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INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR NANCY RYMER

Accounts Resolution Branch Chief
Attn: Richard Kisiel
OP:C:A:A

FROM: Assistant Chief Counsel (Administrative Provisions & Judicial Practice)
CC:PA:APJP

SUBJECT: Significant Service Center Advice Regarding Relief under § 7508A of the Code

This responds to your request dated May 4, 2000, concerning the application of the statute of limitations for filing a refund claim for 1996. The taxpayers involved were granted disaster relief under § 7508A in Notice 97-62, 1997-2 C.B. 320.

ISSUE

In 1997, taxpayers in Grand Forks, North Dakota, and Polk County, Minnesota, (affected taxpayers) were affected by a Presidentially declared disaster. Notice 97-62 granted affected taxpayers 6-month extensions of time to file their 1996 tax returns under § 6081 and pay their 1996 tax liability under § 6161. In addition, Notice 97-62 provided that under § 7508A a specified period of time was disregarded in determining whether affected taxpayers timely performed certain acts, including the filing of refund claims; this period was also disregarded in determining the amount of the refund. See §§ 7508A(a)(2) and 6511(b)(2)(A). Determine the date by which an affected taxpayer must file a refund claim in order to obtain a refund of estimated tax and withheld income tax for 1996 that was deemed paid on April 15, 1997.

CONCLUSION

To receive a refund of amounts deemed paid on April 15, 1997, an affected taxpayer must generally file a claim for refund on the earlier of the last date prescribed for filing a refund claim under § 6511(a) and the date (January 13, 2001) that is 3 years, 6 months, and 90 days from the date the amounts were deemed paid. As indicated below, seven scenarios must be considered.

FACTS

In 1997, Grand Forks County, North Dakota, and Polk County, Minnesota, were declared disaster areas by the President of the United States. The Internal Revenue Service (Service) granted affected taxpayers a 6-month extension of time to file the 1996 return under § 6081 and a 6-month extension of time to pay the 1996 tax liability under § 6161. The Service also determined that § 7508A applied to the affected taxpayers. The Service issued Notice 97-62, which disregarded certain time periods in determining whether affected taxpayers timely performed the acts described in § 7508(a)(1), which include the filing of refund claims, and in determining the amount of the refund; see § 7508A(a)(2) as to the amount of the refund. Notice 97-62 applied to affected taxpayers performing acts for which the period for performance had not expired (taking extensions into account) by August 5, 1997, and had started no later than November 2, 1997 (affected act).¹

The disregarded periods prescribed in Notice 97-62 fell into two categories. If the period for performing an affected act started before August 5, 1997, Notice 97-62 disregarded 90 days in determining whether the act was performed timely.² If the period for performing an affected act started on or after August 5, 1997, and on or

¹An example of an affected act is the filing of a 1996 calendar year individual income tax return. The earliest date that a 1996 calendar year individual income tax return could have been filed was January 1, 1997. Therefore, the period for filing such a return started before November 2, 1997. In addition, an affected taxpayer's period for filing the 1996 calendar year individual income tax return had not expired before August 5, 1997, because all affected taxpayers received a 6-month extension of time to file the return under § 6081.

² The filing of a 1996 calendar year individual income tax return is an example of an affected act for which the period of performance started before August 5, 1997. See note 1, supra. Given the 6-month extension of time to file the 1996 return under § 6081 and the 90-day period disregarded under § 7508A, an affected taxpayer could have filed the 1996 calendar year individual income tax return as late as January 13, 1998, and it would still have been considered timely.

before November 2, 1997, Notice 97-62 disregarded the number of days from the first date for performing the act through November 2, 1997.³

LAW AND ANALYSIS

Under § 301.6402-3(a)(5) of the Regulations on Procedure and Administration, a properly executed individual original income tax return or amended return is a claim for refund within the meaning of § 6511 for the amount of the overpayment disclosed by such return or amended return.

There are two limitations on receiving a refund of amounts paid: (1) the refund claim must be filed within the statute of limitations of § 6511(a); and (2) the amount of the refund is limited by § 6511(b)(2)(A). Both of these limitations must be considered to determine the latest date that a claim may be filed to receive a refund of amounts deemed paid on April 15, 1997.

