



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE  
MEMORANDUM FOR

FROM: Deborah A. Butler  
Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT:

This Field Service Advice responds to your memorandum dated September 13, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

Z

Representatives:

Y

YEAR 1, YEAR 2, YEAR 3, etc.

years

DATE A

Petition filed in Tax Court case

ISSUES

1. Whether the Tax Court has jurisdiction to determine:
  - (A) whether Z overpaid underpayment interest on the portion of an underpayment of tax that was eliminated by use of a foreign tax credit

for foreign taxes paid with respect to YEAR 1 in a later year; and

- (B) whether the Service owes Z additional overpayment interest on overpayments that were refunded to Z or credited to other tax liabilities of Z more than six years before the Tax Court petition was filed.
2. Whether Z has presented a valid and timely claim for the payment of interest for the years at issue based upon each of the following audit adjustments:
- (A) Overpayment interest claimed on a refund alleged to have been made more than 45 days after the original return claiming a refund for YEAR 3 was filed;
  - (B) Overpayment interest claimed on amounts credited from YEAR 1 and YEAR 3 to other tax liabilities of Z due to alleged errors in calculating the underpayment interest due from Z;
  - (C) Overpayment interest claimed on the amounts credited pursuant to the election on Z's returns for YEAR 5 and YEAR 6 to its estimated tax liabilities for, respectively, YEAR 6 and YEAR 7;
  - (D) Reduction of underpayment interest paid by Z on the portion of an underpayment of tax for YEAR 1 that was eliminated by use of a foreign tax credit for foreign taxes paid with respect to YEAR 1 in a later year; and
  - (E) Netting under section 6621(d) of underpayment interest paid or payable by Z and overpayment interest paid or payable to Z over overlapping interest periods for tax periods including YEAR 1, YEAR 3, and YEAR 5.<sup>1</sup>

## CONCLUSIONS

1. The Tax Court has jurisdiction to determine the amount of deficiencies in tax and additions to the tax, as well as the amount of any overpayments of tax, interest, and additions to the tax paid by the taxpayer for the tax periods for which the taxpayer timely filed a petition from a notice of deficiency. In addition, under section 7481(c), the court has jurisdiction to determine the amount of interest payable by or to the taxpayer on deficiencies or overpayments determined by the Tax Court. The court does not have

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<sup>1</sup> Unless otherwise indicated, any reference to a specific "section" refers to the relevant section of the Internal Revenue Code of 1986.

jurisdiction, however, to determine the amount of overpayment interest that should have been paid to the taxpayer on overpayments of tax, such as those in situations 2.(A), 2.(B), and 2.(C), above, that were not determined by the court in this proceeding.

2. With respect to the specific issues raised by the taxpayer:
  - (A) We are unable to determine from the facts developed and presented to date whether Z's return for YEAR 3 was processible when it was filed, so that the Service would be required to pay interest on the overpayment refunded to Z more than 45 days after the return was filed; Z, however did not file a timely action for payment of interest.
  - (B) Z is not entitled to additional overpayment interest on overpayments that were credited in payment of outstanding tax liabilities on excise tax and employment tax returns filed using the same employee identification number for other tax periods, and has not filed a timely action for such interest.
  - (C) Z is not entitled to overpayment interest on a tax overpayment that it elected to have credited to its estimated tax liabilities for the succeeding tax year, and has not filed a timely action for such interest.
  - (D) In accord with Intel v. Commissioner, 111 T.C. 90 (1998), the Service correctly computed underpayment interest on the portion of tax from YEAR 1 that was reduced by the carryback of foreign tax credits from a later year through the due date of the return for the year in which the foreign taxes were paid.
  - (E) Although the Tax Court will likely have jurisdiction to determine reductions in Z's liability for interest that are attributable to the use of a zero tax rate for overlapping periods of overpayment interest and underpayment interest, Z has yet not provided a statement of the overlapping periods.

## FACTS

Z, a consolidated group of related corporations that files consolidated income tax returns, is the petitioner in a pending Tax Court case filed on DATE A to contest the Service's determination of proposed deficiencies in income tax for YEAR 1, YEAR 3, and YEAR 5. In that proceeding, Z claims that the Service erred by not properly computing overpayment interest payable to Z when the Service processed various partial adjustments regarding income tax liabilities during the return filing, audit, and administrative appeals process. Z also alleges that it is entitled to the refund of underpayment interest that it has paid for these years. The theories underlying the claims for the refund or payment of interest, based upon

supplemental information provided by the taxpayer, are separately presented herein.

- (A) Overpayment interest claimed on a refund alleged to have been made more than 45 days after the YEAR 3 return claiming a refund was filed

Z timely, under a six month extension, mailed a return for YEAR 3 to the Service on September 15, YEAR 4. Z declared a tax liability of \$10X, reported prepayment credits of \$11X, and claimed a refund of \$1X. The transcript of account for YEAR 3 shows the Service's designation of the return as non-processible five days later, on September 20, YEAR 4, the Service's processing of the return on November 1, YEAR 4, and the issuance of a refund check for \$1X, without any interest, on November 19, YEAR 4. Although the refund was made 65 days after the filing date, it was made only 18 days after the return was processed. Besides the information reported on the transcript, neither the Service nor Z has found records showing what changes, if any, were made to the return between September 20, YEAR 4 and November 1, YEAR 4.

Z reports it has found no correspondence or other documents relating to the processing of the return or the refund. 

 Z accepted and cashed the refund check and did not question the Service's failure to pay overpayment interest with the refund before raising the issue in this litigation. The petition in this case was filed more than six years after November 19, YEAR 4.

- (B) Overpayment interest claimed on amounts credited from YEAR 1 and YEAR 3 to other tax liabilities of Z because the Service allegedly erred in calculating the underpayment interest due from Z on the other tax liabilities

On several occasions during the audit, due to payments, adjustments to the assessed tax and underpayment interest, and Z's claims for various credits that were allowed by the Service, overpayments of tax were produced in the accounts for YEAR 1 and YEAR 3. The Service, in lieu of fully refunding these overpayments to Z, credited portions of the overpaid amounts to unpaid tax liabilities for other tax periods of Z. On at least one occasion, Z consented to the crediting of such overpayments to the unpaid liability of a member of Z's consolidated group that used a different taxpayer identification number.

In one example of these transactions, the Service on February 27, YEAR 9 credited a \$13X overpayment of tax from YEAR 3 to an excise tax liability owed by Z that was due on April 15, YEAR 5. The YEAR 3 overpayments were first overpaid as of

October 16, YEAR 6. In applying section 6611(b)(1), the Service properly allowed no overpayment interest on the YEAR 3 tax overpayments. However, Z contends that the Service erred by computing underpayment interest for the period from April 15, YEAR 5 through February 27, YEAR 9 on the \$13X excise tax liability that was paid by application of the credit. Z has not yet offered computations to support its claim that the Service's computations were incorrect.

