

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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subject: POSTF-128572-18

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayers =
Tax year at issue =

ISSUES

- (1) Whether the Form 4549 constituted an informal claim for refund.
- (2) Whether the Form 982 constituted an additional informal claim for refund.
- (3) Whether the Letter 105C triggered the two-year period of limitations for taxpayers to file a refund suit.
- (4) Whether the Service is barred from making a refund or credit by I.R.C. § 6514.

CONCLUSIONS

- (1) The Form 4549 constituted an informal claim because it comprised a timely request for a refund/credit for certain years or periods and informed the Service of the basis for the overpayment.

- (2) The Form 982 constituted an additional claim because the form and supporting documents provided an alternative basis for the claim than was iterated in the Form 4549 claim.
- (3) The Letter 105C did not disallow the claim contained in the Form 4549 and therefore the I.R.C. § 6532 period for filing suit has not begun to run.
- (4) Because the Form 4549 was a timely informal claim that was never disallowed, I.R.C. § 6514 does not prevent the Service from making a credit or refund in this case.

FACTS

- : Federal income tax for tax year deemed timely paid
- : Federal income tax return for tax year deemed timely filed
- : Examination of return by Automated Underreporter Program (AUR) begins
- Examination of return by Field Examiner (Exam) begins
- Notice of Deficiency sent to taxpayers by AUR
- : Assessed additional tax of as a result of defaulted Notice of Deficiency
- POA signs Form 4549 (Income Tax Examination Changes)
- Taxpayer Advocate Service (TAS) submits Form 982 (Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)) and supporting documents
- Letter 105C disallows claim dated

The taxpayers' return was simultaneously selected for review by both AUR and Exam. Subsequent to the AUR review, the taxpayers were assessed an additional of tax due to of unreported cancellation of indebtedness income and the denial of an unsubstantiated credit of . The assessment resulted from a defaulted Notice of Deficiency. Subsequent to the Field Examiner's review, the taxpayers' representative signed a Form 4549 that showed a refund due to the taxpayers of , because of the allowance of a loss. The Form 4549 included the of cancellation of indebtedness income and allowed the credit of . The of unreported cancellation of indebtedness income was therefore taken into account by both AUR and Exam, and by the time the POA signed the Form 4549, the additional tax related to this income had been assessed and the credit had been removed from the account.

In , the Service sent the taxpayers a refund check in the amount of (plus in interest), which was less than the amount shown they were due on Form 4549. The difference of represents the additional assessment and credit removal . Beginning in , the taxpayers met with TAS to try to

obtain the balance of the refund. , the taxpayers and their representative communicated with the Service in attempts to have the assessment removed and the credit restored so that they could receive the balance of the refund. In of , TAS submitted a Form 982 on behalf of the taxpayers. On , the Service issued a Letter 105C, Claim Disallowed.

LAW AND ANALYSIS

I.R.C. § 6511 provides, in pertinent part, that

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer 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.

“Read together, the import of these sections is clear: unless a claim for refund of a tax has been filed within the time limits imposed by I.R.C. § 6511(a), a suit for refund, regardless of whether the tax is alleged to have been “erroneously,” “illegally,” or “wrongfully collected,” ... may not be maintained in any court.” United States v. Dalm, 494 U.S. 596, 602 (1990).

I.R.C. § 6514 provides, in pertinent part,

A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void ... If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or ... [i]n the case of a claim filed within the proper time and disallowed by the Secretary, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

I.R.C. § 6514 provides that a refund is erroneous if it is made after the expiration of the I.R.C. § 6511 limitations period and no timely claim was filed with the Service or if a claim is filed and disallowed and the taxpayer does not file suit within the time outlined in I.R.C. § 6532. Computervision Corp. v. United States, 445 F.3d 1355, 1367 (Fed. Cir.), adhered to on denial of reh'g, 467 F.3d 1322 (Fed. Cir. 2006).

