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INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR: ASSOCIATE AREA COUNSEL, AREA 1
(Large and Mid-Size Businesses)
CC:LM:FSH:HAR
Attn: Carmino J. Santaniello

FROM: Assistant Chief Counsel (Administrative Provisions &
Judicial Practice) CC:PA:APJP

SUBJECT: Statute of Limitations on Claims for Refund

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LEGEND

Taxpayer =

State =

ISSUES

1. Whether Taxpayer filed a timely claim for deficiency interest paid for 1988 in 1989 under section 6601 of the Internal Revenue Code.
2. Whether Taxpayer filed a timely claim for deficiency interest paid for 1989 in 1991 and 1992 under section 6601 of the Code.
3. Whether Taxpayer filed timely claims for overpayment interest under section 6611 of the Code for 1988 and 1989.

CONCLUSIONS

1. Section 6511(b)(1) provides that a refund cannot be allowed unless a timely claim for refund is filed. When an informal claim for refund is timely filed and no final action is taken by the Service on the claim, the taxpayer may amend the claim after the expiration of the refund claim period. However, if the Service allows a refund claim in full, there is no longer any claim left to amend and a purported amendment must be viewed as a new claim for refund. Although the Form 870 executed in 1995 was an informal claim for refund for 1988, the Service allowed that claim in full. Thus, the Form 843 filed in 2000 could not serve as an amendment to that claim. It is therefore an untimely new claim except with respect to the tax, deficiency interest, or penalties, if any, paid within the two-year period ending on the date the Form 843 was filed.
2. It is unclear whether Taxpayer's claim for refund for tax year 1989 filed on Form 843 in 2000 is a valid amendment of a prior claim (the Form 870). The previously filed Form 870 was a timely informal claim. If the subsequently filed Form 843 would not require the investigation of new matters that would not have been disclosed by an investigation of the prior claim, then the Form 843 is a timely amendment of the prior claim.
3. The recovery of overpayment interest under section 6611 is not governed by the rules that apply to tax refund claims. Claims for overpayment interest under section 6611 must be filed within the six-year period beginning on the date the Service authorizes the scheduling of an overassessment. Based on the facts presented, it is unclear when the scheduling of the overassessment occurred, and consequently,

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we cannot determine whether Taxpayer filed a lawsuit or a claim within the six-year period.

FACTS

As a preliminary matter, we note that the present case involves the timeliness of refund claims, not the computation of the amount of the overpaid deficiency interest. We therefore assume for the purposes of this memorandum that Taxpayer overpaid deficiency interest for 1988 and 1989. Because the issues presented do not concern the computation of the overpaid interest, it is not necessary to consider May Department Stores Co. v. United States, 36 Fed. Cl. 680 (1996), acq., 1997-2 C.B. 1, action on decision, 1997-008 (August 4, 1997) and subsequent cases involving this issue.

The 1988 Claim

Taxpayer is a C corporation doing business in State. Taxpayer filed its 1988 Form 1120 on extension in September of 1989. On _____, 1989, the Service assessed the tax of \$ _____ reported on that return. After applying credits totaling \$ _____, Taxpayer elected under the provisions of section 6402(b) to credit the overpayment of income tax in the amount of \$ _____ for 1988 against estimated tax for 1989.

On _____, 1989, Taxpayer remitted a subsequent payment of \$ _____, consisting of tax of \$ _____ and \$ _____ of deficiency interest. Although the precise reason for this payment is unknown, it is believed that it accompanied a Form 1120X filed by Taxpayer on that date.

Following an audit of Taxpayer's 1988 return concluding on _____, 1994, the Service and Taxpayer agreed that Taxpayer had overpaid its 1988 income tax by \$ _____. Based on this amount, Taxpayer was entitled to section 6611 allowable interest of \$ _____. On _____, 1994, the Service issued a refund check to Taxpayer for tax and interest totaling \$ _____.