Z has not filed a claim for refund of the allegedly overpaid underpayment interest. The limitations period for filing such a claim has expired and the excise tax liability is not before the Tax Court. Instead, Z argues that the Service should pay interest on the YEAR 3 overpayment for the period from October 16, YEAR 6 through February 27, YEAR 9 because the alleged error in computing underpayment interest on the excise tax liability prevented Z from receiving the full benefit of the \$13X overpayment of income tax for YEAR 3. Z first brought the alleged error to the attention of the Service after the petition in this case was filed on DATE A, more than six years after February 27, YEAR 9.

A second example involves amounts credited from the consolidated income tax liability of Z, a consolidated group, to the separate Form 941 employment tax liabilities of Y, the parent of Z, under whose taxpayer identification number (TIN) Z files its returns. On January 2, YEAR 6, the Service credited an overpayment for Z's YEAR 1 return to Y's employment tax liability. The Service allegedly assessed and collected underpayment interest on Y's employment tax liability satisfied by the credit from the due date of the return through January 2, YEAR 6, but computed overpayment interest payable to Z only through March 15, YEAR 2, the first date on which Y's tax underpayment and Z's overpayment overlapped. Because the returns used the same TIN, the Service identified them as belonging to the same taxpayer. Z now asserts that Y's employment tax liability is separate and distinct from the consolidated income tax liability of Z and that the Service should treat Y and Z as separate taxpayers and compute interest on both Y's underpayment of tax and Z's tax overpayment through January 2, YEAR 6. Y has not filed a claim for refund of underpayment interest on the employment tax liability.

You state that Z has made similar allegations that the Service erred in computing underpayment interest for taxes and tax periods that are not at issue in this suit when it credited overpayments from the tax periods at issue in this suit in payment of those taxes. Although we have not examined these other credited overpayments, we will assume for purposes of providing this advice that they are similar in nature to those described above.

- (C) Overpayment interest claimed on the amounts credited pursuant to the elections on Z's returns for YEAR 5 and YEAR 6 to its estimated tax liabilities for, respectively, YEAR 6 and YEAR 7

Z timely filed its income tax returns for YEAR 5 and YEAR 6 on September 15, YEAR 6 and September 15, YEAR 7, respectively, under extensions of six months from the original filing due dates. On those returns, Z elected to have the overpayments of tax credited to its estimated tax liabilities for the next year, *i.e.*, YEAR 6 and YEAR 7, respectively. Since the tax payments that made up the overpayments were deemed paid as of March 15, YEAR 6 and March 15, YEAR 7, the original due dates of the YEAR 5 and YEAR 6 returns, Z now claims that it is entitled to interest on the overpayments from March 15, YEAR 6 to September 15, YEAR 6 for YEAR 5 and from March 15, YEAR 7 to September 15, YEAR 7 for YEAR 6 based upon the opinion in May Department Stores Company v. United States, 36 Fed. Cl. 680 (1996), acq. 1997-2 CB 1.

- (D) Reduction of underpayment interest paid by Z on the portion of an underpayment of tax for YEAR 1 that was eliminated by use of a foreign tax credit

In YEAR 3, Z paid taxes to a foreign government with respect to income earned in YEAR 1. In agreeing to a partial settlement during the audit, Z claimed a foreign tax credit against U.S. income tax for YEAR 1 under section 901 in the amount of the foreign taxes that were paid in YEAR 3 to offset an agreed upon tax deficiency for YEAR 1. In assessing the tax deficiency, the Service allowed the credit, but computed underpayment interest from March 15, YEAR 2, the due date of the U.S. income tax return for YEAR 1 through March 15, YEAR 4, the due date for Z's U.S. income tax return for YEAR 3. Citing Fluor v. United States, 35 Fed. Cl. 284 (1996), Z claims that no underpayment interest accrued because the foreign tax credit was effective as of March 15, YEAR 2. Z claims that the full amount of the assessed underpayment interest is subject to refund.

- (E) Netting under section 6621(d) of underpayment interest paid or payable by Z and overpayment interest paid or payable to Z over overlapping interest periods

In its amendment to the petition, Z alleges that it made payments of income tax and interest for YEAR 1, YEAR 3, and YEAR 5 and that it received credits and refunds of tax and interest, together with overpayment interest for these same tax years, but that the Service did not use netting principles during periods when Z had underpayments of tax and overpayments of tax over the same time periods for the years at issue. Z has not provided any statement of these concurrently existing overpayments and underpayments either within the YEAR 1, YEAR 3, and YEAR 5

accounts, or between the YEAR 1, YEAR 3, and YEAR 5 accounts and other tax years and liabilities.

## LAW AND ANALYSIS

### 1. Jurisdiction of Tax Court to consider Z's claims in the pending case

The jurisdiction of the Tax Court is limited to that expressly permitted or prescribed by statute. Savage v. Commissioner, 112 T.C. 46 (1999); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Section 7442 gives the Tax Court and its divisions such jurisdiction as is conferred on them by other Code provisions.

The fundamental grant of jurisdiction to the Tax Court in income tax cases is found in section 6214(a), which provides that the Tax Court may redetermine the correct amount of the deficiency proposed by the Service in a notice of deficiency, even if the amount so determined is greater than the amount of the deficiency, and may determine whether any additional amount or addition to the tax shall be assessed. As a prerequisite to the court's exercise of such jurisdiction, the Service must issue a valid notice of deficiency and the taxpayer must file a timely petition with the Tax Court. Mason v. Commissioner, 210 F.2d 388 (5<sup>th</sup> Cir. 1954).

The Tax Court's jurisdiction is limited to the determination of tax for those taxes and tax periods that are covered by both the notice of deficiency and the petition filed with the court. Columbia River Orchards, Inc. v. Commissioner, 15 T.C. 253, acq. 1950-2 C.B. 2.(no jurisdiction over portion of year not covered by notice); Crowell v. Commissioner, 102 T.C. 683 (1994)(no jurisdiction over year for which the Service issued notice disallowing deductions, but not increasing the tax due); Weisbart v. Commissioner, 79 T.C. 521 (1982)(no jurisdiction over gift tax in income deficiency proceeding); Dick v. Commissioner, T.C. Memo. 1984-2, aff'd, 760 F.2d 264 (4<sup>th</sup> Cir. 1985)(no jurisdiction over year for which Service proposed an overpayment).

