



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

OFFICE OF  
CHIEF COUNSEL

June 6, 2002

Number: **200237001**  
Release Date: 9/13/2002  
CC:PA:APJP:B02  
GL-110724-02

UILC: 6511.00-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SBSE)  
CC:SB:7:SJ  
ATTN: TRENT D. USITALO

FROM: Ashton P. Trice  
Senior Technician Reviewer  
CC:PA:APJP:B2

SUBJECT: Estate of Taxpayer

This Chief Counsel Advice responds to your memorandum dated March 14, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer =	Date 8 =
Date 1 =	A = \$
Date 2 =	B=\$
Date 3 =	C = \$
Date 4 =	D =
Date 5 =	
Date 6 =	
Date 7 =	

## ISSUE

Whether the surplus proceeds remaining after the Internal Revenue Service's administrative sale of the taxpayer's property may be remitted to the taxpayer's estate as a return of a deposit.

## CONCLUSION

Under the unusual facts of this case, the surplus proceeds became a deposit that may be remitted to the taxpayer's estate, without interest.

## FACTS

On Date 1, the Internal Revenue Service (Service) assessed an individual income tax liability in the amount of \$A against Taxpayer (taxpayer) for the taxable year Date 2.

On Date 3, the Service sold the taxpayer's real property, which had been seized in Date 4, for the sum of \$ B. After deducting accrued penalties, accrued interest, and expenses, there was a surplus of \$ C. The Service informed the taxpayer that he was legally entitled to the surplus and recommended that he file a claim for the funds, but the taxpayer refused to file a claim for it because he believed the proceeds were the work of the devil. Although the statement suggests that the taxpayer may have been incompetent, the taxpayer was later judged to be competent at a competency hearing brought by his ex-wife.

Subsequently, the taxpayer changed his mind. He retained an attorney in Date 5 to obtain the surplus proceeds. The taxpayer's attorney wrote to the Service, asking how he could file a claim for refund on behalf of the taxpayer. The Service replied to none of the letters. On or about Date 6, the taxpayer's attorney wrote to Senator D and inquired about a refund. The Senator referred the inquiry to the Service. The attorney then advised the Service that he no longer represented the taxpayer. Later, the Service determined that the taxpayer waited too long to file a claim for refund of the surplus proceeds. The period of limitations under section 6511 of the Internal Revenue Code for filing the claim expired in Date 7, two years after the property was sold. Notwithstanding the untimeliness of any refund claim, the Service concluded that the surplus proceeds should be treated as a deposit rather than as an overpayment.

To return the deposit, the Service unsuccessfully attempted to contact the taxpayer, who by then was living in homeless shelters and had no permanent address. Because of the inability to locate the taxpayer, the surplus proceeds were never returned to him. On Date 8, the taxpayer died. Subsequently, the executor of the taxpayer's estate filed a Claim for Refund and Request for Abatement in the amount of \$ C.

## LAW AND ANALYSIS

When the proceeds generated by an involuntary sale exceed the liability, the surplus proceeds constitute an overpayment under section 6401(a). Section 6402 provides that the Service may refund an overpayment within the period of limitations set out in section 6511. The Service may return surplus proceeds to a taxpayer without the taxpayer's having filed a claim or application under section 6342(b). The language in section 6402, however, is permissive and the Service is not required to make the refund.

In this case, the Service did not unilaterally refund the overpayment to the taxpayer. Instead, the Service suggested to the taxpayer that he timely file a refund claim, which he never did. Essentially, the taxpayer chose to leave the money with the Service. At that point, the funds were no longer in any sense a "payment of taxes." In essence, the taxpayer voluntarily deposited the funds with the Service, without designation of the purpose or the account. Thus, at that time, the funds could no longer be characterized as an overpayment and, instead, had to be treated as a deposit. Deposits do not accrue any interest, and are not subject to the section 6511 statute of limitations. Accordingly, the Service should remit the funds to the executor as a return of a deposit, but not pay any interest on the deposit.

As an aside, we note that this case is not one to which section 6511(h) applies. See United States v. Brockamp, 519 U. S. 347 (1997). When RRA 1998 added section 6511(h), which suspends the running of the limitation period to make refund claims when an individual experiences certain physical or mental impairment, Congress provided that the new amendment would not apply to any refund claim which was barred as of July 22, 1998. Because the taxpayer's refund claim in this case would have been barred long before July 22, 1998, the taxpayer would not be entitled to relief under section 6511(h).

If you have any questions, please call us at (202)622-8445.