

Office of Chief Counsel
Internal Revenue Service

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memorandum

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AJPfalzgraf/TL-N-3445-98

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to: Associate District Counsel, Salt Lake City CC:WR:RMD:SLC

from: Assistant Chief Counsel (Income Tax & Accounting) CC:DOM:IT&A

subject: Significant Service Center Advice Request
Refund Claims on Returns with Deferred Payments for 1993

This responds to your request for Significant Advice, electronically mailed to the National Office on May 14, 1998, in connection with a question posed by the Ogden Service Center.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issue

Whether a claim for refund is timely when filed within two years of the third installment payment of "additional 1993 taxes" that the taxpayer made pursuant to § 13201(d) of the Omnibus Budget Reconciliation Act of 1993 [hereinafter "the Act"], 1993-3 C.B. 47.

Conclusion

A claim for refund is timely if it is filed within three years of the date the 1993 return was filed, or within two years from the date on which the taxes were paid, including installment payments.

Facts

The following example illustrates the above issue:

On April 15, 1994, a taxpayer filed a 1993 Form 1040 reporting a tax liability of \$110,000 and a withholding credit of \$125,000. The taxpayer's pre-Act liability was \$98,000, and additional 1993 taxes were owed in the amount of \$12,000 due to the Act. The taxpayer reported a deferral amount of \$8,000 on line 58b of a Form 1040 and attached a Form 8841 showing his election to defer payment of the \$8,000. The taxpayer also requested a refund of \$23,000 on his 1993 return. That amount was later refunded to the taxpayer.

The taxpayer made his second installment payment of \$4,000 on April 17, 1995, and his third installment payment of \$4,000 on April 15, 1996. On December 1, 1997, the taxpayer filed an amended 1993 return requesting a refund of \$500 attributable to a previously unclaimed child care credit.

Discussion

Sections 13201 and 13202 of the Act imposed a tax rate increase for 1993 on high-income taxpayers. Under § 13201(d)(1) of the Act, taxpayers could elect to pay their "additional 1993 taxes," which is the tax increase attributable to the increase in rates, in three equal installments.

Section 13201(d)(2) of the Act provides that the first installment of additional 1993 taxes shall be paid on or before the due date of the Federal tax return for the taxpayer's taxable year beginning in 1993, determined without regard to extensions. Section 13201(d)(2) of the Act further provides that the second installment shall be paid on or before the date one year after that due date, and the third installment shall be paid on or before the date two years after that due date.

The election to defer payments of additional 1993 taxes was required to be made on the taxpayer's original return for the taxable year beginning in 1993 filed by the due date of the return, determined with regard to extensions. Sec. 13201(d)(6) of the Act; Notice 93-51, 1993-2 C.B. 337. To make the election, a taxpayer had to attach to Form 1040 (or Form 1040NR) a completed Form 8841, Deferral of Additional 1993 Taxes. Notice 93-51, 1993-2 C.B. 337. The Form 8841 assisted the taxpayer in calculating the additional 1993 taxes that may be deferred. The deferral amount calculated on the Form 8851 was to be entered on line 58b of the taxpayer's 1993 Form 1040.

When processing the 1993 returns, the Service assessed the full amount of the tax due for the 1993 tax year. The deferral payments were treated as credits, coded as TC 766 to identify the

credit as a 1993 deferral of tax. This coding made it appear as if the account was fully paid. However, when an installment payment was credited to a taxpayer's account, the TC 766 code credit was reversed to prevent the taxpayer from being issued a refund of the installment payment.

Section 6511 of the Internal Revenue Code [hereinafter "the Code"] establishes the basic rules for the time within which a claim for credit or refund must be filed and places limits on the amount of credit or refund. Section 6511(b)(1) of the Code provides that "no credit or refund shall be allowed or made after the expiration of the period of limitations prescribed . . . unless a claim for credit or refund is filed by the taxpayer within such period." Section 6511(a) of the Code provides that a claim for credit or refund must be made "within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid."

