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Cc:

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[Check out TAM 200303012; I found the following language helpful:](#)

ANALYSIS

An Unused Credit Elect is a Payment Against the Succeeding Year's Income Tax
In Avon and May Department Stores, the courts relied on the "use of money" principle to hold that deficiency interest can only be charged when a tax is both due and unpaid. The Service adopted this principle in Rev. Rul. 99-40, and, consequently, will only compute interest on a subsequently determined deficiency that is equal to or less than the overpayment from the date or dates that the overpayment is applied to the succeeding year's estimated taxes, because on that date the deficiency becomes both due and unpaid. Rev. Rul. 99-40 did not address the issue of when interest begins to accrue when a credit elect is made under section 6402(b) but the taxpayer makes sufficient payments to satisfy the estimated tax liability in its succeeding year. However, pursuant to section 6513(d), an overpayment that is credited to the succeeding year's estimated taxes is considered a payment of the *income tax* for the succeeding taxable year whether or not claimed as a credit. Thus, the issue becomes on what date is an unused credit elect applied as a payment of income tax for the succeeding year.

Section 6513(b)(2) provides that any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return). Therefore, in accordance with sections 6513(b)(2) and 6513(d), a credit elect is treated as a payment against the succeeding year's income tax as of the due date of that year's return. In addition, the credit elect amount will constitute an overpayment for the succeeding year regardless of whether taxpayer had a tax liability. See section 6401(c). Furthermore, pursuant to section 6611(d), the credit is applied to the succeeding year's liability as of the due date for purposes of determining interest. Whether the taxpayer chooses to obtain a refund or again applies the overpayment as an interest-free credit to the succeeding year's tax is discretionary. In either case, the credit is no longer in the account for the year the payments were actually made, and, therefore, cannot be used to determine whether that account's taxes are due and unpaid. Accordingly, the Service loses the use of the taxpayer's money in the account for which the payments were made on the due date of

the succeeding year's income tax return. To the extent the credit results in an overpayment of the succeeding year's tax liability that overpayment is only relevant if an underpayment determined for the succeeding year. Thus, pursuant to Rev. Rul. 99-40, the Service will compute interest on a subsequently determined deficiency starting on the due date of the succeeding year's return.

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