

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: July 12, 2004

to: Ivan E. Beattie
Dallas Appeals Office

from: Tiffany P. Smith
Assistant to the Branch Chief, Administrative Provisions & Judicial Practice, Branch 1
(Procedure & Administration)

subject: Cash Bonds

This Chief Counsel Advice responds to your request for assistance dated March 26, 2004. This advice may not be used or cited as precedent.

LEGEND

Taxpayer

Year 1

Year 2

Year 3

Year 5

Year 7

\$a

\$b

\$c

\$d

\$e

\$f

\$g

\$h

\$i

ISSUES

- 1) The taxpayer makes a deposit in the nature of a cash bond for a particular tax year in anticipation of a deficiency to be determined. The Service later assesses a deficiency, plus interest, that is less than the cash bond deposit. At the taxpayer's request, the remaining amount of the cash bond is moved to another taxable year. Does the remaining amount of the cash bond retain the original remittance date in the new taxable year in which it is placed?
- 2) Does the answer to Issue 1 change if the cash bond deposit date is a date earlier than the filing date (either unextended due date or actual filing date) of the return for the tax year to which the taxpayer has requested that the remaining amount of the cash bond be moved?
- 3) The taxpayer makes a deposit in the nature of a cash bond for a particular tax year in anticipation of a deficiency to be determined. The Service later assesses a deficiency, plus interest. The Service converts some or all of the cash bond into a payment of tax and applies it to the deficiency, plus interest. The taxpayer subsequently litigates issues (some or all of which produced some or all of the deficiency determined). The taxpayer prevails with regard to some of the original deficiency such that a refund of tax and deficiency interest is required. Can the refund regain its status as a cash bond? If the answer is yes, does the amount of that refund regain its original remittance date?

FACTS

Issue 1

The Service sent Taxpayer a 30-day letter showing a proposed deficiency of \$a for Year 1. Taxpayer received the 30-day letter on June 15, Year 5. In response, Taxpayer remitted \$b on June 30, Year 5. Taxpayer specifically requested, in writing, that the remittance be treated as a deposit in the nature of a cash bond. On January 31, Year 7, Taxpayer consented to the assessment of a deficiency in the amount of \$c and underpayment interest in the amount of \$d. The Service converted \$e of the cash bond to a payment of tax on January 31, Year 7. Taxpayer submitted an additional request, in writing, that the remaining \$f be applied as a cash bond to Year 2. In addition, Taxpayer requested that \$f retain the deposit date of June 30, Year 5.

Issue 2

The facts are the same as Issue 1 except, Taxpayer submitted an additional request, in writing, that the remaining \$f be applied as a cash bond to Year 7. In addition, Taxpayer requested that \$f retain the deposit date of June 30, Year 5.

Issue 3

The facts are the same as Issue 1 except, after consenting to the assessment, Taxpayer filed a refund suit in the United States Court of Federal Claims. The court determined that the Year 1 tax liability was \$g and the underpayment interest was \$h. As a result, the court concluded that Taxpayer was entitled to a refund of \$i, plus overpayment interest. Taxpayer requested that the Service not issue a refund for \$i, but rather apply it as a deposit in the nature of a cash bond to Year 3. In addition, Taxpayer requested that the cash bond retain the original deposit date of June 30, Year 5.

LAW AND ANALYSIS

Rev. Proc. 84-58, 1984-2 C.B. 501, provides the Service's procedures for determining whether a remittance constitutes a payment of tax or a deposit in the nature of a cash bond. Section 4.02(1) of Rev. Proc. 84-58 provides that a remittance made before the mailing of a notice of deficiency that is designated by the taxpayer in writing as a deposit in the nature of a cash bond will be treated as such by the Service. Section 4.02(2) provides that upon completion of an examination, if a taxpayer who has made a deposit executes a waiver of restrictions on assessment and collection of the deficiency or otherwise agrees to the full amount of the deficiency, an assessment will be made and any deposit will be applied against the assessed liability as a payment of tax as of the date the assessment was made. Section 4.02(4) provides that a taxpayer may elect to have a deposit in the nature of a cash bond that exceeds the amount of tax ultimately determined to be due applied against another assessed or unassessed liability, subject to the provisions of subparagraph 1 of this section. Thus, a taxpayer under examination for several different years may request that a deposit made for one year be applied to another year. Such requests must be in writing and must be directed to the same office with which the original deposit was made.

Issue 1

In Issue 1, Taxpayer remitted \$b after receiving a 30-day letter. Taxpayer requested, in writing, that the remittance be treated as a deposit in the nature of a cash bond. Eventually, Taxpayer consented to the assessment of a deficiency in the amount of \$c and underpayment interest in the amount of \$d. The Service converted \$e of the cash bond to a payment of tax on January 31, Year 7. Taxpayer requested, also in writing, that the Service apply the remaining \$f as a cash bond to Year 2.

Pursuant to section 4.02 of Rev. Proc. 84-58, the Service treated the \$b remittance as a cash bond. Taxpayer, pursuant to section 4.02, requested that the Service transfer the remaining \$f to Year 2, and the Service complied. Because \$f was not needed to satisfy the assessed liability, it retains its original status as a cash bond. As a result, \$f retains the original remittance date of June 30, Year 5.

Issue 2

In Issue 2, Taxpayer remitted \$b after receiving a 30-day letter. Taxpayer requested, in writing, that the remittance be treated as a deposit in the nature of a cash bond.

Eventually, Taxpayer consented to the assessment of a deficiency in the amount of \$c and underpayment interest in the amount of \$d. The Service converted \$e of the cash bond to a payment of tax on January 31, Year 7. Taxpayer requested, also in writing, that the Service apply the remaining \$f as a cash bond to Year 7.

Pursuant to section 4.02 of Rev. Proc. 84-58, the Service treated the \$b remittance as a cash bond. Taxpayer, pursuant to section 4.02, requested that the Service transfer the remaining \$f to Year 7, and the Service complied. Because \$f was not needed to satisfy the assessed liability, it retains its original status as a cash bond. As a result, \$f retains the original remittance date of June 30, Year 5. The fact that the cash bond deposit date is earlier than the filing date of the return for Year 7 is irrelevant.

Issue 3

In Issue 3, Taxpayer remitted \$b after receiving a 30-day letter. Taxpayer requested, in writing, that the remittance be treated as a deposit in the nature of a cash bond. Eventually, Taxpayer consented to the assessment of a deficiency in the amount of \$c and underpayment interest in the amount of \$d. The Service converted \$e of the cash bond to a payment of tax on January 31, Year 7. The Service, pursuant to Taxpayer's written request applied the remaining \$f as a cash bond to Year 2. After consenting to the assessment, Taxpayer filed a refund suit in the United States Court of Federal Claims. The court determined that the Year 1 tax liability was \$g and the underpayment interest was \$h. As a result, the court concluded that Taxpayer was entitled to a refund of \$i, plus overpayment interest. Taxpayer requested that the Service not issue a refund for the \$i, but rather apply it as a deposit in the nature of a cash bond to Year 3.

In this case, the Service complied with Taxpayer's request and applied \$e of the cash bond as a payment of tax to Year 1 and the remaining \$f as a cash bond to Year 2. Once \$e was converted to a payment of tax, it ceased being a cash bond. As a result, \$i cannot regain its original status as a cash bond with the remittance date of June 30, Year 5. Taxpayer; however, may request, pursuant to the procedures of Rev. Proc. 84-58, that \$i be treated as a deposit in the nature of a cash bond with the refund date as the remittance date.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.