

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

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(Technical)

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subject: Period of Disallowance of Overpayment Interest for Form 1042

This Chief Counsel Advice responds to your request for assistance dated November 5, 2012. This advice may not be used or cited as precedent.

ISSUE

Whether the 180-day period provided for in section 6611(e)(4) applies to overpayments reported on a Form 1042.

CONCLUSION

To the extent that the overpayment results from tax withheld under sections 1441 through 1446 or tax paid under section 1451, and not from the tax imposed under section 4989 or the excise tax imposed under section 5000C, the 180-day period applies.

LAW AND ANALYSIS

Section 6611(a) provides that the Service will pay interest on overpayments, at the overpayment rate established under section 6621. If an overpayment is credited against another liability, interest generally 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). If the overpayment is refunded, interest generally 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). Depending on the circumstances, one or more restrictions or exceptions could apply to the period for which overpayment interest is payable.

Sections 6611(e)(1) and (2) provide that, if an overpayment is refunded within 45 days after the last day prescribed for filing the return or 45 days after the day a claim for refund or credit is filed, no overpayment interest is allowed under section 6611(a). Similarly, if a Service-initiated adjustment results in a refund or credit of an overpayment, overpayment interest is computed by subtracting 45 days from the number of days interest would otherwise be allowed. I.R.C. § 6611(e)(3).

In 2010, section 501(b) of the Hiring Incentives to Restore Employment Act, P.L. 111-147, added section 6611(e)(4) to the Code. Section 6611(e)(4) provides that, when an overpayment “results from tax deducted and withheld” under chapter 3 or 4, the periods of disallowance of overpayment interest in sections 6611(e)(1), (2) and (3) are 180 days, rather than 45 days. Chapter 3 of the Internal Revenue Code refers generally to withholding of tax on nonresident aliens and foreign corporations. Chapter 3 correlates generally to sections 1441 through 1464 of the Internal Revenue Code. Chapter 4 refers generally to withholding of tax on certain payments made after December 31, 2013, to foreign financial institutions, other foreign entities, and recalcitrant account holders of participating foreign financial institutions. Chapter 4 correlates generally to sections 1471 through 1474 of the Internal Revenue Code. The current version of Form 1042 does not report the tax liability for amounts withheld under chapter 4 because withholding is not required until after December 31, 2013.

Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, is used by withholding agents to report:

- (1) The tax liability and tax withheld on amounts paid to nonresident alien individuals, foreign partnerships, foreign corporations, foreign estates and foreign trusts under sections 1441 through 1446, including:
 - (a) Distributions of effectively connected income (ECI) made by a publicly traded partnership to its foreign partners under section 1446; and
 - (b) Amounts paid or ECI allocable to foreign private foundations under section 1443;
- (2) The tax liability and tax withheld on interest payments on bonds with a tax-free covenant that were issued before 1934 by a domestic corporation or a resident or nonresident corporation under section 1451. Section 1451 is effective for bonds issued before January 1, 1984; and
- (3) The excise tax imposed on Federal procurement payments received by foreign persons under section 5000C.

Filers of Form 1042 report (to the extent required) the weekly aggregate of the four amounts in the “Record of Federal Tax Liability” section, and the annual aggregate of the four amounts on line 63a. The balance due or overpayment reported on the form is determined by taking into account adjustments, amounts the withholding agent paid by

electronic funds transfer, overpayments for the previous year applied as a credit by the withholding agent, and credits for amounts withheld by other withholding agents.

The amount of tax withheld on income for foreign persons under sections 1441 through 1446, and the amount of tax assumed under section 1451 are chapter 3 taxes. Accordingly, to the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the 180-day period applies. Conversely, the excise tax under section 5000C is not a chapter 3 or 4 tax. To the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the 180-day period does not apply.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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