Although its jurisdiction over any tax period or tax is conditioned upon a determination by the Service that there is a deficiency, the Tax Court has jurisdiction, under section 6512(b)(1), to determine that there is actually an overpayment of tax for any tax periods for which a taxpayer has invoked its jurisdiction by filing a petition from a notice in which the Service has proposed a deficiency. Thus, if the Tax Court determines there is an overpayment for the tax period for which the Service proposed a deficiency (whether there is or is not a deficiency), the Tax Court has jurisdiction to determine the overpayment and its amount. Further, the Service may refund or credit the amount of the overpayment once the decision becomes final if the Tax Court, as provided by section 6512(b)(3), has also determined that the payment was made after the notice of deficiency was issued or that a claim for refund of the overpayment would have

been a timely claim for refund if it had been made on the date the notice of deficiency was issued.<sup>2</sup>

Further, with respect to interest, several Code sections give the Tax Court supplemental jurisdiction to consider the application of interest after the initial Tax Court decision becomes final. First, once a Tax Court decision determining an overpayment becomes final, the Tax Court has jurisdiction under section 6512(b)(2) to order the IRS “to refund the overpayment determined by the Tax Court” with overpayment interest if the IRS has not made the refund 120 days after the decision becomes final and the taxpayer files a motion. Likewise, the Tax Court has auxiliary jurisdiction under section 7481(c) to determine whether the taxpayer has made an overpayment of interest or the Service has underpaid interest based upon a deficiency or overpayment decision entered by the court; for the court to exercise this jurisdiction, the taxpayer must pay the tax and interest assessed by the Service and file a motion for a redetermination of interest within one year after the decision is entered. Finally, section 6404(i) gives the Tax Court jurisdiction to determine whether the Service’s failure to abate interest due to unreasonable errors and delays by the Service was an abuse of discretion, but first, the tax and interest must be assessed, the taxpayer must administratively request the abatement, and the Service must make a final determination not to abate the interest.

(A) Jurisdiction over assessed underpayment interest

The Tax Court’s jurisdiction over the determination of interest under these provisions depends upon the type of interest involved and the context in which it is raised. The Internal Revenue Code separately provides, in section 6601 and section 6611, for the payment of underpayment interest (interchangeably called “deficiency interest”) on amounts payable by taxpayers to the government on taxes that are not paid when due and for the payment of overpayment interest by the government when taxes that have been overpaid by the taxpayer are refunded or credited. Underpayment interest owed by a taxpayer generally accrues, under section 6601, from the date the tax is due until the date on which it is paid. Overpayment interest owed to a taxpayer by the Service accrues from the date the overpayment arises until it is refunded or credited to the taxpayer.

In disputes involving underpayment interest, the Tax Court has no authority to decide whether underpayment interest is due or refundable on an unassessed and unpaid deficiency. Pen Coal Corporation v. Commissioner, 107 T.C. 249 (1996); 508 Clinton Street Corp., 89 T.C. 352 (1987); White v. Commissioner, 95 T.C. 209

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<sup>2</sup> Section 6512(b)(3) contains the specific requirements for the application of the section 6511 limitations periods for claiming refunds in Tax Court cases.

(1990). In 508 Clinton Street Corp., the Tax Court found that it did not have any authority to consider a requested abatement of underpayment interest in a deficiency proceeding because the Service's abatement authority in section 6404(e) does not arise until an assessment has been made and the assessment cannot be made until the Tax Court decision becomes final. Likewise, in White, the Tax Court concluded that it had no jurisdiction over proposed assessment of interest under former section 6621(c) because section 6601(e)(1), in providing for the imposition of underpayment interest, specifically excludes such interest from being treated as a tax in deficiency proceedings. In Pen Coal, the court followed White to reach the same conclusion with respect to interest imposed under current section 6621(c) on large corporate underpayments. Interest cannot be assessed on the tax deficiency in a deficiency proceeding until such tax deficiency is assessed and becomes an underpayment of tax.

The Court does have jurisdiction to consider alleged overpayments of underpayment interest as part of its overpayment jurisdiction. Such excessive interest, once assessed and paid, becomes part of an overpayment, *i.e.*, a payment in excess of that which is properly due. Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947); Baumgartner v. Commissioner, 85 T.C. 445 (1985). At the time of the overpayment, previous payments of tax and previous payments of interest merge to become the refundable amount of the overpayment, regardless of their previous designation as tax or interest. Baumgartner, at 457-58; see also section 6601(e)(1); Alexander Proudfoot Co. v. United States, 454 F.2d 1379, 1382 (1972) ("deficiency interest . . . has been deemed an integral part of the tax"); Barton v. Commissioner, 97 T.C. 548 (1991) (Tax Court has jurisdiction to consider overpayment of interest under former section 6621(c) even though it does not have jurisdiction over a proposed determination of yet-to-be assessed and paid underpayment interest).

Thus, in Winn-Dixie Stores, Inc. v. Commissioner, 110 T.C. 291 (1998), the court held that it had jurisdiction to consider the effect of the Service's failure to honor the taxpayer's request that the Service credit overpayments of tax from other tax years against the proposed liabilities before the court because such crediting would have reduced the amount of underpayment interest due from the taxpayer on the deficiencies. Critical to the Court's exercise of jurisdiction was the taxpayer's payment of the tax plus the underpayment interest determined by the Service before the taxpayer asked the court to determine an overpayment of tax, including underpayment interest.

(B) Jurisdiction over the payment of overpayment interest

Unlike a dispute over the section 6601 interest paid to the Service on tax underpayments, a dispute over the interest imposed by section 6611 on tax overpayments is not within the Tax Court's jurisdiction. Baumgartner v.

Commissioner, 85 T.C. 445 (1985). In distinguishing a refund of the overpaid underpayment interest (as at issue in that case) from interest payable on an overpayment, the court explained:

Once an overpayment has been determined, either by our Court or one of the “refund forums,” interest accrues in accord with section 6611 until the time the overpayment is refunded to or reduced to judgment. Once reduced to judgment, interest accrues on the judgment, inclusive of the overpayment (which may include overpaid interest) and interest on the overpayment, all in accord with 28 U.S.C. sec. 2411 (1982). Because our jurisdiction is not derived from Title 28 of the United States Code, we remain unable to enter a decision for interest upon an overpayment.

85 T.C. at 452-53.

The court’s analysis in Baumgartner is consistent with the separation of claims for overpayment interest under the statutory and jurisdictional regimes for making and enforcing refund claims in district court. The handling of claims for refund of tax, including claims for the refund of underpayment interest, differ from those concerning the payment of overpayment interest. The jurisdiction of district courts and the Court of Federal Claims over claims for refund of underpayment interest under section 7422 is predicated upon the taxpayer’s filing a timely administrative claim for refund while the jurisdiction of those courts over claims for overpayment interest falls within their general claims jurisdiction. Suits for refund of tax must be filed within 2 years of the date on which a timely filed claim was denied while a claim for overpayment interest must be filed within six years of the date on which the refund was allowed, without regard to interim administrative claims. See General Instruments Corp. v. United States, 33 Fed. Cl. 4, 98-1 U.S.T.C. ¶ 50,234 (1995).