I. Section 6511(a) limitation:

A. In general:

Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in § 6511(a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

Section 6511(a) provides that a claim for credit or refund of an overpayment of any tax imposed by the Internal Revenue Code, with respect to which the taxpayer is required to file a return, shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

If an original return is filed for a given tax year, the 3-year statute of limitations of § 6511(a) for filing a claim for refund for that tax year generally begins to run on the date the return is filed. However under § 6513(a), if a return is filed before the last date prescribed by law for filing the return, the return is deemed filed on such last date. Under § 6702(a), the last day prescribed by law for filing a 1996 calendar

³If the 1996 calendar year individual income tax return was filed between August 5, 1997, and November 2, 1997, the 3-year § 6511(a) statute of limitations for filing a claim for refund began to run on the date such return was filed. Thus, the filing of such a refund claim is an example of an affected act for which the period of performance started on or after August 5, 1997, and on or before November 2, 1997.

year federal income tax return was April 15, 1997. The last day prescribed by law is not affected by extensions or periods disregarded under §§ 7508 and 7508A. See § 6513(a) as to extensions and Houston v. Commissioner, 38 T.C. 486, 491 n. 6 (1962) as to disregarded periods. Therefore, if an affected taxpayer filed the 1996 calendar year federal income tax return before April 15, 1997, the return was deemed filed on April 15, 1997, and the 3-year statute of limitations for filing a claim for refund started running on April 15, 1997. If an affected taxpayer filed the 1996 calendar year federal income tax return on or after April 15, 1997, then the 3-year statute of limitations for filing a claim for refund started running on the actual date the tax return was filed.

B. Effect of § 7508A on the statute of limitations:

Sections 7508A and 7508 both authorizes the Secretary to disregard a period of time in determining whether the acts described in § 7508(a)(1) are timely performed. Section 7508A applies to individuals who are affected by a Presidentially declared disaster, and § 7508 applies to individuals who serve in a combat zone. There is currently no case law interpreting the disregarded period under § 7508A; however, for purposes of § 7508, courts and the Service have interpreted the disregarded period as a tolling of the statute of limitations for timely performing, or a suspension of the applicable time limitation for performing, acts described in § 7508(a)(1). For example, §§ 7508 and 7508A suspend the time limitations in § 6072 for timely filing an original individual income tax return and toll the § 6511(a) statute of limitation applicable to a refund claim filed after an original return is filed. See Hathaway v. Commissioner, T.C. Memo 1993-487 (indicating that § 7508 suspends the time limitations for certain tax-related activities); Hampton v. United States, 513 F.2d 1234, 1247 (Ct. Cl. 1975) (§ 7508 defers the running of the period of limitations for filing a claim for refund during the time that the serviceman is serving in the combat zone plus 180 days); G.C.M. 35309, 1973 IRS GCM LEXIS 254 (§ 7508 tolls the statutory period for performance of the acts specified in § 7508(a)(1)).

There is no indication in § 7508, the legislative history to § 7508, or court cases, that the disregarded period of § 7508 changes the date prescribed by law for filing a return, paying the tax, or performing other acts. Rather, § 7508 tolls the applicable statute of limitations or suspends the applicable time limitation. Carrick v. Commissioner, 9 T.C. 756 (1947), illustrates the application of § 3804 of the Internal Revenue Code of 1939, which is the predecessor to § 7508, to the tolling of the statute of limitations. In Carrick, the taxpayer filed his return for the 1941 on March 16, 1942. Under the Internal Revenue Code of 1939, the statute of limitations for making an assessment on the return began to run on March 16, 1942, when the return was filed, and would ordinarily have expired three years after that date on March 16, 1945. However, on February 28, 1944, the taxpayer went overseas with the armed forces, and he was continuously outside of the United States until February of 1945. The Secretary assessed a deficiency against the

taxpayer for the 1941 tax year on August 13, 1945. The Tax Court determined that the assessment was timely because the period of limitations for making an assessment was tolled by § 3804 for the period that the taxpayer was continuously outside of the United States, and for 90 days thereafter.

