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**From:** [REDACTED]

**Sent:** Wednesday, June 21, 2017 1:51:46 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** FW: 6402 question

Hi [REDACTED]. We agree with the technical advisor's statement that since the \$ overpayment for [REDACTED] was designated as a credit elect, it is then considered an estimated tax payment for the next year. IRC 6402(b) and Treas. Reg. 301.6402-3(a)(5).

As to the \$ [REDACTED] payment made with the Form 4868 in connection with the extension of time to file provided by Treas. Reg. 1.6081-4, the application of that payment follows the same procedure as that for estimated tax payments. See Gabelman v. Commissioner, 86 F.3d 609, 612 (6<sup>th</sup> Cir. 1996) ("Furthermore, the lump sum remittance of estimated taxes is analogous to the withholding of taxes and the payment of estimated taxes made in installments throughout the year. Both of the latter types of remittances have been characterized as payments.") See also, Action on Decision CC-1997-006 (May 5, 1997) Re: Robert B. Risman and Eleanor Risman v. Commissioner, 1997 WL 218204, agreeing with Gabelman on this point.

Estimated tax payments made in a separate declaration are the separate property of the spouse making the declaration. Janus v. United States, 557 F.2d 1268, 1269-70 (9<sup>th</sup> Cir. 1977); Morris v. Commissioner, T.C. Memo. 1966-245 (Each spouse filed individual declarations of estimated tax and neither was entitled to any portion of the others payments). For those estimated tax payments made in a joint declaration of estimated tax for a year in which the taxpayers wind up filing separate returns, the taxpayers may allocate the payment in any consistent manner that they may agree upon. Treas. Reg. 1.6654-2(e)(5)(ii)(A). If the taxpayers cannot agree, the payment "shall be allocated between them" in proportion to the tax liability reported on the separate tax return for the current year. Treas. Reg. 1.6654-2(e)(5)(ii)(B). This estimated tax payment allocation rule had been set out in Rev. Rul. 76-140 under obsolete Treas. Reg. 1.6015(b)-1(b). That ruling addressed taxpayers who had had made a credit elect for an overpayment on a joint return, but divorced in that subsequent year and filed separate returns dividing the overpayment; the separate returns were determined to reflect an agreement and in the absence of evidence to the contrary, the allocation method in Treas. Reg. 1.6015(b)-1(b) was not applicable. The instructions for Form 4868 reflect this part of the estimated tax payment procedure: "If you and your spouse jointly file Form

4868 but later file separate returns for \_\_\_\_\_, you can enter the total amount paid with Form 4868 on either of your separate returns. Or you and your spouse can divide the payment in any agreed amounts.” Taxpayers are directed not to make a joint payment of estimated tax if they are separated under a decree of divorce or of separate maintenance. Treas. Reg. 1.6654-2(e)(5)(i).

As the credit elect came from a joint return, then as estimated payment for \_\_\_\_\_ the \$ \_\_\_\_\_ amount is considered on its face to be a payment for a joint account. As to the \$ \_\_\_\_\_ payment made with the Form 4868, the technical advisor indicates that the documentation indicates the payment was for the joint account, and if so, we agree with the technical advisor’s treatment.

TAS has verified that the funds for the payments came from TPW’s separate account, but under the regulations referenced above, the source of the payment is not relevant to the allocation of an estimated tax payment made in a joint declaration of estimated tax. Circumstances, however, may show that payment submitted with a joint estimated tax voucher is not in fact a joint payment. See, e.g., United States v. Bell, 818 F. Supp. 444 (D. Mass. 1993) (the “joint” payment was made under a threat of violence).

As the TPH has not filed for \_\_\_\_\_, the Service cannot yet determine the taxpayers’ proportionate shares. Under IRM 21.6.3.4.2.3.3 (10-01-2012) *ES Joint Allocation*, it seems documentation of contact with TPH is needed. (“IF Taxpayer has been previously advised the payments must be allocated; AND Both taxpayers cannot agree on an allocation of the joint payments; THEN Advise taxpayer to submit a computation indicating the allocation of the ES credit in proportion to each spouse’s separate tax.”) TPW may wind up having all of the payments applied to her \_\_\_\_\_ account; but if not, a disallowance letter would be issued.

Please contact me if you have any questions.