

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

[CC-2003-023]

[July 03, 2003]

Subject: The Role of the Joint Committee on Taxation Under Section 6405
Cancel Date: Upon incorporation into CCDM

Purpose

This Notice explains the role of the Joint Committee on Taxation regarding refunds and credits of federal tax under I.R.C. § 6405, and clarifies the procedures the Service uses to comply with this section. Additionally, this Notice provides guidance on the respective responsibilities and roles of the Service, Counsel, and the Joint Committee in cases subject to section 6405.

Discussion

The Joint Committee has a statutory role in the processing of credits and refunds of tax. To comply with section 6405, there are specific procedures the Service must follow.

Section 6405(a) provides:

No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of \$2,000,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and decision of the Secretary, is submitted to the Joint Committee on Taxation.

"Tax" includes penalties and interest previously assessed and paid as tax. See sections 6671(a) and 6601(e) respectively. The reports required by section 6405(a) must provide the information necessary for the Joint Committee to determine whether the positions taken by the Service are consistent with Congressional intent.

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The express language of section 6405(a) only prohibits the Service from issuing a refund or credit during the 30-day period following the report to the Joint Committee. This “report and wait” period requirement allows the Joint Committee a limited period of time to consider and comment on the Service’s proposed refund or credit. It does not give the Joint Committee the authority to approve, disapprove, authorize, or, in any way, prohibit the Service from taking whatever action the Service determines is appropriate. The determination whether to issue or deny a refund or credit rests solely with the Commissioner, regardless of the Joint Committee’s favorable or unfavorable views on the Service’s proposed action. Some Internal Revenue Manual provisions, including some in the current Chief Counsel Directives Manual, do not accurately reflect the “report and wait” requirement, but rather speak of obtaining Joint Committee “approval” or “authorization.” The Associate Chief Counsel Procedure & Administration is revising the CCDM and is working with the Service to revise the IRM to reflect accurately the Joint Committee’s precise statutory role.

Although the Joint Committee does not have the authority to approve or disapprove refunds or credits, the report to the Joint Committee is not a perfunctory gesture. The legislative history underlying section 6405 and its predecessors establishes that Congress wanted the Joint Committee to review refunds and credits to monitor whether the Service’s administration of the Internal Revenue Code is consistent with Congressional intent and without favoritism. The Service values the views of the Joint Committee and carefully considers those views before making a final determination on a refund or settlement. Because the Service values the views of the Joint Committee, the Service may choose to withhold final action on a refund or credit for more than 30 days after reporting to the Joint Committee. The decision to temporarily withhold final action permits the Service to respond to requests for additional information by the Joint Committee or to allow the Joint Committee additional time to comment on complex cases.

Counsel attorneys must keep the requirements of section 6405 and the proper role of the Joint Committee in mind when advising the Service, and when conducting settlement negotiations in docketed cases. Neither the Service nor Counsel may legally commit to any reportable settlement until a report, in accordance with section 6405, has been submitted to, and the timely views of, the Joint Committee have been considered. In discussing tentative settlements, Counsel attorneys should advise taxpayers and the court in docketed cases that the Service’s position remains tentative until compliance with section 6405 is complete. It should not be suggested that the Service must seek the Joint Committee’s “approval” or implied that the Service will not exercise its own independent judgment when deciding whether to issue the refund after receiving and considering the Joint Committee’s views.

Commencing immediately, copies of all reports, in accordance with section 6405, sent to, and the views from, the Joint Committee by Counsel should be provided to Branch 1, Administrative Provisions and Judicial Practice Division of the Office of the Associate Chief Counsel (Procedure & Administration) for informational purposes.