The provisions giving the Tax Court supplemental jurisdiction over interest on overpayments are limited by their terms to the overpayments determined by the Tax Court and do not apply to overpayments made outside the Tax Court proceeding. If the Service fails to refund an overpayment determined by the Tax Court, with overpayment interest, within 120 days after the decision ordering the refund has become final, section 6512(b)(2) authorizes the Tax Court to order the Service to make the refund. Presumably, this jurisdiction allows the court to determine the correct amount of overpayment interest due on the refund. Likewise, section 7481(c) authorizes the Tax Court to reopen a case to determine “whether the taxpayer has made an overpayment of . . . interest or the Secretary has made an underpayment of . . . interest and the amount thereof.” Again, the auxiliary jurisdiction covers only the amount of interest “involved in the case” and does not extend to claims for overpayment interest on overpayments refunded or credited

outside the scope of the Tax Court case. See Tax Court Rule 261; BankAmerica Corporation v. Commissioner, 109 T.C. 1 (1997).

The Tax Court’s lack of jurisdiction over claims for overpayment interest on refunds and credits made outside its jurisdiction does not deny aggrieved taxpayers a forum in which to seek a remedy. Under section 6512(a), the Tax Court’s jurisdiction over the issues properly before it is exclusive:

If the Secretary has mailed . . . a valid notice of deficiency . . . and if the taxpayer files a [timely] petition with the Tax Court [or a motion for statutory interest under 7481(c)] . . . , no credit or refund of income tax for the same taxable year . . . in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except —

- (1) as to overpayments determined by a decision of the Tax Court which has become final; and
- (2) as to any amount collected in excess of an amount computed in accordance with the decision of the final Tax Court decision; and
- (3) as to amounts collected after the [section 6502 period of limitation for collection has expired]; and
- (4) as to overpayment attributable to partnership items . . . ; and
- (5) as to any amount collected [during period between issuance of notice of deficiency and final Tax Court decision]; and
- (6) as to overpayments the Service is authorized to refund or credit pending appeal . . . .

By the express terms of section 6512(a) and section 7422(e), the Tax Court’s exclusive jurisdiction over cases before it extends only to “credits or refunds” or “suits for the recovery” of tax. Because overpayment interest payable on taxes that have previously been refunded or credited is not itself an overpayment that might be refunded to the taxpayer, it is not subject to the restriction. A taxpayer can file a suit for the payment of overpayment interest with respect to amounts of tax that have previously been refunded or credited, even while a Tax Court case involving the determination of further deficiencies and overpayments for the same tax period is pending. Such a suit, if timely filed, is the appropriate remedy for taxpayers having such claims.

Another basis for finding that the Tax Court does not have jurisdiction over Z’s claim for additional overpayment interest, particularly its claim that it is entitled to overpayment interest on amounts credited from YEAR 1 and YEAR 3 to other tax liabilities, is the limitation on the court’s jurisdiction in section 6512(b)(4). In defining the court’s jurisdiction to determine overpayments of tax, section 6512(b)(4) provides:

The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402.

Applying this Code section, the Tax Court determined in Savage v. Commissioner, 112 T.C. 46 (1999), that it did not have jurisdiction to consider whether the Service improperly determined the taxpayer's liabilities, particularly those for interest and penalties, for the years before the court because the Service had improperly applied a previously claimed overpayment of tax to assessed tax liabilities for periods not before the court. The court relied upon precedents in the Second Circuit that held, before section 6512(b)(4) was enacted, that a procedurally valid assessment for a period not before the Tax Court generally provides a proper basis for the crediting of a tax overpayment and precludes the Tax Court's jurisdiction to review the merits of the assessment. 112 T.C. at 49; see Belloff v. Commissioner, 996 F.2d 607 (2d. Cir. 1993). The taxpayer, who correctly asserted that his liabilities for penalties and underpayment interest in the year before the court would be less if the overpaid taxes had not been credited to other liabilities, was not allowed to question the validity of the taxes determined for the years not before the court or to have the amounts credited in payment of the assessed liabilities brought back as payments made in the year before the court.

Finally, we have considered the possibility that the Tax Court might have jurisdiction over a claim that additional overpayment interest that is due to a taxpayer might be offset, even if the refund or credit of such payment is barred under relevant limitations periods, against deficiencies determined to be due from the taxpayer in the Tax Court proceedings or the amount of tax and interest due from the taxpayer as a result of those proceedings. In determining a tax deficiency or a tax overpayment, the Service is authorized to consider a taxpayer's entire liability for the subject tax period. In Lewis v. Reynolds, 284 U.S. 281 (1932), the Supreme Court held that deficiencies of tax that could not be assessed because the statutory assessment period had expired could nevertheless be considered in determining whether an overpayment claimed by the taxpayer existed for the same tax period. In practice, the Service may offset against a tax refund claim any barred deficiencies of tax, penalty or underpayment interest with respect to the tax period.

Similar offsets may be made in determining a deficiency. In determining the tax deficiency for a given tax period under section 6211, the Tax Court must consider the entire tax liability, the amounts previously assessed, plus the amount of any abatements, credits, refunds or other payments. Although payments of underpayment interest are not considered in determining a deficiency, they can be weighed in determining whether an overpayment exists. The interest paid to the taxpayer on previous overpayments, however, is not considered in determining the existence or amount of an overpayment, and thus, can not be offset against liabilities that are included in determining an overpayment.

Thus, we conclude that the Tax Court would have jurisdiction to determine whether the payment of excessive underpayment interest gives rise to an overpayment of tax in the years before the court. We have found no provisions, however, that give the Tax Court jurisdiction either during a deficiency proceeding or in supplemental proceedings to determine whether the Service properly paid the full amount of overpayment interest due a taxpayer on refunds and credits made to or on behalf of such taxpayer prior to the date on which the Tax Court petition was filed.

2. Without regard to the Tax Court's jurisdiction, Z has not presented a valid and timely claim for the payment of interest for the years at issue based upon the audit adjustments.

- (A) Z has neither made a timely claim for additional overpayment interest on a refund alleged to have been made more than 45 days after the original return claiming a refund for YEAR 3 was filed nor shown that the refund was not made within 45 days of the date on which its return became processible.

