



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL, KENTUCKY-
TENNESSEE DISTRICT, LOUISVILLE

CC:SER:KYT:LOU

Attn: Jillena A. Warner

FROM: Assistant Chief Counsel, Income Tax & Accounting
CC:DOM:IT&A

SUBJECT: Significant Service Center Advice on Application of § 6015

This responds to your request for Significant Advice dated November 27, 1998, in connection with a question posed by the § 6015 Coordinator in the Cincinnati Service Center. The request for advice is due to a recurring issue at the Cincinnati Service Center, which is relevant to the processing of all requests for relief under § 6015.

ISSUE

When the Service satisfies a taxpayer's outstanding liability by crediting an overpayment pursuant to § 6402(a), on what date is the outstanding liability deemed "paid"?

CONCLUSION

The crediting of an overpayment to an outstanding liability is deemed paid on the date on which the overassessment is scheduled. The overassessment is scheduled after the return is processed by the Service.

FACTS

Under the hypothetical you provide, a taxpayer filed a 1997 individual income tax return in August, 1998, pursuant to a valid extension under § 6081. The 1997

return reflected an overpayment. The taxpayer had an outstanding income tax liability for the 1990 taxable year, a year in which the taxpayer filed a joint return with a former spouse. When the 1997 return was filed in August, 1998, the Service credited the 1997 overpayment to the 1990 liability pursuant to § 6402(a). The 1997 overpayment satisfied the 1990 liability in full.

The taxpayer then requested relief from joint and several liability under § 6015, seeking a refund of the overpayment that was used to satisfy the 1990 tax liability. Pursuant to the effective date of § 6015, the taxpayer may be eligible for relief from joint and several liability under the provisions of § 6015 only if the liability was unpaid as of July 22, 1998.

If the taxpayer's 1990 liability is deemed paid when the credit transfer occurred in August, 1998, then the taxpayer had an unpaid tax liability on July 22, 1998, and a request for relief will be determined under § 6015. However, if the taxpayer's 1993 liability is deemed paid prior to July 22, 1998, then the request for relief will be considered under § 6013.

DISCUSSION

Section 6015 generally provides that individuals who have filed joint returns may, if eligible, elect to be relieved from liability under § 6015(b) (available to all joint filers) and § 6015(c) (available to joint filers who are no longer married, legally separated, or no longer living together). In addition, taxpayers who have filed joint returns may request equitable relief from joint and several liability under § 6015(f).

Section 6015(e)(3)(A) provides, in part, that credit or refund shall be allowed or made to the extent attributable to the application of §§ 6015(b) and 6015(f). Therefore, refunds are not authorized under § 6015(c).

Section 3201(g) of the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685, 734 (July 22, 1998), provides, in part, that the provisions of § 6015 apply to liabilities arising after July 22, 1998, and liabilities arising before July 22, 1998, that remain unpaid as of that date.

Section 6401(b)(1) provides that if the amount allowable as refundable credits exceeds the tax imposed by subtitle A, then the amount of such excess shall be considered an overpayment.

Section 6402(a) provides, in part, that in the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment.

Section 6407 provides that the date on which the Secretary first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

Generally, an overpayment is treated as arising on the date on which the tax payments first exceed the correct tax liability for the year. Section 301.6611-1(b) of the Regulations on Procedure and Administration provides:

Except as provided in section 6401(a), relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability. . . and the dates of payment of all amounts subsequently paid with respect to such tax liability. . .

For purposes of applying this regulation, § 301.6611-1(d) provides that the provisions of § 6513(b) (treating wage withholding during a taxable year as a “tax payment” on April 15th of the following year) shall apply in determining the date of an overpayment.

Based on the facts provided, an overpayment for the 1997 taxable year arose on April 15, 1998. As of that date, the taxpayer’s wage withholdings were deemed “tax payments” by virtue of § 6513(b)(1), and such payments exceeded the taxpayer’s correct tax liability for the year. Furthermore, pursuant to § 301.6601-1(b) of the regulations, interest on the underpayment satisfied by the credit ceases to accrue on April 15, 1998, the date the overpayment was made.

Although an overpayment existed on April 15, 1998, and interest stops accruing on April 15, 1998, we believe it would be incorrect to deem the 1990 liability paid as of that date. The courts have long held that an outstanding tax liability is considered paid by a credit on the date the credit is allowed. U.S. v. Swift & Co., 282 U.S. 468 (1930); Rahr Malting Co. v. U.S., 260 F.2d 309 (7th Cir. 1958). Similarly, § 7422(d) provides that for purposes of civil refund actions, the credit of an overpayment of any tax in satisfaction of any tax liability shall be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

Section 6407 provides that a credit is “allowed” on the date on which the Secretary first authorizes the scheduling of an overassessment in respect of any internal revenue tax. Section 301.6407-1 clarifies that the date of allowance of refund or credit is the date on which the district director or the director of the

regional service center, or an authorized certifying officer designated by either of them, first certifies the allowance of an overassessment.

Typically, an overassessment is scheduled when the Service receives and processes a taxpayer's return for a given year and agrees that an overassessment has been made. At that time, the service center responsible for processing the taxpayer's return completes Form 2188, Voucher and Schedule of Overpayments and Overassessments, and such form is signed by the appropriate service center official. The date Form 2188 is signed is the date of allowance of refund or credit under § 6407. See General Instrument Corp. v. U.S., 33 Fed.Cl. 4, 8 (1995).

Based on the facts provided, the overassessment for the 1997 taxable year was scheduled upon successful processing of the taxpayer's 1997 return. Since the taxpayer's 1997 return was processed in August, 1998, the overpayment is treated as credited to the 1990 taxable year in August, 1998. Accordingly, we conclude that an unpaid balance existed on July 22, 1998.

Since, under the hypothetical presented, an unpaid liability existed as of July 22, 1998, § 6015 applies to the extent of the unpaid liability. Under these facts, the only liability that was outstanding on July 22, 1998 was the liability for the 1990 tax year that was subsequently fully paid in August, 1998. The taxpayer now seeks a refund of the overassessment that was credited to the 1990 tax liability. Pursuant to § 6015(e)(3)(A), since refunds are not authorized under § 6015(c), the taxpayer is limited to seeking relief from joint and several liability under either § 6015(b) or § 6015(f).

Our response was coordinated with Branch 1 of the Income Tax & Accounting Division. If you have any questions regarding the timing of the payment, please contact Andrew Keyso at 622-4910. If you have any questions regarding the application of § 6015, please contact Bridget Finkenaur at 622-4940.

By: _____
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