

ID: CCA\_2017090111150826

UILC: 6402.01-00, 6511.03-02

Number: **201739015**

Release Date: 9/29/2017

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**From:** [REDACTED]

**Sent:** Friday, September 01, 2017 11:15:08 AM

**To:** [REDACTED]

**Cc:**

**Bcc:**

**Subject:** 6402-6511 question

Hi. Our response is below. Please contact me if you have any questions.

TP made an overpayment of \$ [REDACTED] for [REDACTED]. The entire amount was offset and applied to outstanding tax liabilities for [REDACTED] and [REDACTED] [per IRC 6402(a)] which were \$ [REDACTED] and \$ [REDACTED], respectively. TP had overlooked a \$ [REDACTED] deduction that could have been claimed on the original [REDACTED] return. TP has now filed an amended [REDACTED] return (within 2 years of the \$ [REDACTED] payment made by offset) that shows the original tax imposed as completely eliminated by applying \$ [REDACTED] of the deduction; and as a result, TP claims a refund as well as shows a \$ [REDACTED] NOL. TP also filed an amended return for claiming a refund of \$ [REDACTED] generated by a carryback of the \$ [REDACTED] NOL; the amended return was filed within 2 years of the \$ [REDACTED] payment made by offset.

At issue is whether the period of limitations for [REDACTED] is opened by IRC 6511(d)(2) which provides a special period of limitation for a net operating loss?

IRC 6511(d)(2)(A) provides: If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

Response: No. IRC 6511(d)(2) operates in lieu of the 3-year period provided in IRC 6511(a) for the year of the NOL, as extended under other subsections of IRC 6511. As the 3-year period for [REDACTED] (which runs from the time the original return is filed) is closed and, under the facts provided, is not extended, IRC 6511(d)(2) does not apply.

Therefore, TP may only use the 2-year period provided by IRC 6511(a) and while the claim is timely, \$      of the claim is disallowed under IRC 6511(b)(2)(B) which limits TP's refund to \$      . [If the period of limitation was open pursuant to IRC 6511(d)(2), TP would be allowed the entire \$      (assuming the entire amount is attributable to the carryback).]