The Service secured Taxpayer's agreement to an overassessment for tax years 1988 and 1989 on Form 870, entitled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment." Form 870 was signed by Taxpayer on _____, 1995 and received by the Service on _____, 1995. For tax year 1988, Form 870 reflected an overassessment in the amount of \$ _____.

On _____, 1995, the Service issued a second refund check to Taxpayer for \$ _____. This amount consists of _____ in tax attributable to a _____ loss carryback, together with \$ _____ in overpaid tax for 1988. The sum of these

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amounts equals the \$ figure shown on Form 870. In addition, the refund check included statutory interest thereon of \$.

On , 2000,^{1/} Taxpayer filed a Form 843, Claim for Refund, claiming a refund of \$ for tax year 1988 (as of , 2000). According to Taxpayer, the correct section 6601 deficiency interest is \$, which is \$ less than the \$ assessed and paid on , 1989.

The remaining balance of the \$, according to Taxpayer, consists of additional interest under section 6611 totaling \$. It appears that this amount is primarily due to the overpaid deficiency interest of \$. The Support Unit has not examined the accuracy of Taxpayer's claim pending a determination of the timeliness of Taxpayer's claim for overpaid section 6601 deficiency interest.

Taxpayer and the Service entered into several agreements to extend the time to assess the tax (Form 872) for the 1988 tax year. We assume that several valid Forms 872 were executed extending the statute of limitations through , 1996.

The 1989 Claim

Taxpayer timely filed its 1989 Form 1120 on extension on , 1990. On , 1990, the Service assessed the tax of \$ reported on that return. After applying credits totaling \$, Taxpayer elected to apply the overpayment to its 1990 liability (the 1989 credit elect).

The Service secured Taxpayer's agreement to an overassessment for tax years 1988 and 1989 on Form 870, entitled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment." Form 870 was signed by Taxpayer on , 1995 and received by the Service on , 1995. For tax year 1989, Form 870 reflected an overassessment in the amount of \$. This amount was never paid to Taxpayer.

On , 2000, Taxpayer filed a separate Form 843 for 1989, claiming a refund of \$ for that year. The \$ consists of overcharged section 6601 deficiency interest of \$ (which was paid in 1991 and 1992) and \$ of underpaid section 6611 allowable interest due to Taxpayer as of , 2000.

^{1/} Although Taxpayer's cover letter is dated , 2000, it was received by the Service on , 2000.

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Taxpayer and the Service entered into several agreements to extend the time to assess the tax (Form 872) for the 1989 tax year. We assume that several valid Forms 872 were executed extending the statute of limitations through , 1996.

LAW AND ANALYSIS FOR ISSUES 1 AND 2

Section 6402(a) of the Internal Revenue Code authorizes the Secretary of the Treasury to make refunds when a taxpayer overpays taxes. The regulations on Procedure and Administration under section 6402 provide that “refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable, unless, before the expiration of such period, a claim therefor has been filed by the taxpayer.” Treas. Reg. § 301.6402-2(a)(1).

The period of limitation for claiming a refund of underpayment interest that was previously collected from the taxpayer is governed by section 6511. I.R.C. § 6601(e)(1) (references to “tax” include section 6601 interest); see also Alexander Proudfoot Co. v. United States, 454 F.2d 1379, 1382 (Ct. Cl. 1972) (interest is deemed an integral part of the tax and an interest demand should be governed by section 6511 in the same manner as a claim for the tax itself). Section 6511(a) provides that a claim for credit or refund of an overpayment of any tax in respect of which the taxpayer is required to file a return shall be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later, or if no return is filed by the taxpayer, within two years from the time the tax was paid. Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in section 6511(a), unless a claim for credit or refund is filed by the taxpayer within such period.

When a taxpayer and the Service agree to extend the time for assessment, the taxpayer is entitled to an equal extension of the time within which to file a claim for refund. Section 6511(c)(1) provides that the period within which the taxpayer may file a claim for refund arising from the tax liability covered by the extension agreement is extended for the period of the extension plus an additional six months. For both the 1988 and 1989 Claims, the extensions were valid through , 1996. Consequently, the period within which Taxpayer could file a claim for refund did not expire until , 1997, six months after the expiration of the extension agreement.

