

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

October 11, 2001

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Index (UIL) No.: 6015.00-00
CASE MIS No.: TAM-131759-01/CC:PA:APJP:1
SBSE/Compliance Policy
Area 8

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Taxpayer =
Year 1 =
Year 2 =
Year 3 =
Date 1 =
Date 2 =
Date 3 =
\$a =

ISSUE: For purposes of a claim for equitable relief under section 6015(f) of the Internal Revenue Code, was the Taxpayer's outstanding tax liability for Year 1 paid on or before April 15 of Year 3?

CONCLUSION: Under the facts set forth below, the Year 1 liability was not paid on or before April 15 of Year 3.

FACTS:

The Service informed the Taxpayer in a final notice dated Date 1 that Taxpayer was entitled to equitable relief under section 6015(f) regarding a joint liability on the Year 1 return Taxpayer filed with Taxpayer's then spouse. The notice stated in relevant part that if the Taxpayer had already paid the liability, equitable relief would only apply if payment occurred between July 22, 1998 and April 15, 1999.

TAM-131759-01

The Taxpayer timely filed a Year 2 individual federal income tax return; this return was received by the Service on Date 2. The Year 2 return reflected an overpayment of \$a. Specifically, this amount was attributable to withheld income tax and to an earned income tax credit.

The Service processed the Taxpayer's Year 2 return after April 15 of Year 3. Pursuant to this processing, the Service on or after Date 3 authorized the Year 2 overpayment to be credited against the Year 1 liability. The Year 2 overpayment was applied in full toward the Year 1 liability.

LAW AND ANALYSIS:

Section 6015 generally provides that individuals who have filed joint returns may, if eligible, elect to be relieved from liability under section 6015(b) (available to all joint filers) and section 6015(c) (available to joint filers who are no longer married, legally separated, or no longer living together). In addition, taxpayers who have filed joint returns may request equitable relief from joint and several liability under section 6015(f).

Section 6015(g) provides, in part, that credit or refund shall be allowed or made to the extent attributable to the application of section 6015. Section 6015(g) further provides that refunds are not authorized under section 6015(c).

Section 3201(g) of the IRS Restructuring and Reform Act of 1998, Pub. L 105-206 (July 22, 1998), provides in part that the provisions of section 6015 apply to liabilities arising before July 22, 1998 that remain unpaid as of that date.

Section 6401(b)(1) provides that if the amount allowable as refundable credits exceeds the tax imposed by subtitle A, then the amount of such excess shall be considered an overpayment.

Section 6402(a) provides, in part, that in the case of any overpayment the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment.

Generally, an overpayment is treated as arising on the date on which the tax payments first exceed the correct tax liability for the year. Section 301.6611-1(b) of the Regulations on Procedure and Administration provides as follows:

Except as provided in section 6401(a), relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which

TAM-131759-01

(when added to previous payments) is in excess of the tax liability ... and the dates of payment of all amounts subsequently paid with respect to such tax liability....

For purposes of applying this regulation, section 301.6611-1(d) provides that the provisions of section 6513(b) (treating wage withholding during a taxable year as a “tax payment” on April 15 of the following year) shall apply in determining the date of an overpayment for purposes of computing interest thereon.

As noted above, the Taxpayer’s overpayment for Year 2 was credited in full toward payment of the Taxpayer’s Year 1 tax liability. The Taxpayer now asserts, based on entitlement to equitable relief for Year 1, that the Year 2 overpayment should be refunded to the Taxpayer. The Taxpayer seeks a refund of \$a, i.e., the portion of the Year 1 liability offset when the Year 2 overpayment was credited toward that liability. The Service has stated that a taxpayer may be granted relief under section 6015(f) for tax liabilities that have been paid, but only if payment occurs between July 22, 1998 and April 15, 1999. Rev. Proc. 2000-15, 2000-5 I.R.B. 447. The Taxpayer in the present case is in fact seeking relief for a liability that has been paid, namely the \$a in Year 1 liability paid via application of the Year 2 overpayment. Therefore, unless that sum of \$a was paid between July 22, 1998 and April 15, 1999, it cannot be refunded to the Taxpayer under section 6015(f).

The courts have long held that an outstanding tax liability is considered paid by a credit on the date the credit is allowed. *United States v. Swift & Co.*, 282 U.S. 468 (1931). The Code is consistent, providing in section 7422(d) that for purposes of civil refund actions, the credit of an overpayment of any tax in satisfaction of any tax liability shall be deemed to be a payment in respect of such tax liability at the time such credit is allowed. Similarly, section 6407 provides that a credit is “allowed” on the date on which the Secretary first authorizes the scheduling of an overassessment in respect of any internal revenue tax.