I.R.C. § 6532(a) provides, in pertinent part,

No suit or proceeding shall be begun ... after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

Thus, once the two-year period expires without a taxpayer filing suit, I.R.C. § 6514 prevents the Service from making a refund or credit

Issue 1: Whether the Form 4549 constituted an informal claim for refund.

The regulations under I.R.C. § 6402 set forth the formal requirements for filing a refund claim. It has long been recognized by the courts, however, that an informal claim for refund may suffice. See, e.g., United States v. Kales, 314 U.S. 186, 194 (1941). A valid informal claim for refund must have a written component (written by either the taxpayer or the Service); must include a timely request for a refund/credit for certain years or periods; and must inform the Service of the basis for the overpayment with sufficient information as to the tax and year to allow the Service to examine the claim. Pala, Inc. Employees Profit Sharing Plan & Trust Agreement v. United States, 234 F.3d 873, 877 (5th Cir. 2000).

While an informal claim must have some written component, each case must be decided on its own particular set of facts with the primary question being whether the Service knew or should have known that a refund claim was being made. American Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963); Newton v. United States, 163 F. Supp. 614 (Ct. Cl. 1958). In American Radiator, the court noted that the purpose behind the requirement of an adequate informal refund claim is to prevent surprise through the giving of adequate notice of the nature of the claim as well as of its factual basis so that the Service may begin an investigation into the claim. A Form 4549, which reflects an overpayment on line 16 (Balance Due or Overpayment) of the form, could be considered a valid refund claim because it puts the Service on notice that a refund claim was being made. See Rev. Rul. 68-65, 1968-1 C.B. 555 (holding that a Form 870 waiver on which a taxpayer agrees to an overassessment will be considered a valid refund claim.). As far as we are aware, there is no case law directly considering whether a Form 4549 can be considered an informal claim.

Based on the facts we have received, it is likely that the Form 4549 was an informal claim. [REDACTED]

[REDACTED] Finally, the Form 4549 informal claim was timely filed under I.R.C. § 6511 because it was filed within three years from the time the income tax return was filed.

Issue 2: Whether the Form 982 constituted an additional informal claim for refund.

Although the Form 4549 was likely a timely informal claim, we must also consider whether the Letter 105C triggered the two-year period of limitations to file suit. If it did, because it is now more than two years later, no suit would be possible due to I.R.C. §

6532. Thus under I.R.C. § 6514(a)(2), the Service would not be able to make any credit or refund.

Determining whether additional documentation submitted by the taxpayer constitutes an additional informal claim, an update to the prior claim, or neither of the two is a matter of fact dependent on the information contained in that documentation. This issue typically arises in cases where the taxpayer has been issued two separate notices of claim disallowance and the question is whether the second disallowance triggers a new two-year period under I.R.C. § 6532. If the second claim merely duplicates the first, then there is only one period in which a refund suit can be filed. In Byrne v. United States, 127 Fed. Cl. 284, 298 (2016), the Court of Federal Claims addressed the ways in which case law has differentiated between potentially duplicative claims.

Compare Jones v. United States, 26 Cl. Ct. 424, 425 (1992) (determining that where plaintiff's second set of refund claims are identical to the first set of refund claims "in all material respects," the second set of refund claims does not change the statute of limitations (citing 26 U.S.C. § 6532(a)(4)), aff'd, 988 F.2d 131 (Fed. Cir. 1993)), and B. Altman & Co., 69 Ct. Cl. at 727, 40 F.2d 781 ("The second refund claim ... raises no new issue, involves no additional assessment made subsequent to the filing and denial of the first, and could not by any possibility occasion a reopening of plaintiff's tax liability[.]"), with Charlson Realty Co. v. United States, 181 Ct. Cl. 262, 270, 384 F.2d 434 (1967) ("[T]he two claims are separate and distinct ... the second claim alleges and asserts facts, grounds, and theories for recovery different from those set forth in the first claim."); see also Pacetti v. United States, 50 Fed. Cl. 239, 249 (2001) (determining that the filing of a second claim for an increased amount of refund for the same taxable periods does not alter the statute of limitations.).

