



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: David B. Auclair
Senior Technician Reviewer CC:PA:APJP:1

SUBJECT: Interest on Overpayments Credited Against Outstanding Tax
Liabilities

This Field Service Advice responds to your memorandum dated June 9, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

DISCLOSURE STATEMENT

Field Service Advice is Chief Counsel Advice and is open to public inspection pursuant to the provisions of section 6110(i). The provisions of section 6110 require the Service to remove taxpayer identifying information and provide the taxpayer with notice of intention to disclose before it is made available for public inspection. Sec. 6110(c) and (i). Section 6110(i)(3)(B) also authorizes the Service to delete information from Field Service Advice that is protected from disclosure under 5 U.S.C. § 552 (b) and (c) before the document is provided to the taxpayer with notice of intention to disclose. Only the National Office function issuing the Field Service Advice is authorized to make such deletions and to make the redacted document available for public inspection. **Accordingly, the Examination, Appeals, or Counsel recipient of this document may not provide a copy of this unredacted document to the taxpayer or their representative.** The recipient of this document may share this unredacted document only with those persons whose official tax administration duties with respect to the case and the issues discussed in the document require inspection or disclosure of the Field Service Advice.

LEGEND

Taxpayer =
\$a = \$
\$b = \$
\$c = \$
\$d = \$
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =

ISSUE

Whether interest is allowed on the portion of the taxpayer's overpayment of tax for Year 1 and Year 2, credited against its Year 6 tax liability for periods beyond the due date for the Year 6 tax liability.

CONCLUSION

Interest is not allowed on the portion of the taxpayer's overpayments of tax for Year 1 and Year 2, credited against its Year 6 tax liability beyond the due date for the Year 6 tax liability.

FACTS

Taxpayer is a corporation that files its returns based on a calendar year ending on the 31st of December. Taxpayer timely filed its Year 6 return. On February 1, Year 8, the Service issued taxpayer a refund for Year 6 in the amount of \$a. The refund was issued by the Service without interest. On October 11, Year 9, the Service allowed carrybacks from taxpayer's Year 3 and Year 4 returns, which resulted in overpayments for Year 1 and Year 2 in the amounts of \$b and \$c, respectively. On November 23, Year 10, an additional deficiency was assessed for Year 6 in the amount of \$d. The Service credited the Year 1 overpayment and the Year 2 overpayment to satisfy the Year 6 liability.¹ The Year 1 and Year 2 overpayments eliminated the additional deficiency of \$d to the extent that it was caused by the refund of \$a issued on February 1, Year 8.

LAW AND ANALYSIS

Section 6402(a) of the Code authorizes the Secretary to credit, within the applicable period of limitations, an overpayment, including interest allowed thereon, against any liability in respect of an internal revenue tax of the person who made the overpayment. Interest on an overpayment, however, can be paid only to the extent of statutory authority. See *Rosenman v. United States*, 323 U.S. 658, 663 (1945). In the case of an overpayment credited against a tax liability, § 6611(b)(1) provides that interest will be allowed and paid from the date of the overpayment to the "due date" of the amount against which the credit is taken. The term "due date," as used in § 6611(b)(1), means the last day fixed by law or regulations for the payment of the tax determined without regard to any extension of time. See § 301.6611-1(h)(2) of the Procedure and Administration Regulations.

Section 6151(a) provides that a person required to make a return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return determined without regard to any extension of time for filing the return. Returns of corporations under § 6012 (relating to income tax under subtitle A) made on the basis of a calendar year must be filed on or before the 15th day of the third month following the close of the calendar year. See § 6072(b). Accordingly, in this case, the due date of the amount (the underpayment for Year 6) against which the credit was taken (the overpayments for Year 1 and Year 2) is the date for filing the return for Year 6, determined without regard to

¹ The remainder of the Year 6 liability was satisfied by the crediting of overpayments from other prior tax years.

extensions. Interest on the overpayments for Year 1 and Year 2 is not authorized to be paid beyond this date.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

The result in this case does not comport with a pure “use of the money” theory for paying interest as described in court decisions such as Avon Products, Inc. v. United States, 588 F.2d 342 (2nd Cir. 1978) and May Department Stores v. United States, 36 Fed. Cl. 680 (1996). These cases, however, are not controlling for two reasons. First, these cases address the payment of underpayment interest, not overpayment interest. Overpayment interest can be paid only as specifically provided by statute. Further, the statute allowing for the payment of overpayment interest should be read strictly and literally. See Felixson v. United States, 60-1 USTC ¶ 11,930 (S.D. Cal. 1960) (in interpreting the precursor to § 6611, the court held that it was constrained by the plain language of the statute and reached a result contrary to the use of the money principle). Second, the Code has a number of legislated exceptions to the use of the money principle. If these provisions apply, the use of the money principle is overridden. Section 6611 and its supporting regulations explicitly prevent the payment of interest on \$b of the Year 1 overpayment and \$c of the Year 2 overpayment beyond the due date for the Year 6 tax liability.

Please call Branch 1 of the Administrative Provisions and Judicial Practice Division at (202) 622-4910 if you have any further questions.