

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

CC:PA:02:McLemore  
POSTS-123697-16

UILC: 6611.00-00

date: April 13, 2017

to: Clay Coleman  
Office of Servicewide Interest

from: Pamela Wilson Fuller  
Senior Technician Reviewer  
(Procedure & Administration)

---

subject: Application of section 6611(e)(4)

This advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether the 180-day rule provided in section 6611(e)(4) applies to all overpayments of amounts withheld pursuant to Chapters 3 and 4, including those that arise as a result of NOLs carried back from subsequent tax years.

CONCLUSION

Yes, the 180-day rule provided in section 6611(e)(4) applies to all overpayments of amounts withheld pursuant to Chapters 3 and 4.

LAW AND ANALYSIS

Section 6611(e) limits the amount of interest that accrues on overpayments under three different circumstances. First, section 6611(e)(1) provides that no interest is allowed on an overpayment of tax claimed on a return if, in the case of a timely- or early-filed return, the overpayment is refunded during the 45-day period following the due date of the return or, in the case of a late-filed return, if the overpayment is refunded within 45 days of the date when the return was filed. Next, section 6611(e)(2) provides that, when a taxpayer files a claim for refund and the IRS refunds the overpayment within 45 days of the claim, no interest shall be allowed on the overpayment for a period beginning on the date that the claim for refund was filed. Finally, section 6611(e)(3) provides that, where an IRS-initiated adjustment results in an overpayment, interest on

that overpayment is computed by subtracting 45 days from the number of days for which interest on the overpayment would otherwise be allowed.

Section 6611(e)(4) extends the 45-day periods described in sections 6611(e)(1), (2), and (3) to 180 days “[i]n the case of any overpayment resulting from tax deducted and withheld under chapters 3 or 4.” Chapter 3 of the Code requires withholding of tax on non-resident aliens and foreign corporations, while Chapter 4 of the Code requires withholding on payments to foreign financial institutions and other foreign entities. Your office has requested our advice on whether the extended 180-day period applies to all overpayments of amounts withheld pursuant to Chapters 3 and 4, including those that arise as a result of NOLs carried back from subsequent tax years, or whether there are some overpayments of Chapter 3 and 4 withholding to which the standard 45-day interest suspension period applies.

Section 6611(e)(4) was added to the Code in 2010, as a part of the Hiring Incentives to Restore Employment Act (P.L. 111-147). This same act also added Chapter 4 to the Code. Since its enactment, the IRS has not issued any regulations, revenue rulings, or revenue procedures concerning section 6611(e)(4) and no court has yet considered its scope or meaning. The legislative history of section 6611(e)(4) is also very limited. The only explanation of the new section 6611(e)(4) in the legislative history is the following paragraph, which was included in the Joint Committee on Taxation’s Technical Explanation:

Under the provision, the grace period for which the government is not required to pay interest on an overpayment is increased from 45 days to 180 days for overpayments resulting from excess amounts deducted and withheld under Chapters 3 or 4 of the Code. The increased grace period applies to refunds of withheld taxes with respect to (1) returns due after the date of enactment, (2) claims for refund filed after date of enactment and (3) IRS-initiated adjustments if the refunds are paid after the date of enactment. It is anticipated that the Secretary may specify the proper form and information required for a claim for refund under section 6611(e)(2) and may provide that a purported claim that does not include such information is not considered filed.

Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, the “Hiring Incentives to Restore Employment Act,” Under Consideration by the Senate* (JCX-4-10), Feb. 23, 2010.

The Joint Committee report does not explicitly define when an overpayment would “result from” taxes withheld under Chapter 3 or 4. However, the committee report does state that “[t]he increased grace period applies to refunds of withheld taxes” that are claimed on original or amended returns, or that are issued as a result of an IRS-initiated adjustment. The committee report does not describe any limitations on the extended grace period, or any refunds of Chapter 3 or 4 withholding to which section 6611(e)(4) *does not* apply. This indicates that section 6611(e)(4)’s extended grace period was

intended to apply broadly to *all* overpayments of amounts withheld under Chapters 3 and 4, and not merely some subset of claims for refund of Chapter 3 and 4 withholding.

Further, although the legislative history does not discuss the reason why section 6611(e)(4) was enacted, as TIGTA noted in a 2010 report about the need to improve processes for issuing refunds to nonresident aliens, the IRS requested that the IRS be given 180 days rather than 45 days to process a return without interest in order to give the IRS more time to verify withholding before issuing refunds of amounts reported as having been withheld. Treasury Inspector General for Tax Administration, 2010-40-121, *Improvements Are Needed to Verify Refunds to Nonresident Aliens Before the Refunds Are Sent Out of the United States* (2010). The Joint Committee report also noted, in its more general discussion of refunds and credits of Chapter 3 and 4 withholding, that claims for refunds may be made by nonresident aliens on the basis of a tax treaty. The IRS may need additional time under these circumstances as well, to determine whether any treaty provision entitles the taxpayer to a refund. In addition, the IRS's concern about verifying this withholding before issuing a refund is applicable regardless of the basis for the claim for refund (e.g., an NOL carried back from a subsequent year, deductions in the current year, or income exempted by treaty from U.S. taxation). Accordingly, we conclude that the 180-day rule provided in section 6611(e)(4) applies to all overpayments of amounts withheld pursuant to Chapters 3 and 4.

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) 317-6844 if you have any further questions.