



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT - 7 1999

CC:DOM:IT&A:1AJKeyso
SPR-115271-99

MEMORANDUM FOR INNOCENT SPOUSE PROJECT MANAGER

OP:EX:IS

Attn: Lynne Morrison

FROM:

David B. Auclair *David B. Auclair*
Senior Technician Reviewer, Branch 1 (Income Tax &
Accounting) CC:DOM:IT&A:1

SUBJECT:

Innocent Spouse Memorandum 1999-4: Credit Date for
~~Refund Offsets Under Section 6015~~

This responds to your September 17, 1999, request for our review of Innocent Spouse Memorandum 1999-4. As we discussed during our October 5, 1999, telephone conversation, we suggest several changes to the memorandum.

Section 6015 of the Internal Revenue Code (Code) relieves certain taxpayers from joint and several liability for taxes shown on a joint income tax return. The provisions of § 6015 apply to tax liabilities unpaid as of July 22, 1998, as well as tax liabilities arising after July 22, 1998. Your memorandum addresses a situation where a tax liability is satisfied by a credit of an overpayment shown on the taxpayer's 1997 return. At issue is the date on which the unpaid liability is deemed "paid" by the credit offset.

We previously addressed this issue in a memorandum dated March 4, 1999 (copy attached).¹ In that memorandum, we noted that the courts have long held that an outstanding tax liability is considered paid by a credit on the date the credit is allowed. U.S. v. Swift & Co., 282 U.S. 468 (1930). The Code is consistent, providing in § 7422(d) that for purposes of civil refund actions, the credit of an overpayment of any tax in satisfaction of any tax liability shall be deemed to be a payment in respect of such tax liability at the time such credit is allowed (emphasis added). It is the date on which the credit is "allowed," and not the date on which the clerical bookkeeping entry is made applying the overpayment against the

¹ Our March 4, 1999 memorandum was incorporated into a March 8, 1999, Significant Service Center Advice memorandum issued to the District Counsel, Kentucky-Tennessee District.

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outstanding liability, that the liability is deemed paid. See Rahr Malting Co. v. U.S., 260 F.2d 309 (7th Cir. 1958) ("one would be reluctant to conclude that Congress intended that ministerial or clerical action would be determinative [of the date on which the liability is considered paid]").

Section 6407 of the Code and § 301.6407-1 of the Regulations on Procedure and Administration provide that the date a refund or credit is "allowed" is the date on which the Secretary first authorizes the scheduling of an overassessment in respect of any internal revenue tax. In the context of an overpayment shown by the taxpayer on a valid income tax return, the overpayment is allowed at the time the service center successfully processes the taxpayer's return and schedules the overpayment to the taxpayer's account. We have discussed this issue with Sal Orlando of the Office of the Assistant Commissioner, Systems Development, and it is our understanding that an overpayment shown on a valid return is scheduled to the taxpayer's account on the same date that the tax shown on the return is assessed. According to Mr. Orlando, the date the tax shown on the return is assessed is represented on the taxpayer's transcript of account by the "TC 150" date.

Your memorandum includes an example to demonstrate the date on which an outstanding liability from a 1995 taxable year is deemed paid by the credit of an overpayment shown on a 1997 tax return.

Finally, we note that the first paragraph of your memorandum incorrectly cites § 6015(g)(1) of the Code as authority for the effective date of the new innocent spouse relief provisions. The correct cite is § 3201(g)(1) of the Internal Revenue Service Restructuring and Reform Act of 1998.

If you have any questions regarding this memorandum, please contact Andrew Keyso at 622-4910.

Attachment:

March 4, 1999 Memorandum