Section 6611(a) provides the general rule that interest is to be allowed and paid upon any overpayment in respect of any internal revenue tax. In a widely applicable exception to the general rule, however, section 6611(e) provides that no interest shall be allowed on an overpayment if the overpayment is refunded within 45 days from the last date prescribed for filing the return or, if a return is filed after its due date, within 45 days from the date the return is actually filed. The 45 day rule has applied to income tax refunds made after November 2, 1966, including those at issue in this case. See Interest Equalization Tax Extension Act of 1973, P.L. 89-721, §1(a), 93d Cong. 1st Sess.

For purposes of section 6611(b) and the 45 day rule in 6611(e), section 6611(g) specifies that a return is not to be treated as filed for purposes of section 6611(e) until it is in "processable" form. This statutory requirement for processibility, although formerly designated as subsections 6611(h) and 6611(i), has not changed in substance since the enactment of former section 6611(i) by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248; 97th Cong, 96 Stat. 325, effective for returns filed after October 4, 1982. The TEFRA provision adopted the Service's existing administrative practice of not treating a return as filed until it was "processable." See GCM 39841. Either the administrative or the statutory requirement was in effect for the return at issue.

Section 6611(g)(2) explains that a return is not processible until: 1) it is filed on a permissible form; 2) it contains the taxpayer's name, address, identifying number, and required signature; and 3) it (or required attachments) contains sufficient information to permit the mathematical verification of tax liability shown on the return. See Columbia Gas System, Inc. v. United States, 70 F.3d 1244, 95-2

U.S.T.C. ¶ 50,625 (Fed. Cir. 1995), aff'g. 32 Fed. Cl. 318 (1994) (tentative claim for refund was processible when taxpayer followed IRS directions and included all necessary information and signatures).

[REDACTED]

Your efforts to locate records are ongoing.

In Columbia Gas, before finding that the Service was able to process the Columbia Gas returns as originally filed without submission of any additional data, the Federal Circuit explained:

Mathematical verifiability requires sufficient information to permit IRS to recalculate and corroborate the mathematics and data reported by the taxpayer. Thus, under section 6611, a taxpayer must submit, in good faith, all the required forms with the required signatures and enough underlying data for IRS to verify the tax liability shown on the return. The information must be sufficient to enable IRS to calculate the tax liability without undue burden.

The court also considered the ongoing relationship between the Service and Columbia Gas with respect to the return at issue, including the fact that the Service repeatedly misplaced records concerning the return. [REDACTED]

If Z were entitled to overpayment interest based upon the Service's failure to make a refund within 45 days of Z's filing of a processible return, Z's claim for overpayment interest on the November 19, YEAR 4 refund would nevertheless fail because Z has not acted timely in making a claim for overpayment interest. Unlike suits for the refund of tax or the refund of underpayment interest, suits brought in district court or the Court of Federal Claims for the payment of overpayment interest under section 6611 are controlled by the general six-year statute of limitations under 28 U.S.C. § 2401 and § 2501. General Instruments Corp. v. United States, 33 Fed.Cl. 4, 98-1 U.S.T.C. ¶ 50,234; Barnes v. United States, 133 Ct.Cl. 546, 548, 137 F.Supp. 716 (1956). The Service can make payments of overpayment interest only within this six year period. See Rev. Ruls. 56-506, 1956-2 C.B. 959, 56-574, 1956-2 C.B. 959, and 57-242, 1957-1 C.B. 452. The limitations period begins to run when the overpayment is scheduled. Section 6407; Treas. Reg. § 301.6407-1 (1993); General Instruments Corp. v. United States, 33 Fed.Cl. 4, 98-1 U.S.T.C. ¶ 50,234.

In this situation, the overpayment arose from the assessment of the tax reported on Z's YEAR 3 return because the previously recorded payments of tax exceed the recorded tax liability to be assessed. Thus, the overpayment was scheduled as of November 1, YEAR 4 (the 23C date) when the assessment was scheduled and recorded. Because Z did not file a suit for the payment of additional interest within six years of that date, Z can no longer recover overpayment interest under section 6611 on the refunded amount.

- (B) Z has not made a timely claim for overpayment interest claimed on amounts credited from YEAR 1, YEAR 3, and YEAR 5 to other tax liabilities of Z nor shown that it is entitled to receive such overpayment interest

The Service is authorized to refund overpayments of tax to taxpayers under section 6402(a). An overpayment of tax is the amount by which the tax payments made by a taxpayer exceed the taxpayer's liability for taxes, interest and penalties for a given type of tax and tax period; there is no overpayment until the entire amount of tax is satisfied. An overpayment can result from the overpayment of estimated taxes, carrybacks of net operating losses or other adjustments made on an amended return, adjustments made as the result of an audit, or by the payment of tax that is assessed or collected after the relevant limitations period has expired. IRM § 121.1.4.2 Overpayments of tax can be refunded to a taxpayer at the request of the taxpayer in a formal or informal claim for refund or upon the Service's initiative. Treas. Reg. § 301.6402-2. In lieu of actually refunding such overpayments to a taxpayer, section 6402(a) also allows the Service to credit an overpayment against existing liabilities when it provides:

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c) or (d), refund any balance to such person.

No credit or refund of an overpayment can be made, however, after the expiration of the statute of limitations on refunds unless, before the expiration of the statutory period, the taxpayer files a claim for refund with the Service. Section 6511(b)(1).

At various times after Z's returns for YEAR 1 and YEAR 3 were filed, the Service had cause to abate the tax initially reported by Z on those returns. These abatements were caused by, inter alia, foreign tax credits for taxes paid in later years and agreed partial settlements. The reduction in Z's liability for tax (and, in some instances, the underpayment interest that Z had paid on the tax) led to overpayments for YEAR 1 and YEAR 3. When these overpayments arose the

Service credited all or part of them against other tax liabilities that were outstanding for other taxes and other periods, either at the request of Z or on its own initiative.

When an overpayment is credited against another tax liability, section 6611(b)(1) provides that interest is to be allowed and paid on the overpayment “from the date of the overpayment to the due date of the amount against which the credit is taken.” In the example you provided for YEAR 3, Z’s excise tax liability was due as of April 15, YEAR 5. Because that due date preceded the date, October 16, YEAR 6, on which the overpayment for YEAR 3 arose, there was no period on which overpayment interest was allowable. In contrast, section 6611(b)(2) allows interest on refunds from the date the overpayment arises until a date preceding the date of a refund check by no more than 30 days. Z would have been entitled to overpayment interest if its YEAR 3 overpayment had been refunded to it, rather than credited against the excise tax liability.

On the other side of the credit transaction, section 6601(a) provides that interest on an underpayment of tax that is not paid on or before the last date prescribed for payment accrues from the prescribed payment date until the date on which the tax is paid. Section 6601(e) provides that the interest on any tax—

shall be assessed, collected and paid in the same manner as taxes. Any reference in this title (except . . . deficiency procedures) to any tax imposed by this title shall be deemed to refer to interest imposed by this section on such tax.

