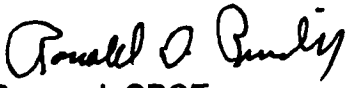


Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:NJRichards

date: APR 26 2005

to: Doug Rogers
Chief, Penalties and Interest
SE:S:E:EP:PI

from: Ronald D. Pinsky 
Assistant Division Counsel, SBSE
CC:SB:ADC:TL

subject: GATT Interest

On February 23, 2005 you wrote the Office of Chief Counsel, SBSE Division Counsel, for advice regarding the application of GATT interest. Your request for advice was coordinated with the National Office, CC:P&A:APJP:B1. This memorandum incorporates their advice in response to your request.

ISSUE

1. Whether the GATT threshold determination process is cumulative or aggregate.
2. What effect a Net Operating Loss (NOL) carryback has on the process.

FACTS

As set forth in your memo: A master file corporate IRS account for tax period 199512 includes a single refund due specifically to the allowance of an NOL carryback in the amount of \$12,000.00. The refund is issued 04/15/1998. The loss year return is 199712; therefore, the effective date of the overpayment is 03/15/1998. A subsequent general adjustment overassessment is determined in the amount of \$5,000.00. The effective date of the subsequent overpayment is 03/15/1996 (due date of the 199512 return), and is scheduled for refund with interest. The interest rate must now be determined.

Law

Effective after December 31, 1994, the General Agreement on Tariffs and Trade (GATT) established a lower credit interest rate for large corporate overpayments. The GATT rate is one and a half points below the normal corporate credit interest rate for overpayments exceeding \$10,000.00 for all business taxpayers with a corporate filing requirement (Forms 1120, 990C, 990T). The reduced GATT rate applies to the excess portion of an overpayment that exceeds the \$10,000.00 threshold. For purposes of

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determining whether the GATT threshold has been exceeded, an accumulative approach is used whereby all overpayments for a particular tax year are added together. General Electric Co. et al. v. United States, 56 Fed. Cl. 488 (2003); IRM 20.2.4.9.2. The effective date of specific overpayments does not change the accumulation.

Conclusion

1. Applying the law to the facts above, the differing effective dates of the two overpayments do not change the result. Once the GATT threshold is satisfied, the lower rate applies regardless of the effective dates. Therefore, the GATT rate would apply to the \$5000 general adjustment in your hypothetical. This position is consistent with our current IRM provision.
2. The General Electric case did not address whether an NOL carryback should be treated differently from an ordinary overpayment. As such, if a taxpayer challenges our application of GATT interest involving an NOL, we suggest formally submitting the issue to the National Office in the form of a TAM. This would give the taxpayer an opportunity to present contrary arguments.

If you have any questions regarding this advice, please feel free to contact Nicholas Richards at (202) 283-0047.