

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
Nov. 4, 1998

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Case Number:

Number: **199918004**
Release Date: 5/7/1999

UILC: 6621.00-00

MEMORANDUM FOR: District Counsel,

Attn:

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service)

SUBJECT:

Internal Revenue Service National Office Field Service Advice

This Field Service Advice is in response to your communication of July 26, 1998. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be relied upon or otherwise cited as precedent.

LEGEND:

A =

Taxpayers's Representative =

Year X = Date a =

ISSUE:

Whether interest netting under I.R.C. § 6621(d) is available to A under the facts detailed below.

CONCLUSION:

If the periods with respect to the interest on the underpayment and the interest on the overpayment are both open, then I.R.C. § 6621(d) may be applied notwithstanding the advance payment of the year X deficiency.

FACTS:

On date a, this office issued Field Service Advice to the effect that District Counsel could not agree to A's stipulation that overpayments from various and apparently open years be credited against a proposed deficiency for year X. The Field Service Advice, citing Northern States Power Co. v. United States, 73 F.3d 764 (8th Cir.), cert. den. 117 S. Ct. 168 (1996), recommended against the stipulation because the taxpayer had made an advance payment of the X year deficiency and the Service lacked the authority to apply an overpayment against a previously satisfied tax liability. The advice pre-dated the enactment of the interest netting provisions of I.R.C. § 6621(d). A is claiming that I.R.C. § 6621(d) overrides our prior advice.

LAW AND ANALYSIS:

I.R.C. § 6621(d) was added by Pub. L. No. 105-206, the Internal Revenue Restructuring and Reform Act of 1998 (RRA 98), on July 22, 1998. A companion non-Code provision, § 3301(c) of the RRA 98, provided for some retroactive application of § 6621(d). Section 3301(c) was very recently amended by § 4002 (a non-Code provision) of Pub. L. No. 105-277 on October 21, 1998.

The Code provision states:

To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on

such amounts shall be zero for such period.

The uncodified language of Pub. L. No. 105-206 provides at section 3301(c) that I.R.C. § 6621(d) shall apply to interest for periods beginning after the date of the enactment of this Act. However, it also provides that I.R.C. § 6621(d) shall apply to interest for periods beginning before the date of enactment of this Act if the taxpayer reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies and, not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Code to such periods.

H.R. Conf. Rept. No. 599, 105 Cong., 2nd Sess. p. 257, June 24, 1998, states:

It is anticipated that the Secretary will take into account interest paid on previously determined deficiencies or refunds for the purposes of determining the rate of interest under this provision without regard to whether the underpayments or overpayments are currently outstanding.

Applying I.R.C. § 6621(d) and the legislative history of Pub. L. No. 105-206 to the facts of this case, it appears no longer relevant whether the taxpayer's year X liability was previously satisfied by the advance payment. The net interest rate of zero authorized by section I.R.C. § 6621(d) is applicable for the period during which interest is payable under I.R.C. § 6601 and allowable under I.R.C. § 6611 on equivalent amounts of underpayments and overpayments irrespective of whether the overpayment was previously refunded or the underpayment was previously paid (or both).

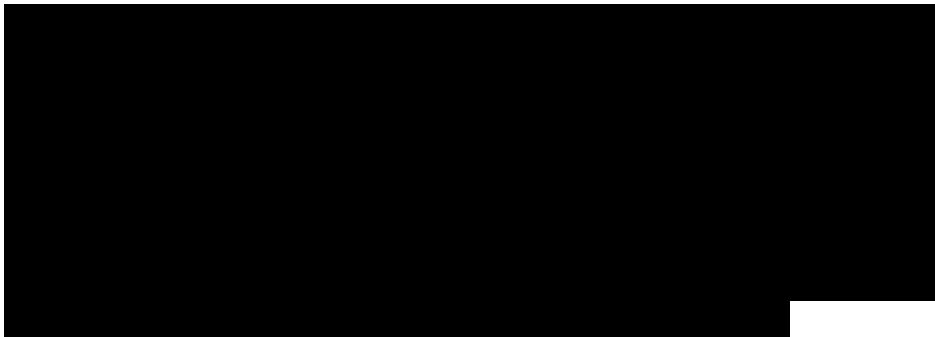
However, § 4002(d) of Pub. L. No. 105-277 limits the retroactive application of I.R.C. § 6621(d) alluded to above. That non-Code provision conditions the retroactive application of interest netting on any applicable statute of limitations not having expired with regard to either a tax underpayment or a tax overpayment.¹

The National Office is currently developing published guidance on the period of limitations considerations of I.R.C. § 6621(d). It is anticipated that such guidance will require that for the underpayment interest and overpayment interest involved in the computation of the net interest rate of zero, the period for refunding the underpayment interest and the period for paying additional overpayment interest must both be open at the time the request for the net

¹ The exact wording of the statute is: "subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments..."

interest rate of zero is made. The period for refunding underpayment interest is set forth in I.R.C. § 6511. Additional overpayment interest can be paid if the period for filing suit under 28 U.S.C. §§ 2401 or 2501 is open. It is not entirely clear from the facts presented respecting A's situation whether the period of limitation is open for both the underpayment interest and the overpayment interest. However, if the periods with respect to the interest on the underpayment and the interest on the overpayment are both open, then I.R.C. § 6621(d) may be applied notwithstanding the advance payment of the X year deficiency.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



If you have any questions, please contact Jim Gibbons at (202) 622-7840.

DEBORAH A. BUTLER

By: SARA M. COE

SARA M. COE
Chief, Procedural Branch
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