Interest on a tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

Section 6601(g). Under this provision, the excise tax liability would accrue interest from the date it was due until it was paid.

To parallel section 6611(b)(1), however, section 6601(f) provides that:

[i]f any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

When the Service credited the YEAR 3 overpayment against the excise tax liability, the underpayment interest on the excise tax should have reflected the accrual period from April 15, YEAR 5 to October 16, YEAR 6; no interest should have been assessed for any period after October 16, YEAR 6. Under section 6601(f), since overpayment interest was not allowed after October 16, YEAR 6 on the YEAR 3 overpayments, accrual of underpayment interest on the excise tax that was paid

with the YEAR 3 overpayment should likewise have stopped as of October 16, YEAR 6. Although we have not reviewed the interest computations, we assume, for purposes of providing this advice, that the Service erred in assessing and collecting underpayment interest on the excise tax for the period after October 16, YEAR 6. The error, if any, was made in computing interest on the excise tax liability.

It has been long established that the crediting of an overpayment of tax from one year against an underpayment of another tax liability constitutes a payment of tax as effectively as a payment of the underpaid tax in cash. McEachern v. Rose, 302 U.S. 56 (1945); United States v. Swift & Co., 282 U.S. 468 (1931), United States v. Botany Worsted Mills, 98 F.2d 880 (3d. Cir. 1938). Inasmuch as the amount of the credit is transferred from the overpaid account as a full or partial payment of the underpaid account, the credited amount ceases to be a payment in the first account and can no longer be an overpayment in that account. In your example, the tax liability for YEAR 3 was no longer overpaid once the Service credited the overpayment in that accounts to the assessed underpayments for the excise tax liability.

Once an overpayment has been credited in payment of another tax liability, the proper remedy for contesting the validity and legality of the tax against which the overpayment has been credited lies in a timely claim for refund of the tax paid by means of the credit. Treas. Reg. § 301.6402-2; see Donahue v. United States, 33 Fed. Cl. 600 (1995). As relevant herein, the claim must be filed within two years from the date on which the tax was paid. Section 6511(a). For purposes of claiming a refund, the payment of a tax deficiency for one year is made when the overpayment from another year is actually credited to the deficiency year. See Republic Petroleum Corporation v. United States, 613 F.2d 518, n.19 (5th Cir. 1980); Donahue v. United States, 33 Fed. Cl. 600 (1995); Bazargani v. United States, 92-1 U.S.T.C. ¶ 50,312 (E.D. Pa. 1992); Rev. Rul. 56-506, 1956-2 C.B. 959. It is undisputed that no one made a timely refund claim for interest on the excise tax, informal or otherwise, within two years from February 27, YEAR 9, when the credits from YEAR 3 to the excise tax were authorized.

Relying upon the section 6601(e)(1) prescription that references to tax also refer to underpayment interest on such tax, the United States Court of Federal Claims has held that a taxpayer is required to follow the refund procedures for taxes with respect to claims for refund of underpayment interest before any suit can be filed to recover underpayment interest: "deficiency interest has been so closely braided to principal that it has been deemed an integral part of the tax." Alexander Proudfoot Co. v. United States, 454 F.2d 1379, 1382 (Ct. Cl. 1972). The court expressly rejected the taxpayer's argument that the refund procedures of the Code do not apply to underpayment interest, and that instead the general provisions governing suits against the government, including the 6-year statute of limitations provided in 28 U.S.C. § 2501, apply. Citing the acknowledged purposes of the refund claim

requirement and the shorter limitations period for tax refund suits -- to prevent surprise, to give adequate notice to the Service of the nature of the claim, and to allow the Service to address the claim administratively prior to litigation -- the court observed, "All of these goals are advanced by adhering to the claim requirement (as well as truncated limitations) even where deficiency interest alone is at stake." 454 F.2d at 1383 (emphasis added).

Z suggests that the Service should correct any error in the application of the overpayment to the excise tax liabilities by allowing the payment of additional overpayment interest on the overpayment for YEAR 3. Z's argument disregards the fact that the overpayment was properly credited to the tax liabilities that had been assessed for another tax. As of that application, there was no longer any overpayment in the account for YEAR 3 that was subject to refund or to the accrual of interest. The only interest authorized by section 6611 is that allowable under section 6611(b)(1), i.e., in this example, none.

Alternatively, Z argues that the Service erred by applying the interest computation rules in section 6611(b)(1) and section 6601(f) to the application of its overpayment to a tax liability of its parent, Y. The Service, in applying interest netting as extensively as administratively possible, uses its authority under section 6402(a) to credit any overpayment, together with interest thereon, against any liability for any tax then due from the person who made the overpayment. See the interest provisions at IRM § 31(59)3.5(2)(a) (1/1/95). Because Y is severally liable for the income tax owed by consolidated group Z, overpayment of Z's income tax can be credited against outstanding liabilities of Y for other taxes.

Z now asserts, for the first time, that its liability is separate from Y's and that its overpayments should not have been credited under section 6402, and that the interest netting provisions should not have been applied. The Service will credit overpayments belonging to one taxpayer to liabilities of another taxpayer, but, because such crediting is not authorized under section 6402, will first obtain the consent of the taxpayer whose overpayment is to be credited. In these situations, for interest purposes, the Service treats the overpayment as having been refunded to the taxpayer and a payment made by the other taxpayer on the date the credit is made. Thus, interest on both the underpayment and the overpayment is computed through the date the credit is completed without using the interest computation rules in section 6611(b)(1) and section 6601(f). Because the underpayment rate has been higher than the overpayment rate since 1987, taxpayers usually prefer situations where related taxpayers are treated as the same taxpayer.

Further, as discussed above, if Z were entitled to overpayment interest based upon the Service's crediting of more than the proper amount of the overpayments from YEAR 1 and YEAR 3 to other tax liabilities or of crediting Z overpayments to another taxpayer, the Service can no longer honor Z's claim for overpayment

interest because more than six years has expired since the claim arose. In these situations, the overpayments arose from the abatements of tax due to various credits claimed by Z during the audit. As explained in General Instruments Corp. v. United States, 33 Fed.Cl. 4, 98-1 U.S.T.C. ¶ 50,234, the overpayments would have been scheduled for purposes of section 6407 when the Certificate and Schedule of Overassessment and Overpayments scheduling the overassessment of tax was signed, *i.e.*, when the abatement creating the overassessment of tax was authorized. Because Z did not file a suit for the payment of additional interest within six years of that date, Z can no longer recover overpayment interest under section 6611 on the refunded amount.

