

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

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subject: Credit Interest on Overpayments When Carryback Recaptures Arise

This Chief Counsel Advice responds to your office's request for assistance dated September 12, 2011. This advice may not be used or cited as precedent.

ISSUES

- (1) What is the date to which overpayment interest under I.R.C. § 6611 should be computed when an adjustment is comprised of a general tax overpayment and a carryback recapture.
- (2) Whether the answer to (1) will require the Service to change the procedures found in Internal Revenue Manual sections 20.2.4.6.1, *Interest on Offsets*, and 20.2.9.7.1, *Application of Overpayment*.

CONCLUSIONS

- (1) Determining the date to which overpayment interest under section 6611 will be computed depends on the facts of each situation.
- (2) The procedures found in IRM 20.2.4.6.1 and 20.2.9.7.1, which arise when an overpayment is credited to the liability for another taxable year, are correct and should be relied upon where applicable.

FACTS

PMTA 2012-02

Your inquiry is not case specific. Accordingly, we present two factual scenarios that highlight your questions:

- (A) On March 15, 2010, corporate taxpayer A filed a Form 1139, *Corporate Application for Tentative Refund*, claiming a tentative refund for a net operating loss (NOL) carryback from A's 2009 taxable year to A's 2007 taxable year, resulting in an overpayment of \$20,000 for the 2007 taxable year. On April 15, 2010, the Service issued the \$20,000 refund to A, without paying overpayment interest (due to section 6611(e)(2)).

On August 15, 2011, the entire NOL carryback was disallowed, resulting in a tax increase for the taxable year 2007 of \$20,000. On the same day, the Service determined an overpayment of \$5,000 for the 2007 taxable year (unrelated to the NOL carryback), which was deemed to have arisen on March 15, 2008 (the due date of the 2007 taxable year return). The result was a net tax underpayment of \$15,000.

Should overpayment interest be paid on the \$5,000, and if so, to what date should overpayment interest be computed?

- (B) On March 15, 2010, corporate taxpayer B filed a Form 1139 claiming a tentative refund for a NOL carryback from B's 2009 taxable year to B's 2008 taxable year, resulting in an overpayment of approximately \$5M for the 2008 taxable year. On April 15, 2010, the Service issued the \$5M refund to B, without paying overpayment interest (due to section 6611(e)(2)).

Subsequently, the Service examined B's 2009 return, and disallowed the entire NOL carryback. The Service assessed a tax increase for 2008 in the amount of \$5M.

As part of the same examination, the Service determined a general tax decrease, resulting in an overpayment, for taxable year 2008 in the amount of \$4M (unrelated to the NOL carryback). The overpayment was deemed to have arisen on March 15, 2009 (the due date of the 2008 taxable year return). Also, as part of the examination, the Service allowed an additional carryback of approximately \$1.1M from the 2010 taxable year to the 2008 taxable year. The result was a net overpayment of approximately \$100k.

Should overpayment interest be paid on the \$4M, and if so, to what date should overpayment interest be computed?

LAW AND ANALYSIS

Section 6611(a) provides that interest shall be allowed and paid on any overpayment of an internal revenue tax at the overpayment rate established in section 6621. In both of the scenarios presented, determining the period that overpayment interest should run depends on whether the overpayment is credited or refunded. The Service has the authority to credit any overpayment against any liability and refund the remainder, if any. I.R.C. § 6402(a).

Overpayment interest is paid starting at the date that the overpayment arises, which is the date when a payment or aggregate of payments, when added to any previous payments, is in excess of the tax liability (including interest, additions to tax, or additional amounts). Treas. Reg. § 301.6611-1(b). Any payment made before the last day prescribed for payment that results in an overpayment is treated as having been made on the payment due date. I.R.C. §§ 6513(a) & 6611(d). Section 6611(b) provides the period in which overpayment interest is to be paid. In the case of a credit, overpayment interest is paid from the date of the overpayment to the due date of the amount against which the credit is taken. I.R.C. § 6611(b)(1). Treas. Reg. §§ 301.6611-1(h)(1) & (2) define the due date of the amount against which the credit is taken to mean the last day fixed by law or regulations for the payment of the tax, without regard to any extensions. In the case where an overpayment is refunded, overpayment interest is paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days. I.R.C. § 6611(b)(2) & Treas. Reg. § 301.6611-1(g).

