



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

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR: Area Counsel (SBSE), AREA 2

FROM: James C. Gibbons
Chief, Branch 1
Administrative Provisions and
Judicial Practice
CC:PA:APJP:1

SUBJECT: Section 6015(f) Claim

This Chief Counsel Advice responds to your memorandum dated August 10, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

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

ISSUES

1. Whether the Service abused its discretion in limiting refunds to a specific period provided under Rev. Proc. 2000-15, 2000-5 I.R.B. 447.
2. For purposes of a claim for equitable relief under section 6015(f) of the Internal Revenue Code, was an outstanding tax liability for Year 1 paid on or before April 15 of Year 3?

CONCLUSIONS

1. The Service did not abuse its discretion in establishing the refund period under Rev. Proc. 2000-15 as commencing on July 22, 1998 and ending on April 15, 1999, as the "window period" for refunds.

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

FACTS

The Taxpayer and the Taxpayer's then spouse filed a joint income tax return for Year 1. They failed to pay the full amount of tax reflected on the return. The Taxpayer timely filed a Year 2 individual federal income tax return. The Year 2 return reflected an overpayment of \$a. This amount was attributable at least in part to withheld income tax.

The Service processed the Taxpayer's Year 2 return after April 15 of Year 3, as indicated by the transcript of the Taxpayer's account. Pursuant to this processing, the Service on or after Date 1 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.

The Taxpayer asserts that the Taxpayer should be entitled to equitable relief for Year 1 pursuant to section 6015(f). The Taxpayer therefore seeks, among other things, a refund of \$a. As noted above, \$a was a Year 2 overpayment credited to Year 1 to offset a portion of Taxpayer's Year 1 liability. You have asked whether the payment of \$a toward the Year 1 liability occurred on or before April 15 of Year 3, for purposes of Revenue Procedure 2000-15 (described below). You have also asked whether Revenue Procedure 2000-15 is consistent with applicable law.

LAW AND ANALYSIS

Section 6015 generally provides that individuals who have filed joint returns may request relief from joint and several 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 (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.

1. The Service did not abuse its discretion with regard to the “window period” established in Rev. Proc. 2000-15.

Section 6015(f) confers broad discretion upon the Commissioner to grant equitable relief, based on all the facts and circumstances in cases where relief is unavailable under section 6015(b) or (c). Congress placed no objective limitations on this grant of authority. However, sound tax administration requires that some objective and judgmental limitations be applied to the exercise of this authority to ensure fairness and consistency of taxpayer treatment.

As directed by section 6015(f), the Secretary has prescribed procedures to use when determining whether a taxpayer qualifies for equitable relief in Rev. Proc. 2000-15. It provides the conditions under which relief under section 6015(f) will ordinarily be granted and, for all other circumstances, a partial list of factors to be considered in determining whether it would be inequitable under section 6015(f) to hold a requesting spouse liable. Rev. Proc. 2000-15 gives taxpayers guidance on when equitable relief is appropriate and provides Service employees with standards to follow in an effort to ensure that the agency exercises its discretion consistently.

Section 4.01(4) of Rev. Proc. 2000-15 provides that requests for equitable relief under section 6015(f) will generally be granted only if the taxpayer’s liability remains unpaid. One exception to this provision is that relief will be available even if the liability has been paid, but only if payment occurs between July 22, 1998 and April 15, 1999 (the window period). This enabled taxpayers to obtain a refund of those amounts paid before guidance in Notice 98-61 was issued on the subject.

April 15, 1999 was selected as the ending date because it provided a reasonable period of time after guidance was issued to put taxpayers on notice that the Service would not be issuing refunds generally for relief granted under section 6015(f).

Rev. Proc. 2000-15 also carves out a second exception for a refund of amounts paid pursuant to an installment agreement after a claim for relief was filed. The Service and the Department of Treasury wanted to encourage taxpayers who have entered into installment agreements to continue making installment payments so as to avoid a default. Therefore, spouses who receive relief under section 6015(f) will be able to receive refunds for installment payments made under an installment agreement following the date of their request for relief. However, this exception only applies if the taxpayer is not in default under his or her installment agreement.

If the requesting spouse's claim for relief does not fit within one of these two exceptions, then he or she will not receive a refund of amounts paid, if relief is granted. Refunds pursuant to installment agreements are not relevant in the present case.

The Secretary published guidance regarding the window period in Notice 98-61, 1998-2 C.B. 758. In Notice 98-61, the Service and Department of Treasury requested comments from the public regarding the interim guidelines. No comments were received. Rev. Proc. 2000-15 finalized the procedures that were outlined in Notice 98-61 with very few changes to its provisions.

The Tax Court reviews the Service's determination of relief pursuant to section 6015(f) under an abuse of discretion standard. See Butler v. Commissioner, 114 T.C. 276, 292 (2000). The Tax Court has stated that there exists a strong presumption that the actions of an administrative agency are subject to judicial review. See Mailman v. Commissioner, 91 T.C. 1079, 1083 (1988); Estate of Gardner v. Commissioner, 82 T.C. 989, 1000 (1984). Whether the Commissioner has abused his discretion is a question of fact. See Hospital Corp. of Am. v. Commissioner, 81 T.C. 520, 594 (1983); Foster v. Commissioner, 80 T.C. 34, 160, 178 (1983), aff'd in part and rev'd in part on another ground, 756 F.2d 1430 (9th Cir. 1985). The court must examine all of the facts and circumstances to determine this.

The Tax Court in Pacific First Federal Savings v. Commissioner, 101 T.C. 117, 121 (1993), described the following approach for questions involving abuse of discretion:

In reviewing the Commissioner's actions . . . we do not substitute our judgment for the Commissioner's nor do we permit taxpayers to carry their burden of proof by a mere preponderance of the evidence. Taxpayers are required to clearly show that the Commissioner's action was arbitrary, capricious, or without sound basis in fact.

The Service did not abuse its discretion in providing guidance in Rev. Proc. 2000-15 regarding refunds. The window period allotted a reasonable amount of time to put taxpayers on notice that generally refunds would not be granted under section 6015 (f).

2. The payment of \$a toward the Taxpayer's liability for Year 1 occurred after April 15 of Year 3.

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 asserts under section 6015(f) 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 "scheduled" 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. The Taxpayer's transcript of account indicates that it was not until Date 1 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 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.

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 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.

You note that the Taxpayer’s transcript describes a transfer in Year 3 of the Year 2 overpayment to Year 1. The transcript does not state, however, that this transfer occurred on or before April 15 of Year 3; the cycle date for the transfer instead indicates that it took place after that date. 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 or scheduled 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).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



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Please call if you have any further questions.