- (C) Z has not filed a timely suit for overpayment interest claimed on the amounts credited pursuant to the election on Z's returns for YEAR 5 and YEAR 6 to its estimated tax liabilities for, respectively, YEAR 6 and YEAR 7 nor shown that it is entitled to such interest.

In May Department Stores Company v. United States, 36 Fed. Cl. 680 (1996), acq. 1997-2 C.B. 1, the Court of Federal Claims held that when a taxpayer elected to have an overpayment reported on a return credited to the estimated tax liability for the next tax period and later became liable for a deficiency in tax for the overpayment year, the underpayment interest on the portion of the deficiency that became "unpaid" because of the overpayment credit did not start to accrue until the date as of which the overpayment was credited to the next year's estimated tax liability.

In light of May Department Stores, the Service reconsidered the manner in which interest on a subsequently determined deficiency is to be computed under section 6601(a) and issued Rev. Rul. 99-40, 1999-40 I.R.B. 441 to announce a practice consistent with that decision. When such an election is made, the overpayment will be applied to unpaid installments of estimated tax due on or after the date the overpayment arose, in the order in which they are required to be paid to avoid an addition to the tax for failure to pay estimated income tax under sections 6654 and 6655. The Service will assess interest on a subsequently determined deficiency for the overpayment year from the date (or dates) that the overpayment is applied to the succeeding year's estimated tax obligations. In all situations, the estimated tax rules in effect for the tax year to which the overpayment is credited will be used to determine the amount of estimated taxes due, and thus, the amount of the overpayment needed to satisfy the obligation for each installment of estimated tax. Any remaining balance of the overpayment credit will be applied as of the due date, without extensions, for filing the succeeding year's income tax return.

In its claims for overpayment interest on the overpayments of tax from YEAR 5 and YEAR 6 that it elected to credit to estimated taxes for YEAR 6 and YEAR 7, Z misinterprets the effect of May Department Stores. The underlying premise in May

Department Stores and similar cases is that a taxpayer who elects to have an overpayment of tax reported for one tax year credited to the estimated tax for the succeeding year relinquishes the right to obtain overpayment interest on the refund or credit of the overpayment when it makes the election. Later, if the taxpayer became liable for a deficiency in tax because of that election to transfer money from one tax year to the next year, the courts have considered it inherently unfair to require a taxpayer to pay underpayment interest on the credited amount for the period of time before it was credited because the taxpayer, by making the election, had already given up the right to recover overpayment interest for that same period. The tax that had been overpaid before the date as of which the credit was made did not become “unpaid” and subject to underpayment interest until the credit was made.

Nothing in the May Department Stores line of cases contradicts the statutory prescription in sections 6611(e) and 6513(b)(2) that prohibit the payment of overpayment interest on estimated tax for periods before the due date of the return for the tax year for which the estimated tax payments are made. For purposes of computing overpayment interest, section 6611(e) incorporates the provisions of section 6513(b)(2) establishing that estimated payments of income tax for any taxable year shall be deemed to have been paid on the last day for prescribed for filing the income tax return for such taxable year, regardless of when the estimated tax payments were submitted. No overpayment interest is payable on payments of estimated tax before the return due date.

The regulations issued under section 6402(b) further explain the effect of the interest restriction when a taxpayer elects to credit an overpayment of tax from one year against the taxpayer’s estimated tax for the succeeding year. The regulations state, in the middle of Treas. Reg. § 301.6402-3(a)(5):

A return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amounts shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer’s estimated income tax for the taxable year immediately succeeding the taxable year for which such return (or amended return) is filed. If the taxpayer indicates in its return (or amended return) that all or part of the overpayment shown by its return (or amended return) is to be applied to its estimated income tax for its succeeding taxable year, such indication shall constitute an election to so apply such overpayment, and no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

Emphasis added. The “no interest” caveat is reiterated at Treas. Reg. 301.6611-1(h)(2)(vii).

The Court of Claims held that the regulations prohibiting interest were not unreasonable when it refused to allow interest on such an overpayment in Owens Corning Fiberglas Corp. v. United States, 462 F.2d 1113, 72-2 U.S.T.C. ¶ 9556 (Ct. Cl. 1972). In that case, a corporate taxpayer included its section 6402(b) election on a return timely filed under extension six months after the original due date. Relying on the installment payment plan for corporate taxpayers then in effect, the taxpayer paid most of the tax in March, made a payment of its underpaid estimated tax liability in June, and elected to credit an overpayment equal to the June payment to its next year’s quarterly estimated tax liability (due September 15) when it filed its return in September. The taxpayer then claimed a right to overpayment interest on that amount from June to September. After reviewing the legislative history of section 6402(b) and the regulations issued by the Service under that section, the Court of Claims concluded that “the Treasury’s power to regulate the exercise of this privilege [to treat an overpayment as a payment] is broad enough that it may require a taxpayer who exercises it to forego benefits it would otherwise enjoy.” The court found that Congress had implicitly approved the regulations. Thus, while May Department Stores and its progeny may result in taxpayers being exempted from paying underpayment interest for periods over which they were not allowed overpayment interest on amounts credited under section 6402(b), neither Congress nor the courts have required the Service to pay overpayment interest on the credited amounts. See also Barry v. United States, 570 F. Supp. 176, 83-2 U.S.T.C. ¶ 9429 (N.D. Ill. 1983)(when the taxpayers elected to have the overpaid taxes credited against the next year’s estimated tax liability, the overpayments, by the taxpayers’ choice, became tax payments for that year which were not due until that next year’s return due date.)

- (D) Z is not entitled to a reduction of underpayment interest paid by Z on the portion of a tax underpayment for YEAR 1 that was eliminated by use of a foreign tax credit carryback

Under section 6601, underpayment interest accrues on a tax liability from the last date prescribed for payment to the date on which the tax is paid. The last date prescribed for the payment of income tax is the date on which the return reporting such tax is due, without regard to extensions. In Fluor v. United States, 35 Fed. Cl. 284 (1996), the case relied upon by Z, the Federal Claims Court held that no underpayment interest accrued on the portion of a tax deficiency that was eliminated by a foreign tax credit carryback because section 904(c), in providing a credit for foreign taxes, specifies that the foreign taxes in excess of the foreign tax credit ceiling for a tax year may be carried back to the two prior years and that the excess credited taxes are “deemed taxes paid or accrued” in the tax year to which they are carried back.

The Federal Claims Court decision in Fluor, however, was reversed in 1997 by the Court of Appeals for the Federal Circuit in Fluor v. United States, 126 F.3d 1397 (1997), rev'g 35 Fed. Cl. 284 (1996). The Federal Circuit, relying upon Manning v. Seeley Tube & Box Co., 338 U.S. 561 (1950) and United States v. Koppers Co., 348 U.S. 254 (1955), reasoned that the retroactive adjustment to a taxpayer's obligations to pay tax did not have the effect of releasing the taxpayer from the duty to pay interest on the original obligations until the time that they were reduced, i.e., the year in which the foreign tax was paid or accrued.

