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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ROBERT A. WIHL
DIRECTOR, OFFICE OF COLLECTION, SERVICE CENTER
& APPRAISAL SERVICES C:AP:CSC&AS

FROM: Lewis J. Fernandez
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CC:DOM:IT&A

SUBJECT: Request for Clarification of Previous Guidance WTA-N-
108252-97, Memo dated July 7, 1997

This is in response to your inquiry regarding whether § 6621(d) of the Code (enacted by § 3301 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 741), changes the conclusion reached in our memorandum dated July 7, 1997.

ISSUE

Whether § 6621(d) of the Code authorizes the Service to credit an overpayment against a liability that has been satisfied by a payment.

CONCLUSION

An overpayment may not be credited against a liability that has been satisfied by a payment. This conclusion is not changed by § 6621(d).

FACTS

A taxpayer has two open years in Appeals ([REDACTED]). The [REDACTED] tax year (due date [REDACTED]) will result in an underpayment of \$ [REDACTED] . The taxpayer made a payment of \$ [REDACTED] on [REDACTED] . The [REDACTED] tax year (due date [REDACTED]) will result in an overpayment of \$ [REDACTED] . The computation of underpayment and overpayment interest for the two years depends on how the underpayment for [REDACTED] is satisfied.

If the [REDACTED] underpayment is satisfied by the [REDACTED] overpayment, then the \$ [REDACTED] overpayment for [REDACTED] accrues interest from [REDACTED] to [REDACTED]

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The \$ [redacted] overpayment and accrued interest is then applied to the \$ [redacted] underpayment as of [redacted]. Underpayment interest on the excess of \$ [redacted] over the overpayment and accrued interest is calculated from [redacted] to the date paid.

If the [redacted] tax is satisfied by the [redacted] payment, then the \$ [redacted] overpayment for [redacted] accrues interest from [redacted] to the date of refund. Interest will run on the underpayment from [redacted] to [redacted].

DISCUSSION

In our July 7, 1997, memorandum, we note that § 6402(a) permits the Service to credit an overpayment against an outstanding liability for tax. If the liability is satisfied by the application of a credit pursuant to § 6402(a), then § 6601(f) provides that the interest otherwise determined under the rules set forth in § 6601 will not be charged during any period for which overpayment interest would be payable if the credit had not been made (i.e., during the period of mutual indebtedness). This result cannot be achieved merely by treating a previously paid tax liability (i.e., one that is no longer outstanding) as unpaid for interest calculation purposes. That is, credits cannot be allowed as if the overpayment had not previously been refunded and/or the tax liability had not previously been paid. The argument that § 6402(a) provides the Service with the authority to allow such treatment, for the purpose of invoking § 6601(f), was rejected in Northern States Power Co., v. United States, 73 F.3d 764 (8th Cir. 1996), cert. denied, 117 S.Ct. 168 (1996). However, the memorandum also states that the facts and circumstances of each case must be reviewed to determine if a remittance constitutes a payment of tax. See Rev. Proc. 84-58, 1984-2 C.B. 501, which provides guidance in making this determination. If the [redacted] remittance is a payment of tax, then there is no outstanding liability against which to apply an overpayment. However, if the remittance is a deposit, then the deposit could be returned to the taxpayer and the overpayment could be used to satisfy the underpayment.

Section 6621(d) provides that, to the extent that for any period interest is payable under subchapter A (§§ 6601 and 6602) and allowable under subchapter B (§ 6611) on equivalent underpayments and overpayments by the same taxpayer of tax imposed by the Code, the net rate of interest under § 6621 on such amounts is zero for such period.

The legislative history of § 6621(d) states, in part:

...It is anticipated that the Secretary will take into account interest paid on previously determined deficiencies or refunds for the purpose of determining the rate of interest under this provision without regard to

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whether the underpayments or overpayments are currently outstanding. It is also anticipated that where interest is both payable from and allowable to an individual taxpayer for the same period, the Secretary will take all reasonable efforts to offset the liabilities, rather than process them separately using the net interest rate of zero.

H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998).

Section 6621(d) provides relief from the difference in interest rates regardless of whether the underpayments or overpayments are outstanding. Therefore, the taxpayer in the example above will be entitled to relief under § 6621(d) if the remittance made on [REDACTED] is a payment of tax. The net interest rate of zero applies to the equivalent amount of underpayment and overpayment (\$ [REDACTED]) for the period during which interest on the underpayment and overpayment overlapped ([REDACTED]). Our July 7, 1997, memorandum is hereby modified to take into account § 6621(d).

The legislative history cited above does not provide support for a "global netting" approach to interest netting whereby payments would be reversed or otherwise treated as unpaid solely for interest computation purposes. The legislative history indicates only that Congress intended that the Service make all reasonable efforts to offset the liabilities rather than relying solely on § 6621(d). Offsets can occur pursuant to § 6402(a) only if the overpayment and the underpayment are both outstanding. Accordingly, our July 7, 1997, memorandum is not affected by the language of the legislative history that anticipates that the Service will take all reasonable efforts to offset the liabilities.

The result may be the same regardless of the methodology used to avoid the interest rate differential (the offset approach compared to the net interest rate of zero in § 6621(d)) with the exception of the interest-free periods that are not considered in the § 6621(d) computation. [REDACTED]

[REDACTED] If you have any questions regarding this memorandum or would like to meet to discuss the issue in more detail, please contact John McGreevy at 622-7506.

cc: Special Counsel (M&SP)
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