Two similar claims can be considered independent when "[t]he second claim was not a mere repetition of the first claim, but is based upon new grounds, and, therefore, constitutes a separate claim which is entitled to independent treatment with reference to the statute of limitations." Charlson Realty Co., 384 F.2d at 440. In Charlson, the taxpayer submitted two claims for refund. Both claims alleged the same amount of refund plus interest was due back to the taxpayer and both claims contained the same grounds as the basis for the taxpayers' recovery. However, the second claim, while containing the same grounds as iterated in the first claim, alleged various other and different grounds and theories for recovery. The court determined that these two claims were different because of the additional grounds for relief outlined in the second claim. Id.

Similarly, in this case, the Form 4549 claim and the Form 982 claim are two separate claims. The Form 4549 claim is a claim for refund of taxes already paid. The grounds for the Form 4549 claim stemmed from a recalculation of taxable income due to a

. The loss was brought to the Service's attention during the examination on a Form 4797, which allowed the taxpayers to deduct the loss from the sale of from their taxable income, leading the taxpayers to ultimately have negative income for and to being due a refund. The Form 4549 included the taxpayer's cancellation of indebtedness income and the taxpayers did not dispute that inclusion.

The Form 982 claim and supporting documents is not a repetition of the Form 4549 claim because is a claim based upon new grounds. The Form 982 dealt with the taxpayers' cancellation of indebtedness income¹ and is a claim to recalculate the taxpayers' taxable income, without taking it into account. The grounds for the Form 982 claim were to dispute the inclusion of cancellation of indebtedness income in the taxpayers' taxable income due to the taxpayers' insolvency stemming from their loss in the sale of . The form and the supporting documents were sent to "substantiate [the taxpayers'] insolvency in " and were not sent to substantiate or amend the previous Form 4549 claim or its grounds for refund (namely,).

Issue 3: Whether the Letter 105C triggered the two-year period of limitations for taxpayers to file a refund suit.

Using a Letter 105C is an appropriate means to fully disallow claims. See IRM 21.5.3.4.6.1 (Letter 105C is one of the form letters used for a notice of total claim disallowance). Because there were two claims involved in this case, the Form 4549 claim, and the Form 982 claim, we must determine whether the Letter 105C was a denial of both claims, just one of the claims, or neither claim.

The Letter 105C was most likely issued in response to the Form 982 claim and supporting documentation as opposed to the Form 4549 claim. While is the year at issue for both claims, the Letter 105C explicitly disallowed a claim dated , the date of the Form 982 claim. The letter 105C does not reference the Form 4549 claim or any other prior claim or date. Without more information, the Letter 105C can only be read as a disallowance of the claim it explicitly references, the Form 982 claim. The Letter 105C was a disallowance of the Form 982 claim and cannot be considered a disallowance of the Form 4549 claim, which as discussed above, was based on different grounds. Thus, the best interpretation is that Form 4549 claim has never been disallowed.

Issue 4: Whether the Service is barred from making a refund or credit by I.R.C. § 6514.

I.R.C. § 6514 prevents the Service from issuing refunds or credits if certain periods of time have elapsed. If the taxpayer did not file an administrative claim for refund within

¹ This form is used to determine under certain circumstances described in I.R.C. § 108 the amount of discharge of indebtedness income that can be excluded from gross income.

the I.R.C. § 6511 period of limitations, then no refund or credit can be made. In addition, no refund or credit can be made if the taxpayer timely filed a claim for refund and more than two years have passed since that claim was disallowed and the taxpayer has not filed suit.

The taxpayers submitted the Form 4549 claim in . That claim was timely under I.R.C. § 6511 because it was filed within three years from the time the tax return was filed. The Form 4549 claim was never disallowed because the taxpayers never received a Letter 105C or other letter of disallowance pertaining to that claim and thus the I.R.C. § 6532 period never began to run. Therefore I.R.C. § 6514 does not preclude the Service from issuing the taxpayers a refund.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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