

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

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December 17, 1996

Subject: Equitable Recoupment
In Tax Court Cases **Cancellation Date:** March 17, 1997

In Estate of Mueller v. Commissioner, 101 T.C. 551 (1993), the Tax Court held that it has authority to apply the doctrine of equitable recoupment. This doctrine allows an untimely claim to be used as a counterclaim against a timely claim, provided the two claims arise out of the same transaction or taxable event. In Estate of Bartels v. Commissioner, 106 T.C. 430 (1996), the court reaffirmed Estate of Mueller. Most recently, in Estate of Mueller v. Commissioner, 107 T.C. No. 13 (1996), the court held that equitable recoupment can only be used as a defense against an otherwise valid claim, and could not increase the amount of an overpayment.

In the view of the National Office, the Tax Court in all cases lacks authority to apply equitable recoupment. Whenever a petitioner raises the doctrine, the Procedural Branch of the Field Service Division should be contacted for assistance in developing an appropriate response.

Following publication of this Notice, appropriate changes will be made to the Chief Counsel Directives Manual. For additional information about the subject of this Notice, please contact Stuart Spielman at (202) 622-7950.

/s/

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