Section 7508A(a) is similar to § 7508 in that it also provides a disregarded period in determining whether taxpayers affected by a Presidentially declared disaster timely perform the acts described in § 7508(a)(1). One of the acts described in § 7508(a)(1) is the filing of a claim for credit or refund. See § 7508(a)(1)(E). Like § 7508, § 7508A suspends or tolls the period of limitations for performing an affected act.

Under Notice 97-62, certain periods of time were disregarded in determining the timeliness of affected acts for which the period of performance had started before November 2, 1997. Therefore, under Notice 97-62, if an affected taxpayer's statute of limitations for filing a claim for refund for the 1996 tax year started to run before November 2, 1997, § 7508A tolled the affected taxpayer's statute of limitations for filing a claim for refund for the number of days disregarded under Notice 97-62.

II. Section 6511(b)(2)(A) limitation on amount of refund

A. In general:

Section 6511(b)(2)(A) provides that if a claim for refund was filed by a taxpayer during the 3-year period prescribed in § 6511(a), the amount of the refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim equal to 3 years plus any extension of time for filing the return.

Under § 6513(a), for purposes of §§ 6511(b)(2), 6511(c), and 6512, any portion of tax paid before the last day prescribed for the payment of the tax shall be considered paid on such last day. The last day prescribed for paying tax is determined without regard to extensions or disregarded periods. See § 6513(a); see also Houston v. Commissioner, 38 T.C. 486, 491 n. 6 (1962). Section 6513(b) provides that for purposes of §§ 6511 and 6512, any tax actually withheld from a calendar year taxpayer's wages or paid as estimated tax during a calendar year is deemed paid on April 15 of the next calendar year.

B. Effect of Notice 97-62 on the § 6511(b)(2)(A) limitation:

Under Notice 97-62, affected taxpayers received a 6-month extension of time to file the 1996 tax return under § 6081, and an additional 90 days was disregarded under § 7508A in determining the last date on which a 1996 individual income tax return would be considered timely filed. Section 6511(b)(2)(A) specifically refers to extensions of time to file. Also, under § 7508A(a)(2), 90 days are disregarded in determining the amount of the refund. Thus, both the 6-month extension and the

90-day period prolonged the 3-year lookback period of § 6511(b)(2)(A). Therefore, assuming that a refund claim is timely under § 6511(a), an affected taxpayer may receive a refund of any amount paid 3 years, 6 months, and 90 days before the claim for refund was filed under § 6511(b)(2)(A). As a result, if a refund claim is timely under § 6511(a), it may be filed as late as January 13, 2001 (the date that is 3 years, 6 months, and 90 days after April 15, 1997) for a refund of estimated tax and withheld income tax deemed paid on April 15, 1997.

III. Application of §§ 6511(a) and 6511(b)(2)(A) to affected taxpayers

There are seven scenarios indicating the possible time frames in which an affected taxpayer could have filed the original 1996 individual income tax return and claimed a refund. In all the scenarios, except for the first, both an original return and an amended return are filed.

A. Scenario 1: The affected taxpayer filed an original 1996 return claiming a refund after January 13, 1998; no amended return was filed.

The original return in this scenario also functions as a claim for refund. Section 301.6402-3(a)(5). Under § 6511(a), if an original return was filed, the claim for refund must be filed within 3 years from the date the original return was filed. In this scenario, the claim for refund was filed on the same day as the original return; therefore, the claim for refund was necessarily filed within 3 years from the date when the original return was filed. The claim for refund in this scenario was filed within the period of limitations of § 6511(a) regardless of when the return was filed. Dixon v. United States, 7 Cl. Ct. 377 (1985); Rev. Rul. 76-511, 1976-2 C.B. 428. Thus, the § 6511(b)(2)(A) limitation on the amount of the refund is the only concern in this scenario.

