

Office of Chief Counsel
Internal Revenue Service

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memorandum

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SPShepherd TL-N-5148-98

date: OCT 21 1998

to: Assistant District Counsel, Kansas-Missouri District

from: Assistant Chief Counsel (Income Tax & Accounting)

subject: Significant Service Center Advice Regarding Refund from Adjustments to Balance Due Returns

This responds to your request for significant service center advice dated July 23, 1998, regarding the application of section 6611(e)(3) of the Code to the computation of interest on tax refunds.

Disclosure Statement

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ISSUES

1. Is interest on a tax refund computed under section 6611(e)(1) or section 6611(e)(3) of the Code if the tax return shows a balance due, but the Service issues a refund because the taxpayer made an error or errors on the return which the Service corrects?
2. Is interest on a tax refund computed under section 6611(e)(1) of the Code, section 6611(e)(3) of the Code, or both sections, if a return is filed claiming a refund, and the Service determines that the taxpayer is entitled to a larger refund than the amount claimed on the return?
3. In the case of a tax refund resulting from a Service-initiated adjustment under section 6611(e)(3) of the Code, does the interest-free period under section 6611(e)(3) include the interest-free period under section 6611(b)(2)?

CONCLUSIONS

1. Interest on the refund is computed under section 6611(e)(3) of the Code.
2. Both sections 6611(e)(1) and 6611(e)(3) of the Code apply. The former section applies to the amount claimed as a refund on the return. The latter section applies to the additional amount that the Service determines is payable to the taxpayer.
3. The interest-free period under section 6611(e)(3) does not include the interest-free period under section 6611(b)(2). The two interest-free periods run consecutively, rather than concurrently. Under current administrative practice, the total interest-free period is 58 days for individuals and 54 days for corporations.

DISCUSSION

Section 6611(a) of the Code provides, in general, that interest is paid on any overpayment of any internal revenue tax at the overpayment rate established under section 6621.

Section 6611(b)(2) of the Code provides that in the case of a refund, interest is paid from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days. Under current administrative practice, the interest-free period is 13 days if the refund is payable to an individual, and 9 days if the refund is payable to a corporation. The interest-free period prescribed under 6611(b)(2) allows the Service to compute interest due at a fixed point in time, and then process the refund check without additional interest accruing before the taxpayer receives the check. See Godfrey v. U.S., 997 F.2d 335, 337 (7th Cir. 1993).

Section 6611(e)(1) provides that no overpayment interest will be paid if the overpayment is refunded within 45 days after the last date prescribed for filing the return (determined without regard to any extension of time for filing the return) or, if the return is filed after such last date, the refund is made within 45 days after the return is filed.

Section 6611(e)(2) provides that if the taxpayer files a claim for a credit or refund for any overpayment of tax, and such overpayment is refunded within 45 days after the filing date of the claim, no overpayment interest is paid from the filing date of the claim until the refund date.

Section 6611(e)(3) provides that if an adjustment initiated by the Service results in a refund or credit of an overpayment, overpayment interest will be computed by subtracting 45 days from the number of days interest is otherwise allowed under section 6611.

Section 13271 of the Revenue Reconciliation Act of 1993 (OBRA) amended section 6611(e) by enacting subsections (e)(1), (e)(2), and (e)(3). The purpose of the amendment was to provide parallel rules applicable to all tax refunds whether arising

from an original tax return, an amended return or claim for refund, or a Service-initiated adjustment. In determining whether subsection (e)(1), (e)(2), or (e)(3) applies, the source or origin of the refund must be determined. If a refund arises from an original return, section 6611(e)(1) applies. If the refund arises from a Service-initiated adjustment, section 6611(e)(3) applies. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 699 (1993).

ISSUE 1

If a return is filed showing a balance due, but a refund is paid because the taxpayer made an error or errors on the return which the Service corrects, the refund arises from action initiated by the Service, rather than from the filing of the return. The computation of the interest is therefore governed by section 6611(e)(3).

ISSUE 2

This issue may be illustrated by an example in which the return claims a \$1000 refund and the Service determines that the taxpayer is entitled to a \$1700 refund, which is \$700 more than the amount claimed on the return. Section 6611(e)(1) applies to the amount claimed on the return (\$1000) and section 6611(e)(3) applies to the additional amount payable to the taxpayer as determined by the Service (\$700). It would be improper to apply section 6611(e)(1) or section 6611(e)(3) to the entire \$1700 refund. The \$1700 refund arises, in part, from the filing of the return and, in part, from action initiated by the Service.

ISSUE 3

If a refund arises from a Service-initiated adjustment under section 6611(e)(3), overpayment interest is computed by subtracting 45 days from the number of days interest "would otherwise be allowed" with respect to the overpayment. This language indicates that the section 6611(e)(3) interest-free period and the section 6611(b)(2) interest-free period operate independently of each other. Therefore, the interest free-period of section 6611(b)(2) is not subsumed into the larger interest-free period under section 6611(e)(3), and the two interest-free periods run consecutively rather than concurrently. Thus, under current administrative practice, the total interest-free period for a Service-initiated adjustment would be 58 days for individuals ($58 = 45 + 13$) and 54 days for corporations ($54 = 45 + 9$).

If you have any questions regarding this memorandum, please call Sara Shepherd at 622-4910.

JODY J. BREWSTER

By: /s/
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Chief, Branch 1

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