sales and more than two years from the time the taxpayer paid the tax on these sales, the customer returned the vaccines. The taxpayer did not resell these returned vaccines. Within six months of receiving the returned vaccines, the taxpayer filed a claim for a refund of the tax it paid on its sale of the returned vaccines.

LAW

Section 4131(a) imposes a federal excise tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

Section 4132(b)(1) provides for an abatement, credit, or refund of this tax if the vaccine is destroyed or returned (other than for resale) to the person who paid the tax. Section 4132(b)(2) provides that the refund claim must be filed within 6 months after the date the vaccine is returned or destroyed.

Section 6511(a) requires that a claim for credit or refund of an overpayment of any tax imposed in respect of which tax the taxpayer is required to file a return shall be filed three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later.

In Bulova Watch Co., Inc. v. U. S., 365 U.S. 753, 758 (1961), the Supreme Court stated that “it is familiar law that a specific statute controls over a general one.”

ANALYSIS

The rule in § 4132(b)(2) applies in determining whether a claim for a credit or refund for a returned vaccine is timely. This is the case because § 4132(b)(2), a refund rule specifically for vaccines, controls over § 6511(a), a general refund provision. See Bulova Watch at 758. Therefore, the taxpayer in this case has submitted a timely claim for a refund for a returned vaccine because the taxpayer submitted its claim within six months after the vaccine was returned, as required by § 4132(b)(2).

If you have any questions concerning this memorandum, please contact Celia Gabrysh at (202) 317-6855.