There are several requirements that must be fulfilled for a document to constitute a formal claim for refund. In particular,

the claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis

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thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury.

Treas. Reg. § 301.6402-2(b)(1).

As a general rule, a claim for refund of an overpayment of income taxes shall be made on the appropriate income tax return. Treas. Reg. § 301.6402-3(a)(1). However, it is well-established that a failure to meet the formal requirements in regard to claims for refund is not necessarily destructive of a taxpayer's right to a refund where the Commissioner was not misled or deceived by the failure to file a formal claim. Newton v. United States, 163 F.Supp. 614, 618 (Ct. Cl. 1958) (citing Bonwit Teller & Co. v. United States, 283 U.S. 258 (1931)). In regard to informal claims, the Supreme Court has stated the following:

A notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim, where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period.

United States v. Kales, 314 U.S. 186, 194 (1941) (citing United States v. Memphis Cotton Oil Co., 288 U.S. 62 (1933)).

In applying the elements of the informal claim theory, the Court of Appeals for the Fifth Circuit has indicated that "there can be no doubt that [the] filing of the Form 870 constituted a claim for refund." Bauer v. United States, 594 F.2d 44, 47 (5th Cir. 1979), aff'd 449 F.Supp. 755 (W.D. La. 1978). Moreover, the Service has stated that it will accept a timely executed Form 870, Waiver of Restrictions on Assessment, showing an overassessment, as a valid claim for refund. Rev. Rul. 68-65, 1968-1 C.B. 555. The grounds upon which the overassessment was determined by the Service are considered the basis of the claim. Id. Moreover, the instructions to Form 870 provide that "[w]e will consider this waiver a valid claim for refund or credit of any overpayment due you resulting from any decrease in tax and penalties shown above, provided you sign and file it within the period established by law for making such a claim." Thus, the Form 870 executed in this case constitutes an informal claim for refund for the 1988 and 1989 tax years, as it shows an overassessment for each year. It is clear that the Service waived the formal requirements of a refund claim with respect to the 1988 claim, as evidenced by the fact the Service issued a refund of \$ _____, the precise amount shown on Form 870.

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The period in which to file claims for refund for both 1988 and 1989 did not expire until _____, 1997. Thus, the Form 870 was a timely filed informal claim for refund for tax years 1988 and 1989 because it was executed in 1995.

The defects of an informal claim for refund can be cured by amendment and the two claims become merged into a single and indivisible claim, “the new indissolubly welded into the structure of the old.” Memphis Cotton Oil Co., 288 U.S. at 71, aff’g 59 F.2d 276 (Ct. Cl. 1932). The amendment to the informal claim may be filed after the lapse of the statutory period. Kales, 314 U.S. at 194.

Two considerations are relevant in determining whether a supplemental claim for refund is considered an amendment to the original claim, rather than an untimely new claim. If these two requirements are satisfied, there is no specific time period within which a supplemental claim must be filed. First, the supplemental claim will not be considered an amendment to the original claim if it would require the investigation of new matters that would not have been disclosed by the investigation of the original claim. United States v. Andrews, 302 U.S. 517, 524-26 (1938); Pink v. United States, 105 F.2d 183, 187 (2d Cir. 1939). Such a supplemental claim is a new claim, rather than an amendment to the existing timely claim. The policy ground for not allowing time-barred claims that vary from timely claims is that “[t]he Commissioner does not possess the time or resources to perform extensive investigations into the precise reasons and facts supporting every taxpayer’s claim for refund.” Stoller v. United States, 444 F.2d 1391, 1393 (5th Cir. 1971).

