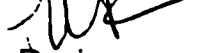


Office of Chief Counsel
Internal Revenue Service
memorandum

UILC: 6611.00-00; 6611.03-00; 6611.04-00

date: JAN - 6 2003

to: Doug H. Rogers
National Director
Office of Interest and Penalty Administration
Small Business/Self-Employed
S:C:CP:RC P C9-156

from: Pamela W. Fuller 
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subject: Payment of Interest on Limited Payability Refunds

This responds to your memorandum dated October 8, 2002. In accordance with I.R.C. § 6110(k)(3), this advice should not be cited as precedent.

ISSUES

- (1) Whether a taxpayer is entitled to additional interest between the issuance of the original refund check and the replacement check when the original check is cancelled pursuant to The Competitive Equality Banking Act of 1987.
- (2) Whether a taxpayer is entitled to additional interest between the issuance of the original refund check and the date of the offset when the original check is cancelled pursuant to The Competitive Equality Banking Act of 1987.
- (3) If the answer to Issues 1 and/or 2 is yes, whether interest should be calculated from the original overpayment date or the date the check was credited back to the taxpayer's account.

CONCLUSIONS

- (1) A taxpayer is not entitled to additional interest between the issuance of the original refund check and the replacement check because the delay in the delivery of the refund check was not due to any fault of the Government.

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- (2) A taxpayer is not entitled to additional interest between the issuance of the original refund check and the date of the offset because the delay in the delivery of the refund was not due to any fault of the Government .
- (3) The answer to Issues 1 and 2 is no; therefore, we need not answer Issue 3.

FACTS

The Competitive Equality Banking Act of 1987, Public L. No. 100-86, established a 12 month time limit on the payment of U.S. Government checks. Consequently, a refund check issued by the Service must be negotiated within 12 months from the original issue date or the check will be cancelled. If the check is cancelled, the refund will be credited back to the taxpayer's tax module. The Service then proceeds as follows: (1) for refunds under \$10, the Service will not take any action unless contacted by the taxpayer; (2) for refunds between \$10 and \$1000, the Service will issue a CP32 notice and a replacement check; and (3) for refunds over \$1000, the Service will issue a CP32A notice and place an "S" freeze on the account. The Service will refund overpayments over \$1000 if the taxpayer contacts the Service. If the taxpayer has an outstanding tax liability for another tax year, the Service may, pursuant to section 6402(a), offset the overpayment against the liability and refund any remaining balance to the taxpayer.

LAW AND ANALYSIS

The government may only pay interest if specifically allowed by a statutory provision. See, U.S. ex. Rel. Angarica v. Bayard, 127 U.S. 251 (1888). Section 6611(a) of the Internal Revenue Code provides, in general, that interest shall be allowed and paid on any overpayment of any internal revenue tax at the overpayment rate established under § 6621.

In the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken. Section 6611(b)(1).

In the case of a refund, interest is paid 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, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon. Section 6611(b)(2).

In Rev. Rul. 76-74, 1976-1 C.B. 388, the Service concluded that no interest is allowed, beyond the date prescribed in section 6611(b)(2) of the Code, when the delay in delivery of the refund check is not due to any fault of the Government. In Rev. Rul. 76-74, the Service set out two examples. In the first example, a refund check made payable to a deceased taxpayer was not negotiated by the decedent's personal representative even though the representative was authorized to negotiate the check. Rev. Rul. 76-74 concluded that no

additional interest was allowable when the representative eventually negotiated the check, because the delay in the delivery of the refund was not due to the Government. See Dresser v. United States, 180 F.2d 410 (10th Cir. 1950). In the second example, the Government, after making reasonable efforts, was unable to deliver a refund check and the check was returned to the Treasurer of the United States. Rev. Rul. 76-74 concluded that no additional interest would be allowable if the Government issued a replacement check, because the delay in the delivery of the refund was not due to the Government.

In Finlen v. United States, 1989 U.S. Dist. LEXIS 10630 (D. Kan. 1989), the court relied on Rev. Rul. 76-74 to hold that the taxpayer was not entitled to additional interest. In Finlen, the Government issued a replacement check when the original refund check was destroyed by the taxpayer who inadvertently placed the refund check in the trash. The court held that the taxpayer was not entitled to additional interest for the period between the issuance of the first and second refund checks, because the delay in the delivery of the refund check was not due to any fault of the Government.

Issue 1

Based on Rev. Rul. 76-74 and Finlen, we conclude that no additional interest is allowable between the issuance of the original refund check and the replacement check when the original check is cancelled pursuant to The Competitive Equality Banking Act of 1987 because the delay in the delivery of the refund check was not due to any fault of the Government.

Issue 2

Based on Rev. Rul. 76-74 and Finlen, we conclude that no additional interest is allowable between the issuance of the original refund check and the date of the offset when the original check is cancelled pursuant to The Competitive Equality Banking Act of 1987 because the delay in the delivery of the refund was not due to any fault of the Government.

Issue 3

The answer to Issues 1 and 2 is no; therefore, we need not answer Issue 3.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.