The affected taxpayer's refund is limited by §§ 6511(b)(2)(A) and 7508A(a)(2) to amounts paid within the 3 years immediately preceding the claim for refund, plus the period of any extensions of time to file the return and any disregarded period under § 7508A. Notice 97-62 granted affected taxpayers a 6-month extension of time to file the 1996 return, and it disregarded 90 days in determining the amount of any claim for refund. Therefore, for purposes of § 6511(b)(2)(A), the affected taxpayer may receive a refund of amounts that were paid within 3 years, 6 months, and 90 days from the date the claim for refund was filed. The affected taxpayer seeks a refund of amounts that were deemed paid on April 15, 1997. Thus, the affected taxpayer must file the 1996 return on or before January 13, 2001 (the date that is 3 years, 6 months, and 90 days from April 15, 1997) to receive a refund of such amounts.⁴

⁴January 13, 2001, is a Saturday, but this is irrelevant in applying § 6511(b)(2)(A) in this scenario. Under § 7503, when the last date prescribed for performing an act falls

B. Scenario 2: In the second scenario, the affected taxpayer files the original 1996 return after January 13, 1998, but before January 13, 2001, and seeks to file an amended return claiming a refund.

Under Notice 97-62, affected acts are those for which the period of performance began to run before November 2, 1997. The original return in this scenario was filed after November 2, 1997; thus, the statute of limitations in § 6511(a) for filing a claim for refund, which started to run on the date that the original return was filed, did not start to run before November 2, 1997. Therefore, the filing of an amended return in this scenario is not an affected act, and § 7508A has no effect on the 3-year period of limitations of § 6511(a) on filing a timely refund claim. The affected taxpayer in this scenario must file the refund claim within 3 years from the date the original return was filed for the claim to be considered timely.

However, the affected taxpayer seeks a refund of amounts that were deemed paid on April 15, 1997. Therefore, as with Scenario 1, the claim for refund must be filed on or before January 13, 2001 so that the refund those amounts will not be precluded by § 6511(b)(2)(A).⁵

C. Scenario 3: In the third scenario, the affected taxpayer filed the original 1996 return on January 13, 1998, and seeks to file an amended return claiming a refund.

Under § 6511(a), the affected taxpayer must file a timely claim for refund within 3 years from the date the original return was filed. The date that is 3 years from January 13, 1998, is January 13, 2001. Therefore, ordinarily, the affected taxpayer would be required to file the claim for refund by January 13, 2001, for the claim for refund to be timely.

However, January 13, 2001, is a Saturday. Under § 7503, when the last day prescribed by law for performing an act falls on a Saturday, Sunday, or legal

on a Saturday, Sunday, or holiday, the taxpayer has until the next day that is not a Saturday, Sunday, or holiday to timely perform the act. In this scenario, it is irrelevant that January 13, 2001, is a Saturday because this date is neither the last day prescribed for filing the 1996 tax return nor the last day prescribed for filing a refund claim for 1996 under § 6511(a). See Stevens v. United States (Action on Decision), AOD 1981-10, 1980 AOD LEXIS 82. Compare Scenario 3.

⁵The fact that January 13, 2001, is a Saturday does not affect the amount limitation of § 6511(b)(2)(A). Under § 6511(a), the last day prescribed for filing the claim for refund will be 3 years from the date the return was filed. The return in this scenario was filed after January 13, 1998; therefore the last day prescribed for filing the claim for refund under § 6511(a) will be sometime after January 13, 2001. See n. 4, supra.

holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Since the affected taxpayer filed the original return on January 13, 1998, and the last date for filing the claim for refund is a Saturday, the affected taxpayer may file the claim for refund at any time on or before Monday January 15, 2001, and such claim will be considered timely.

As with Scenarios 1 and 2, the affected taxpayer in Scenario 3 seeks a refund of amounts deemed paid on April 15, 1997. Ordinarily, an affected taxpayer would have to file the claim for refund by January 13, 2001 (the date that is 3 years, 6 months, and 90 days from April 15, 1997), in order to prevent § 6511(b)(2)(A) from precluding a refund of amounts deemed paid on April 15, 1997. However, under Rev. Rul. 66-118, 1996-1 C.B. 290, when the deadline for filing a claim for refund is affected by § 7503, it would obviously nullify the full effectiveness of that section if the limitation of § 6511(b)(2)(A) were applied so that a refund of amounts paid would not be allowed because the day that was 3 years from the date the amount was paid fell on a Saturday, Sunday, or legal holiday. Therefore, the language in § 7503 that the filing will “be considered timely if it is performed on the next succeeding day” is interpreted to mean that the filing is treated as if it had, in fact, occurred on the last day otherwise prescribed for such filing.