(1) In the first scenario, at the time A filed its 2007 income tax return, there was an overpayment in the amount of \$5,000. Even though the overpayment was not discovered until later, it relates back to the filing date of that return. Any overpayment arising from the 2009 NOL carryback, and any underpayment arising from its subsequent recapture do not relate to the date of the filing of the 2007 return.

The Service has the option to either credit the \$5,000 against the \$20,000 underpayment or to refund the \$5,000 to A.

If the Service credits the \$5,000 against A's \$20,000 underpayment, overpayment interest should be paid to "the due date of the amount against which the credit is taken." However, neither the Code nor the regulations specifically address what that due date is where an NOL carryback is disallowed. Section 6601(d)(1) provides that, in the case of an underpayment that is reduced by a NOL carryback, underpayment interest for the year to which the NOL is carried back runs to the filing date of the taxable year in which the NOL arose. Filing date is defined in section 6611(f)(4)(A), to mean the due date of the taxable year in which the NOL arose, not including any extensions. Similarly, section 6611(f)(1) provides that overpayment interest is not due on an overpayment arising from an NOL prior to the filing date of the taxable year in which the NOL arises. In this case the NOL was not effective, or due, and A did not have an underpayment of \$20,000 until March 15, 2010, the due date of the 2009 return. For the foregoing

reasons, we conclude that here the due date for purposes of 6611(b)(1) is March 15, 2010, the due date of the taxable year in which the NOL arose.

If the Service refunds the \$5,000 to A, section 6611(b)(2) applies. Overpayment interest on A's \$5,000 overpayment runs from the date of the filing of the 2007 income tax return to a date preceding the date of the refund check by not more than 30 days.

Similarly, in the second scenario, at the time B filed its 2008 income tax return, there was an overpayment in the amount of \$4M. Even though the overpayment was not discovered until later, it relates back to the filing date of that return. Any overpayment arising from the 2009 NOL carryback, and any underpayment arising from its subsequent recapture do not relate to the date of the filing of the 2008 return.

The Service may either credit the \$4M against the \$5M underpayment, arising from the NOL recapture, or refund the \$4M to B.

If the Service credits the \$4M overpayment against B's \$5M underpayment, overpayment interest on the \$4M runs to the due date of the liability against which the \$4M is credited. Accordingly, overpayment interest on the \$4M should run to March 15, 2010, the due date of the 2009 return. If the Service then credits the \$1.1M overpayment arising from the carryback from 2010 to 2008, to the remaining \$1M underpayment, no overpayment interest will run on the first \$1M. If the Service refunds the remaining \$100,000 overpayment, overpayment interest will run on the remaining \$100,000 to a date preceding the date of the refund check by not more than 30 days.

If the Service refunds the \$4M to B, section 6611(b)(2) applies. Overpayment interest on B's \$4M overpayment runs from the date of the filing of the 2008 income tax return to a date preceding the date of the refund check by not more than 30 days. Similarly, interest on the \$1.1M overpayment created by the carryback from 2010 to 2008 runs from the date of the filing of the 2010 income tax return to a date preceding the date of the refund check by not more than 30 days.

(2) The answer in (1) is not contradictory to IRM sections 20.2.4.6.1 and 20.2.9.7.1. IRM sections 20.2.4.6.1 and 20.2.9.7.1 could be revised to more explicitly state that they relate to the rules under section 6611(b)(1). But the general rules provided in those IRM sections are applicable depending on the factual scenario.

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Please call (202) 622-4940 if you have any further questions.