The circuit court did not accept, however, the Service's determination of when the interest stopped running. While the Service argued that the underpayment interest should accrue until the due date of the return for the year in which the foreign tax was paid or accrued, the circuit court relied upon the statutes governing interest in 1958 when the foreign tax carryover provision was enacted to hold that the underpayment interest stopped running at the end of the tax year in which the carryback was generated. 126 F.3d at 1406. These statutes provided that underpayment interest on deficiencies eliminated by a net operating loss carryback and overpayment interest on foreign tax carrybacks and net operating loss carrybacks would, respectively, end and begin at the end of the taxable year in which the carryback was generated. Sections 6601(e) and 6611(f) (1958).

In the Taxpayer Relief Act of 1997, P. L. 105-34, § 1055(a), 111 Stat. 944, Congress codified the Service position for tax years ending after August 5, 1997. Section 6601(d)(2) now provides:

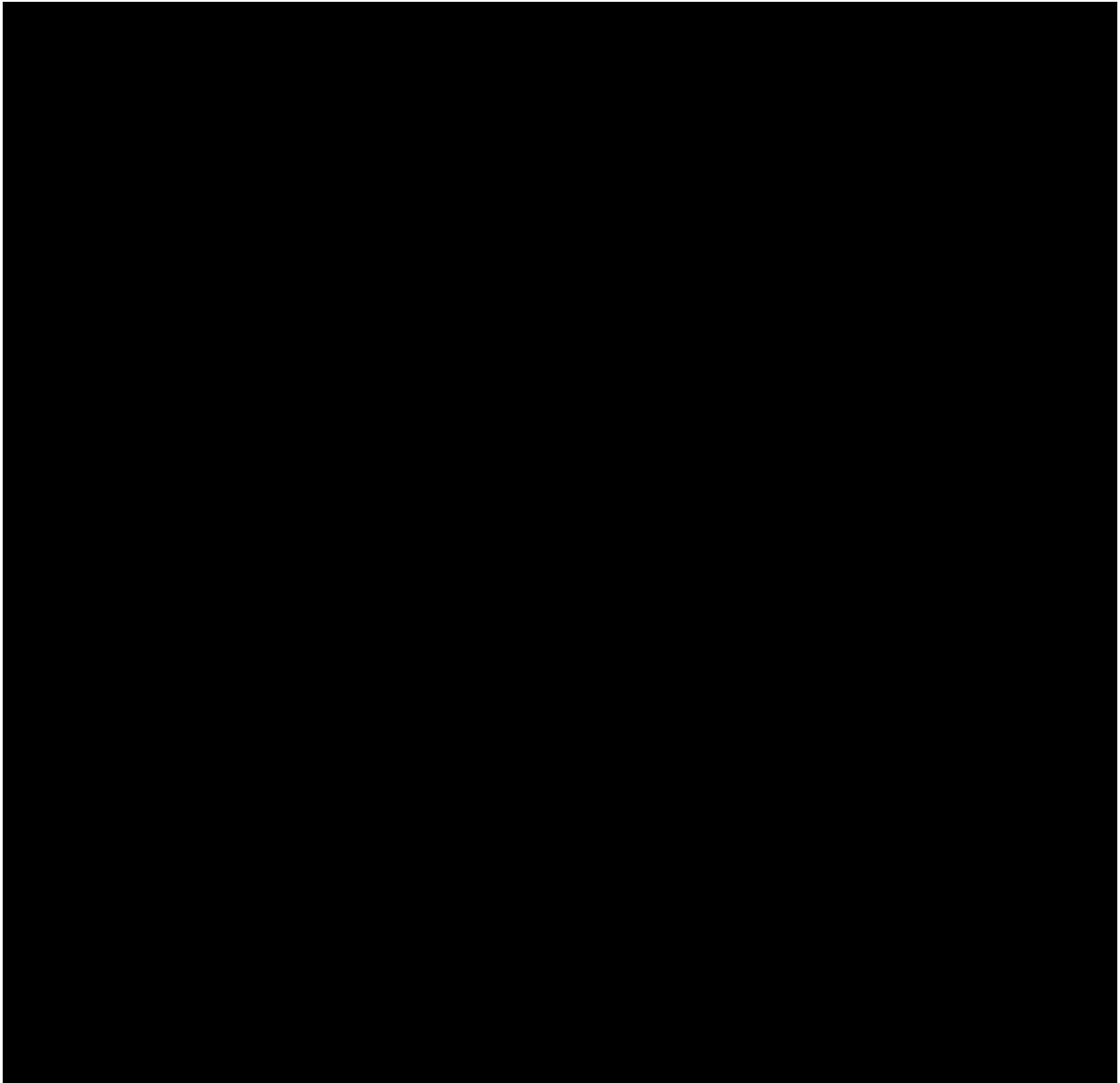
If any credit is increased by reason of a carryback of tax [paid or accrued to foreign countries or possessions of the United States, such increase shall not affect the computation of interest under [section 6601] for the period ending with the filing date for the taxable year in which such taxes were paid or accrued.

Further, for tax years ending before August 5, 1997, the Tax Court adopted the Service's argument in Intel v. Commissioner, 111 T.C. 90 (1998). See also Dresser Industries, 99-2 U.S.T.C. ¶ 50,678 (N.D. Tex. 1999)(district court followed Intel, not Fluor) and Hallmark Cards, Inc. v. Commissioner, 111 T.C. 266 (1998)(Tax Court would not relinquish jurisdiction where taxpayer sought to avoid the Intel precedent). Counsel's litigating position on this issue is contained in LGM TL-104, (September 18, 1998). As it relates to this case, "[t]he Service will not accept any settlement of either the deficiency interest issue or the computation issue in cases docketed in the Tax Court."

- (E) Netting under section 6621(d) of underpayment interest paid or payable by Z and overpayment interest paid or payable to Z over overlapping interest periods

Neither the amendment to the answer filed by Z nor the subsequent submissions we have seen clearly indicate the nature of Z's netting claims. We are unable to consider them without further information. To the extent Z is trying to preserve a claim for global netting for the years before the court and other tax years, the Service has set forth the application process and the deadlines for filing applications in Rev. Proc. 99-19 (issued March 29, 1999), 1999-13 I.R.B. 10 and in Rev. Proc. 99-43 (issued November 22, 1999), 1999-47 I.R.B. 579.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS





Please do not hesitate to contact us at 202-622-7940 concerning further development of these issues or other issues in this case.

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