Second, a supplemental claim will not generally be considered an amendment if the Service took final action on the original claim by either rejecting or allowing the claim in whole or in part. In either case, the supplemental claim is untimely because once the Service has taken final action on the original claim, there is no longer any claim left to amend. Mondschein v. United States, 338 F.Supp. 786 (E.D.N.Y. 1971), aff’d, 469 F.2d 1394 (2d Cir. 1973); Clement v. United States, 405 F.2d 703 (1st Cir. 1969); Edwards v. Malley, 109 F.2d 640 (1st Cir. 1940), aff’g 38-1 U.S.T.C. (CCH) ¶ 9026 (D. Mass. 1937); New York Trust Co. v. United States, 87 F.2d 889 (2d Cir. 1937), aff’g 14 F.Supp. 1012 (S.D.N.Y. 1936).

There are certain narrow exceptions to the rule concerning final action by the Service. First, the Service’s disallowance of a claim will not constitute final action by the Service if the Service did not fully consider all grounds for the refund. Bemis Bro. Bag Co. v. United States, 289 U.S. 28 (1933). In Bemis Bros. Bag Co., the Service denied a claim for refund by rejecting one of the three grounds stated in the claim, while overlooking two independent grounds for the claim. Id. at 31-32. The taxpayer then submitted an amended claim, reiterating the grounds stated in the original claim. The Supreme Court held that the claim as amended was timely.

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Second, the Service's allowance of a refund claim will not constitute final action by the Service in the following unusual circumstances: (1) the overpayment amount stated in the original claim was improperly computed; (2) the Service had sufficient information to compute the correct amount of the overpayment but failed to do so; (3) the Service issued a refund for the full amount stated in the refund claim; and (4) the taxpayer submitted a supplemental claim to correct the computational error and obtain an additional refund after the statute of limitations for claiming the refund had expired. Mutual Assurance, Inc. v. United States, 56 F.3d 1353 (11th Cir. 1995), action on decision, 1999-014 (October 12, 1999). In Mutual Assurance, Inc., the original claim for refund contained a computational error, which was not corrected by the Service when processing the claim. The Service issued a full refund and did not discover the mistake until after the statute of limitations for filing a claim for refund had expired. The taxpayer then filed an informal claim for refund, requesting the amount due as a result of the miscalculation. The Court of Appeals for the Eleventh Circuit held that the supplemental claim for the amount due as a result of the miscalculation was a timely amendment, rather than a new claim barred by the statute of limitations. Id.

In this case, the Form 843 for tax year 1988 filed on _____, 2000, is not an amendment to the informal claim filed on _____, 1995 (the Form 870) because the Service took final action on the informal claim by issuing the refund check in the exact amount shown on the Form 870. In this regard, "[a]llowance of a specific claim and payment of the full sum claimed must be deemed final action thereon, leaving nothing pending for subsequent amendment." New York Trust Co., 87 F.2d at 891. It is our understanding that there was no other pending claim that could be amended by the filing of Form 843.

We believe the decision in Mutual Assurance, Inc. is not applicable to the 1988 Claim for several reasons. First, the Service disagrees with the conclusion and rationale of that case as indicated by the action on decision in the opinion noted above. Thus, the Service will follow Mutual Assurance, Inc. only in cases that would be appealable to the Court of Appeals for the Eleventh Circuit. Second, Mutual Assurance, Inc. involved an unusual situation in which the original claim provided the Service with all the information needed to compute the correct amount of the refund. By contrast, there is no evidence that the overpayment amount stated in the Form 870 was improperly computed or that given the available information, the Service could have computed the correct amount of the overpayment. Thus, the limited circumstances in which Mutual Assurance, Inc. can be applied were not present in this case. Consequently, by taking final action with respect to Form 870, there was no longer any claim left to amend. Accordingly, the Form 843 is not a timely amendment to the Form 870 for tax year 1988.

