

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

**CC:DOM:IT&A:Br1  
JJMcGreevy FREV-252716-96**

**date: FEB 12 1997**

**to: National Director, Customer Service Operations T:C:O  
Attn: Rose Schulkers**

**from: Senior Technician Reviewer, Branch 1 (Income Tax and  
Accounting) CC:DOM:IT&A:1**

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**subject: Request for opinion Re: IRC 6611(e)(1) and (2)**

This is in response to your memorandum dated November 8, 1996, requesting our assistance in applying the provisions of sections 6611(e)(1) and (e)(2) of the Internal Revenue Code.

**ISSUE**

Whether amended income tax returns, amended non-income tax returns, and IRS-prepared amended returns should be treated as returns for purposes of section 6611(e)(1) of the Internal Revenue Code.

**CONCLUSION**

Original returns prepared by the taxpayer and returns prepared by the IRS are "returns" within the meaning of section 6611(e)(1). Any return filed after the original return is an amended return. An amended return that shows an overpayment is a claim within the meaning of section 6611(e)(2).

**DISCUSSION**

Your memorandum expresses concern that the IRS is needlessly paying as much as 1.45 billion dollars of overpayment interest annually because the IRS treats amended returns showing overpayments as "claims" subject to § 6611(e)(2), rather than as "returns" subject to § 6611(e)(1). Currently, the IRS only treats original returns according to the rule contained in § 6611(e)(1).

Your memorandum cites certain provisions of the Code and the regulations indicating that an amended return is an integral and inseparable part of the taxpayer's return for the tax year and that the regulations appear to confer on amended returns the same legal status and force as the original return. For example, you cite § 301.6211-1(a) of the Regulations on Procedure and

Administration, relating to the definition of a deficiency, which states that "[a]ny amount shown as additional tax on an 'amended return,' so-called...filed after the due date of the return, shall be treated as an amount shown by the taxpayer 'upon his return' for purposes of computing the amount of a deficiency." Also, you cite § 1.6664-2(c)(2) of the Income Tax Regulations, which provides that for purposes of determining the underpayment subject to the accuracy-related penalty, the "amount shown as the tax by the taxpayer on his return" includes an amount shown as additional tax on a qualified amended return. You conclude that original returns and amended returns should be treated as tax returns subject to § 6611(e)(1) since both appear to have the same legal status.

Other authorities, however, support the position that an amended return is separate from the original return. For example, § 301.6402-3(a) of the regulations clearly indicates that a return and an amended return are separate documents. That section provides that a claim for credit or refund shall be made on the appropriate income tax return. In the case of an overpayment of income taxes for which a Form 1040 or Form 1120 has been filed, the claim shall be made on Form 1040X or Form 1120X. In the case of other income taxes for which forms other than Form 1040 and Form 1120 are required, the claim is made on the appropriate amended income tax return. In addition, Rev. Rul. 83-36, 1983-1 C.B. 358, provides that an amended return filed after the due date including extensions is not the return of the taxable year for estimated tax purposes. Finally, § 1.6664-2(c)(2), which you also cite in your memorandum, states that the amount of tax shown on a qualified amended return will not be taken into account if it relates to a fraudulent position on the original return.

The concept of what constitutes an "amended return" is not defined in the Code. However, it is a well-established rule of statutory construction that the words of statutes should be interpreted in their ordinary everyday senses and that the common language and accepted meaning should be given effect. See Hertens Law of Federal Income Taxation §3.32 (1991). The commonly understood definition of the word "amended" indicates that an amended return is a document that follows and changes a return.

For purposes of determining the effect of an amended return for the purpose of computing overpayment interest, it is necessary to interpret the language of the relevant statute in the context of its purpose and legislative history.

Section 6611(b)(1) provides that overpayment interest is allowed and paid, in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken. Section 6611(b)(2) provides that interest is allowed and paid, in the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary)

preceding the date of the refund check by not more than 30 days. Pursuant to § 6611(b)(3), in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13271, 107 Stat. 312, 541 (OBRA 1993), amended § 6611(e) by enacting subsections (e)(1), (e)(2), and (e)(3). Section 6611(e)(1) replaces § 6611(e) as the general 45-day rule and extends its application to all taxes imposed by the Code and not just income taxes as was the case prior to OBRA 1993. Section 6611(e)(1) states:

If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

Section 6611(e)(2), as enacted by OBRA 1993, provides:

If--

(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

The committee report accompanying OBRA 1993 indicates that § 6611(e)(2) is a "parallel rule" that applies to "amended returns and claims for refund" (see H.R. Rep. No. 111, 103d Cong., 1st Sess. 787 (1993)). It is clear from the language of the statute and the committee reports that two rules apply--one to "returns" (§ 6611(e)(1)) and another to "claims" (§ 6611(e)(2)). The committee report indicates that amended returns are covered by § 6611(e)(2), which is consistent with the treatment of an amended income tax return as a claim for the amount of any overpayment shown on the amended return. See § 301.6402-3(a) of the regulations. Therefore, while an original return is a claim if an overpayment is shown on the return, only an amended return or claim filed subsequent to the original return is subject to § 6611(e)(2).