In the present case, there is no basis for concluding that the Service “allowed” or “authorized” the crediting of the Year 2 overpayment to the Year 1 liability before April 15 of Year 3. No processing of the Year 2 return occurred until after April 15 of Year 3. That is, the Service did not even enter the numbers shown on the Year 2 return onto a tape or any other recordkeeping system until after April 15 of Year 3. Absent any processing of the return, the Service cannot be viewed as allowing to the Taxpayer a credit for an overpayment shown on that return. It was not until Date 3 that the Service certified in writing that the Taxpayer had overpaid the Taxpayer’s income tax liability for Year 2.

Section 6402 and the underlying regulations authorize the Service to credit an overpayment against an earlier year’s deficiency, as it did in the present case after April 15 of Year 3. Section 6402(a) provides in relevant part as follows:

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest

TAM-131759-01

allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment....

The regulations under section 6402 provide that when the Service determines that the payments by a taxpayer exceed the tax shown on the return, the Service “may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund”. See section 301.6402-4 of the Procedure and Administration Regulations. Until it processes a return, the Service cannot be realistically viewed as determining that an overpayment exists. Once the Service makes such a determination, the regulation quoted above allows it to credit the overpayment to an earlier year. No processing occurred in the present case by April 15 of Year 3. It follows that no determination of an overpayment and no authorization for the crediting of that overpayment to Year 1 took place by that date. Accordingly, under *Swift & Co.*, the payment of \$a toward Taxpayer’s Year 1 liability by application of the Year 2 overpayment did not occur by April 15 of Year 3. Revenue Procedure 2000-15 therefore precludes a claim under section 6015(f) for refund of that amount.

The Supreme Court recently held that for purposes of the ceiling imposed by section 6511(b)(2)(A) on overpayment refunds or credits, estimated tax payments and wage withholding are “paid” on the due date of the taxpayer’s income tax return. *Baral v. United States*, 528 U.S. 431 (2000). The Court based this conclusion on section 6513(b)(1) and (2). These provisions state that for purposes of section 6511 or 6512, income tax withheld from wages and estimated tax payments are considered paid on the due date of the return for the year to which such remittances relate. *Baral* did not involve the use of an overpayment to offset tax liability from a previous year. The Court, therefore, had no occasion to address the issue of when a prior year’s liability is “paid” by application of an overpayment, and *Baral* is not controlling in the present case. Section 6513(b)(which the Court relied upon in *Baral*) treats wage withholding and estimated taxes as “paid” on the due date of the return only for certain limited purposes not at issue in the present case.

A recent decision by the Court of Federal Claims provides guidance for a situation such as that of the Taxpayer. See *Donahue v. United States*, 33 Fed. Cl. 600, 95-2 U.S.T.C. (CCH) ¶ 50,390 (1995). In *Donahue*, the Service applied a taxpayer’s 1988 overpayment against his outstanding tax liability for 1985. The taxpayer filed his 1988 return in June of 1989, but the Service did not credit the 1988 overpayment to the 1985 liability until July 31, 1989. *Id.* at 89,214. The Court held that the taxpayer “paid” his 1985 liability on the date (July 31, 1989) that the Service credited the 1988 overpayment to 1985. *Id.* at 89,215. The Court in *Donahue*, therefore, looked not to the return filing date to set the “payment date” for the 1985 liability, but to a date that followed successful processing of the return.

Neither party in *Donahue* specifically argued that the return filing date should constitute the payment date for the 1985 tax liability. The Government argued for July 31, 1989 and the

TAM-131759-01

taxpayer argued that the payment occurred in 1991, after the Government completed its audit of the taxpayer's 1988 return. Nevertheless, the Court's conclusion that the payment occurred upon the Service's crediting of the overpayment to the earlier year was not dicta, and provides guidance in situations such as the present case. As noted above, it follows from the regulations under section 6402 (quoted extensively in *Donahue*) that "payment" of a prior year's liability with a current year overpayment cannot occur before processing of the current year return. No such processing occurred in the present case on or before April 15 of Year 3.

The Service's transcripts of the taxpayer's account contain a number of references to April 15 of Year 3 in the context of the Year 2 overpayment and the Year 1 liability. Some of these references signify that interest on the Year 1 liability will stop running on April 15 of Year 3 to the extent that liability was satisfied by the Year 2 overpayment. None of the transcript references, however, indicate that the Service allowed a credit for the Year 2 overpayment on or before April 15 of Year 3.

Based upon the circumstances described above, the payment of \$a toward the Taxpayer's Year 1 liability did not occur between July 22, 1998 and April 15, 1999. Accordingly, the Taxpayer is not entitled to a refund of that amount under section 6015(f).

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.