In contrast to the 1988 Claim, there was no final action by the Service on the overassessment for 1989 reported on Form 870. Thus, the Form 843 filed on _____

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, 2000, for tax year 1989 may be a permissible amendment to the timely filed informal claim for refund. Resolution of this issue depends on whether the Service's consideration of the Form 843 would require the investigation of new matters that would not have been disclosed by the investigation of the original claim. United States v. Andrews, *supra*. This is an issue that cannot be resolved based on the facts presented because we do not have detailed information as to the factual and legal grounds on which the Service computed the overassessment shown on the Form 870. Thus, we cannot determine the extent of the variance between the grounds for the informal claim (Form 870) and the grounds for the formal claim (Form 843).

Assuming the Form 843 is a valid amendment of the informal claim, section 6511(c) must be considered in determining the amount of the allowable refund. Because Taxpayer and the Service entered into an agreement under section 6501(c)(4) to extend the time for assessment, section 6511(c) limits the amount of the refund to: (1) the portion of the tax paid after the execution of the extension agreement and before the filing of the claim; plus (2) the portion of the tax recoverable under the rules pursuant to section 6511(b)(2) if the claim had been filed on the date the agreement to extend the time for assessment was executed. See also Treas. Reg. § 301.6511(c)-1(c)(1).

LAW AND ANALYSIS FOR ISSUE 3

The period of limitation for claiming overpayment interest (*i.e.*, interest computed under section 6611) is not found in the Internal Revenue Code. Instead, Title 28 of the United States Code governs claims for overpayment interest, and a suit for overpayment interest must be commenced within 6 years from the date the right of action first accrues. 28 U.S.C. §§ 2401, 2501. A cause of action for overpayment interest first accrues on the date the related credit or refund is allowed. Barnes v. United States, 137 F.Supp. 716 (Ct. Cl. 1956), *cert. denied*, 351 U.S. 933 (1956). That date is the date the Service authorizes the scheduling of an overassessment. I.R.C. § 6407; see also General Instrument Corp. v. United States, 33 Fed. Cl. 4 (1995).

In the present situation, the Service determined that Taxpayer overpaid its 1988 income tax and was entitled to section 6611 overpayment interest. On , 1994, the Service issued a refund check to Taxpayer for tax and overpayment interest. However, the date of the refund check is probably not the date on which the Service authorized the scheduling of the overassessment. Taxpayer has six years from the latter date to file a timely lawsuit to recover statutory interest. If neither a lawsuit nor a claim was filed within the six-year period, no overpayment interest may be paid to Taxpayer.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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This memorandum only addresses statute of limitations issues. We cannot determine whether any underpayment interest or overpayment interest calculations are correct. Please contact this office if you need information as to the impact of May Department Stores Co. v. United States, 36 Fed. Cl. 680 (1996), action on decision, 1997-008 (August 4, 1997) on the computation of underpayment interest.

Also, we note that Treas. Reg. § 301.6611-1(g) provides that if an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date that precedes the date of the refund check by 30 days or less. This language suggests that no overpayment interest accrues on an overpayment (or portion thereof) that was not refunded and that is not refundable because the refund claim was untimely under section 6511. We raise this point because of the possibility that the six-year statute of limitations applicable to overpayment interest may not have run for one or both years, but the statute of limitations (section 6511) applicable to the overpaid tax or overpaid deficiency interest may have run. While a technical advice memorandum cannot be cited as precedent, Tech. Adv. Memo. 9643001 (June 19, 1996) and the court cases cited therein involving this issue may be of interest to you. We do not reach any conclusion on this issue but feel compelled to raise it because it may be relevant if the statute of limitations for claiming overpayment interest has not expired.

It is our belief that because Taxpayer's claim for refund for tax year 1988 was time-barred, Taxpayer's claim for section 6611 interest relating to that claim should also be barred; however, no definite conclusion has been reached in this regard. With regard to Taxpayer's claim for section 6611 interest for tax year 1989, we cannot determine at this time whether Taxpayer's claim should prevail. To the extent Form 843 is found to be an untimely amendment of the prior claim filed on Form 870, Taxpayer's claim for section 6611 interest for tax year 1989 should also be barred, but no definitive conclusion has been reached.

If you have questions, please contact Susan L. Hartford at (202) 622-4940.

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