It is a well-established rule of statutory construction that effect must be given to every clause and part of a statute. See Mertens, supra, § 3.38 (1991). Congress clearly intended separate rules to apply to original returns (both timely and late), claims and amended returns (following the original return), and IRS initiated adjustments (e.g., those reflected on Form 870). In our opinion, treating an amended return as the return for interest computation purposes is not consistent with the commonly understood definition of what constitutes an "amended" return. Moreover, treating an amended return as the return for interest computation purposes would not give proper effect to § 6611(e)(2) as it was intended to apply by Congress.

The answers to your questions are as follows:

1. Is an amended income tax return (Form 1040X or Form 1120X) both a tax return and a claim or only a claim?

Answer: An amended tax return is not a return but may be a claim if it reflects an overpayment.

2. If both the original and amended returns are claims as well as returns, should an amended income tax return (Form 1040X or Form 1120X) be treated the same as the original return for purposes of § 6611(e)?

Answer: An original return and an amended return may each be a claim to the extent that either shows an overpayment; however, an amended return and an original return are not both returns because of this common characteristic.

3. Should an amended income tax return (Form 1040X or Form 1120X) be treated as a return under § 6611(e)(1) or should it be treated as a claim under § 6611(e)(2)?

Answer: An amended return reflecting an overpayment is a claim subject to § 6611(e)(2).

4. If an amended income tax return (Form 1040X or Form 1120X) is treated as a return under § 6611(e)(1), should the received date of the original return or the received date of the amended return be used for the starting date of the 45-day period.

Answer: See answer 1.

5. If an amended income tax return (Form 1040X or Form 1120X) is treated as a return under § 6611(e)(1), would the amended return be considered a "late return" as defined by § 6611(b)(3)?

Answer: See answer 1.

6. Is it possible to amend a non-income tax return?

Answer: The rules for amending non-income tax returns are generally governed by the regulations pertaining to the particular tax or, in some cases, may be specified in the forms and instructions pertaining to the particular tax.

7. If it is possible to amend a non-income tax return, can a Form 843 or a Form 8849 be used to amend the non-income tax return?

Answer: Form 843 and Form 8849 are used for filing claims for refund or credit of employment taxes and excise taxes, respectively.

8. If it is possible to amend a non-income tax return with a Form 843 or Form 8849, does the form constitute an amended non-income tax return?

Answer: See answer 7.

9. If it is possible to amend a non-income tax return, but neither Form 843 or Form 8849 can be used as the amended return, what is the proper vehicle for amending the return (what forms or documents), and would the form(s) constitute an amended non-income tax return?

Answer: See answer 7.

10. Can a taxpayer amend an original tax return by signing an agreement to overassessment (with attached tax computations and schedules prepared by the IRS as a result of an examination), or must the taxpayer submit the same information on an amended tax return to amend the original return?

Answer: A Form 870 on which the taxpayer has agreed to an overassessment of tax determined by the Service is considered a valid claim for credit or refund. See Rev. Rul. 68-65, 1968-1 C.B. 555. Section § 6011(e)(3) would generally apply to interest on the overassessment (IRS initiated adjustments). A taxpayer is not required to submit the same information on an amended return requesting a refund.

11. If signing an agreement to overassessment (resulting from an IRS examination) amends an income tax return, does the signed agreement (with attachments) constitute an amended income tax return?

Answer: See answer 10.

12. If signing an agreement to overassessment (resulting from an IRS examination) amends a non-income tax return, does the signed agreement (with attachments) constitute an amended non-income tax return?

Answer: See answer 10.

13. If a signed agreement to overassessment (resulting from an IRS examination) constitutes an amended income tax return, does that amended return have equal standing under the provisions of § 6611(b)(3) and § 6611(e) with a Form 1040X or Form 1120X prepared and filed by the taxpayer with the same information?

Answer: See answer 10. Section 6611(b)(3) applies to late returns. However, the agreement would constitute an IRS initiated adjustment.

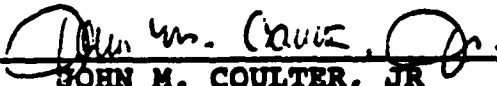
14. If a signed agreement to overassessment (resulting from an IRS examination) constitutes an amended non-income tax return, does that amended return have equal standing under the provisions of § 6611(b)(3) and § 6611(e) with a Form 843 or 8849 prepared and filed by the taxpayer with the same information?

Answer: See answer 10. Overpayments of employment taxes and excise taxes can be claimed through adjustments to subsequent returns that report the taxes, on Form 843 in the case of employment taxes, or on Form 8849 in the case of excise taxes. See § 31.6402(a)-2(a) of the Employment Tax Regulations and the instructions to Form 720. Therefore, a Form 843 or Form 8849 would be considered a claim subject to § 6611(e)(2).

15. If a signed agreement to overassessment (resulting from an IRS examination) constitutes an amended return, would the amended return filing date be the date the taxpayer signed the agreement?

Answer: See answer 10.

If you have any questions regarding this memorandum or would like to meet to discuss our answers to your questions, please contact John McGreevy on 622-4910.

  
JOHN M. COULTER, JR.