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From: [REDACTED]

Sent: Wednesday, July 14, 2021 1:38:45 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Request for Counsel opinion - section 6511, interest, and restitution

Hi [REDACTED]. Thanks for your patience while I had the relevant subject matter experts in Counsel take another look at this. Unfortunately, they still believe section 6511 is the relevant timeframe for requesting a refund of an amount charged as interest that should not have been charged as interest in light of *Klein*. See the attached email. Please let me know if you need anything further.

- Please post in POSTN-112106-21, Restitution and Section 6511, and close 7/14. Thanks.

ATTACHMENT 1

Hi

You requested that we revisit our prior advice issued in 2019, which concluded that the section 6511 period of limitation for claiming a refund is the applicable lookback period for interest erroneously assessed on restitution. Specifically, you now ask if section 6511 is applicable to the return of an amount incorrectly assessed and collected as interest on a restitution-based assessment.

In the situation at issue, regardless of whether the IRS should have assessed section 6601 (underpayment) interest, that is in fact what the IRS did. As the underpayment interest was then paid, it resulted in overpaid assessed interest. "The requirement of a timely claim for refund pursuant to §§ 6511 and 7422 applies to a claim for refund of overpaid assessed interest." *Computervision Corp. v. United States*, 62 Fed. Cl. 299, 310 (2004), *aff'd*, 445 F.3d 1355 (Fed. Cir. 2006). Section 7422(a) provides that "No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, ... or of any sum alleged to have been excessive or wrongfully collected... [emphasis added] until a claim for refund has been filed." Therefore, whether the amount being recovered is considered tax erroneously collected or any sum wrongfully collected, a taxpayer seeking the return of interest on a restitution payment must first file a claim for refund of overpaid assessed interest and is subject to the section 6511 period of limitations for filing that claim.

Please let or me know if you have any questions.
Thanks,