Section 6511(b)(2) of the Code provides the look-back periods limiting the amount of credit or refund: (A) if the claim was filed within three years from the time the return was filed, the refund shall not exceed the portion of the tax paid in the three-year period immediately prior to the filing of the claim, plus the period of any extension of time for filing; (B) if the claim was not filed within the three-year period, then the refund shall not exceed the portion of the tax paid during the two years immediately prior to the filing of the claim; or (C) if no claim was filed, the refund shall not exceed the amount which would be allowable in either (A) or (B), if the claim was filed on the date the credit or refund is allowed.

In the above example, the claim for refund was filed more than three years after the return was filed, making inapplicable the three-year limitations period of § 6511(a) of the Code. Therefore, the taxpayer's claim in the above example is timely if the claim was filed within "2 years from the time the tax was paid." Whether the claim is timely turns on whether the installment payments authorized by § 13201(d) of the Act are payments within the meaning of § 6511 of the Code.

The Supreme Court in Rosenman provided the basis for determining whether a remittance by a taxpayer is a payment of tax. Rosenman v. U.S., 323 U.S. 658 (1945). Although Rosenman was a case in which a taxpayer had made a pre-assessment remittance which raised the question of whether the remittance was a deposit or a payment, we believe that the principles established in that case are applicable here. Rosenman established that a remittance by a taxpayer is a payment where (1) a liability has been defined, and (2) the taxpayer intends to

discharge that defined liability. Rosenman v. U.S., 323 U.S. at 662; see also Oureshi v. IRS, 75 F.3d 494, 496-497 (9th Cir. 1996) (remittances to Service as a result of the levies on taxpayer's wages and bank account were amounts collected to discharge taxpayer's finally determined tax liability and thus, were payments triggering the § 6511 statute of limitations).

In the case of deferred payments under § 13201(d) of the Act, the liability is defined upon the filing of the 1993 return on which the taxpayer made the deferral election. A taxpayer making such a deferral election does not intend to discharge that defined liability, however, until the second and third installment payments are made. In the above example, this intent is evidenced by the deferral election on Form 8841 and the taxpayer's request for a refund on his 1993 return. Therefore, the installment payments authorized by § 13201(d) of the Act are payments within the meaning of § 6511 of the Code. Accordingly, a claim for refund filed within two years after the installment payments were made is timely.

Our conclusion is supported by the language of the Act itself which refers to installments as payments. Sec. 13201(d) of the Act. Further, Service guidance interpreting § 13201(d) of the Act treats the second and third installments as payments, providing that if a taxpayer electing the three-year deferral fails to pay by the installment due date, that taxpayer may be liable for interest and the failure to pay penalty. Notice 93-51, 1993-2 C.B. 337; Rev. Proc. 94-58, 1994-2 C.B. 745.

The election under § 13201(d) of the Act is analogous to the election provided by § 6166 of the Code for an extension of time to pay estate taxes. Section 6166 of the Code provides that where an estate consists largely of interest in a closely held business, the estate tax may be deferred and paid in installments. In cases applying § 6511 of the Code to installment payments under § 6166 of the Code, courts have held that the estate tax is not fully paid until the last installment of the deferred payment is made and thus, the limitations period for filing a claim for refund remains open until the last installment is paid and for two years thereafter. Axtell v. U.S., 860 F. Supp. 795, 798-799 (D. Wyo. 1994); see also Estate of Bailly, 81 T.C. 246, 253 (1983) (stating "no statute of limitations problem can arise with earlier payments since no overpayment can occur until the final installment [of the deferred tax liability] is paid").

Having established with respect to the above example that the claim for refund was timely filed within "2 years from the time the tax was paid," it follows that the two-year look-back period of § 6511(b)(2)(B) of the Code applies to limit the refund amount. Accordingly, the taxpayer in the above example would be

limited to a refund of the amounts paid within the two years prior to the December 1, 1997, filing of the refund claim, in this case \$4,000. Thus, the taxpayer would be entitled to a refund of \$500 attributable to a previously unclaimed child care credit.

If you have any questions or comments regarding this matter, please call Amy Pfalzgraf at (202) 622-4930.

Assistant Chief Counsel
(Income Tax & Accounting)

By /s/
MICHAEL D. FINLEY

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