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**From:**

**Sent:** Thursday, February 14, 2013 5:33 PM

**To:**

**Cc:**

**Subject:** Section 6603 RSED Issue

Hi

You asked us when the refund period of limitations begins to run when a section 6603 deposit is converted to pay a tax liability. We agree with your conclusion - the refund period of limitations starts when the section 6603 deposit is converted to pay a tax. As the Sixth Circuit noted recently, “to defined ‘overpayment’ with any precision also requires defining ‘payment.’” *Ford Motor Co. v. United States*, 2012 WL 6579598 at 9 (6th Cir. Dec. 17, 2012). In order to determine the correct RSED under section 6511 for refund of an overpayment, then, it is necessary to first determine the date of payment. In the section 6603 context at issue in this case, Congress was helpful enough to address this explicitly - in a section headed “Deposits are not payments of tax” it stated that “A deposit is not a payment of tax prior to the time the deposit amount is used to pay a tax.” H.R. Rep. No. 108-755, at 649 (2004) (Conf. Rep.). Further, as you noted, section 4.02(1) of Rev. Proc. 2005-18 states that “Upon completion of an examination ... an assessment will be made and any deposit will be applied against the assessed liability as a payment of tax...” (emphasis added). Finally section 6.01 titled “Request for return of a deposit made pursuant to section 6603” states that “A deposit...is not subject to a claim for credit or refund as an overpayment until the deposit is applied by the Service as payment of an assessed tax of the taxpayer.” Only at the point of payment does the deposit become “subject to a claim for credit or refund as an overpayment” and thus the RSED that comes with such payment.