

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

CC:PA:01
POSTN-131790-13

UILC: 6694.00-00, 6703.03-00

date: September 24, 2013

to: Appeals Technical Specialist
Specialty Operations, Domestic Operations Team 2
(Office of Appeals)

from: Ashton P. Trice
Chief, Branch 2
(Procedure & Administration)

subject: Appeals Allowance of Special Claims for Credit or Refund Following Disallowance

This memorandum responds to your request for assistance dated July 17, 2013. This advice may not be used or cited as precedent.

ISSUES

Whether the Office of Appeals may allow a claim for refund filed under the section 6694(c) or 6703(c) special refund procedures when the Service has denied the claim, and the 30-day window to file suit under those procedures has expired.

CONCLUSIONS

Yes. Appeals may consider and allow a preparer/promoter's special claim for refund after Compliance disallows the claim even if the period to file a refund suit under section 6694(c) and 6703(c) has expired so long as the preparer/promoter still has time remaining to file suit under the section 7422 general refund procedures.

FACTS

You asked us to address the period within which Appeals can allow a credit or refund in the following scenarios:

Scenario 1: Pursuant to section 6694(c), a preparer pays 15 percent of the section 6694 penalty and files a special claim for a refund. Compliance disallows the claim and issues a letter notifying the preparer.

Scenario 2: Pursuant to section 6703(c), a promoter pays 15 percent of the section 6700 or 6701 penalty and files a special claim for refund. Compliance disallows the claim and issues a letter notifying the promoter.

Generally, in each of the scenarios described above, Appeals receives the case after the 30-day period for the preparer/promoter to file suit under the special refund procedures has expired or when there is insufficient time remaining for Appeals to consider the claim prior to the expiration of that period.

LAW AND ANALYSIS

Sections 6694(c) and 6703(c) provide special procedures that allow preparers or promoters to contest penalties under sections 6694, 6700, and 6701. Under these procedures, a preparer/promoter has 30 days after notice and demand to pay at least 15 percent of the penalty and file an administrative claim for refund. I.R.C. §§ 6694(c)(1) and 6703(c)(1). If the Service denies the claim or does not act on it within 6 months, the preparer/promoter may file suit in district court within 30 days of the denial or expiration of the 6 months, whichever is earlier. I.R.C. §§ 6694(c)(2) and 6703(c)(2).

If the preparer/promoter fails to bring suit under the special refund procedures, the preparer/promoter may still follow the general refund procedures and bring suit for refund under section 7422. See *Korobkin v. United States*, 988 F.2d 975, 976 (9th Cir. 1993) (challenge to a section 6700 penalty); *Humphrey v. United States*, 854 F. Supp. 2d 1301, 1305-10 (N.D. Ga. 2011) (same). Under section 6532(a), a preparer/promoter has two years from the date that the Service mails a notice of claim disallowance or the date the preparer/promoter waives the requirement to receive the notice of claim disallowance to file a refund suit under section 7422.

Unless a preparer/promoter timely files suit following an administrative denial of his or her refund claim, section 6514(a)(2) restricts the time within which the Service may allow the claim for credit or refund. Section 6514(a)(2) provides that a refund is “considered erroneous” and a credit is “considered void” if the Service denies a claim for credit or refund and then makes the credit or refund “after the expiration of the period of limitations for filing suit” unless the taxpayer begins suit within that period. As such, section 6514(a)(2) precludes any division of the Service, including Appeals, from allowing a claim for credit or refund after the expiration of the period to file suit.

Section 6514(a)(2), however, does not bar Appeals from considering and allowing a refund after the expiration of the 30-day period to file suit under the special refund procedures. While a preparer/promoter can no longer file suit under the special refund procedures after the 30-day window to file suit has expired, the preparer/promoter may still seek redress under the general refund procedures. See *Humphrey*, 854 F. Supp. 2d, at 1303-05 (holding that the court did not have jurisdiction under section 6703(c) because the taxpayer failed to file suit within the time provided under that section, but

that it had jurisdiction under the general refund procedures). If time still remains for the preparer/promoter to file a refund suit under the general refund procedures, section 6514(a)(2) does not bar allowance of the claim because the period within which the preparer/promoter is permitted to file a refund suit has not expired. Therefore, in the scenarios described above, Appeals may consider and allow the special refund claims so long as the preparer/promoter still has time remaining to file suit under the general refund procedures.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.