In this scenario, an affected taxpayer’s claim for refund on an amended return filed on January 15, 2001, will be considered to have been filed on January 13, 2001. Therefore, the affected taxpayer may receive a refund of amounts that were deemed paid on April 15, 1997.

D. Scenario 4: In the fourth scenario, the affected taxpayer filed the original 1996 return after November 2, 1997, but before January 13, 1998, and seeks to file an amended return claiming a refund.

Under Notice 97-62, affected acts are those for which the period of performance began to run before November 2, 1997. The original return in this scenario was filed after November 2, 1997; thus, the statute of limitations in § 6511(a) for filing a claim for refund, which began when the return was filed, did not start to run before November 2, 1997. Therefore, the filing of an amended return in this scenario is not an affected act, and § 7508A has no effect on the § 6511(a) limitation on filing a timely claim for refund. To file a timely claim for refund, the affected taxpayer in this scenario must file the claim within 3 years from the date the original return was filed.

Section 6511(b)(2)(A) does not limit the amount of the affected taxpayer’s refund in this scenario. Section 6511(b)(2)(A) only limits the amount of a refund if amounts were paid more than 3-years before the claim for refund was filed (plus extensions under § 6081 and disregarded time periods under § 7508A). As with scenarios 1 and 2, January 13, 2001, is the date which is 3 years, 6 months, and 90 days from

April 15, 1997 (the date the sought amounts were deemed paid). However, in this scenario, the 3-year statute of limitations under § 6511(a) for filing a claim for refund will expire before January 13, 2001, because the original return was filed before January 13, 1998. Therefore, as long as the affected taxpayer files a claim for refund within 3 years of the date the original return was filed, the amount of the refund will not be limited by § 6511(b)(2)(A).

E. Scenario 5: In the fifth scenario, the affected taxpayer filed the original 1996 return on or after August 5, 1997, and on or before November 2, 1997, and seeks to file an amended return claiming a refund.

Under Notice 97-62, affected acts are those for which the period of performance began to run before November 2, 1997. The original return in this scenario was filed sometime between August 5, 1997, and November 2, 1997. Thus, the statute of limitations in § 6511(a) for filing a claim for refund, which began to run when the original return was filed, started to run before November 2, 1997. Hence, the filing of a claim for refund in this scenario is an affected act.

Notice 97-62 provides that for affected acts, the period of performance of which began on or after August 5, 1997, and on or before November 2, 1997, the number of days between the date that the period commenced and November 2, 1997, will be disregarded under § 7508A in determining whether the act was performed timely. In this scenario, the number of days from the date the original return was filed and November 2, 1997, are added to the 3-year period of limitations for filing a claim for refund under § 6511(a) to determine if the claim for refund is timely. The date that is 3 years plus the number of days disregarded under Notice 97-62 in this scenario is November 2, 2000. Therefore, the affected taxpayer's claim for refund in this scenario will be timely if it is filed on or before November 2, 2000.

As with scenario 4, the § 6511(b)(2)(A) limitation on the amount of the refund is not an issue in this scenario. The claim for refund must be filed on or before November 2, 2000, to be considered timely, and § 6511(b)(2)(A) only limits refund amounts for timely claims that are filed after January 13, 2001. If the affected taxpayer files a timely claim for refund in this scenario on or before November 2, 2000, the affected taxpayer may receive a refund of amounts deemed paid on April 15, 1997.

F. Scenario 6: In the sixth scenario, the affected taxpayer filed the original 1996 return on or after April 15, 1997, but before August 5, 1997, and seeks to file an amended return claiming a refund.

Under Notice 97-62, affected acts are those for which the period of performance began to run before November 2, 1997. The original return in this scenario was filed sometime between April 15, 1997, and August 5, 1997. Thus, the statute of limitations in § 6511(a) for filing a claim for refund, which began to run when the

original return was filed, started to run before November 2, 1997. Hence, the filing of a claim for refund in this scenario is an affected act.

Notice 97-62 provides that for affected acts, the period of performance of which began before August 5, 1997, 90 days will be disregarded under § 7508A in determining whether the act was performed timely. In this scenario, 90 days are added to the 3-year period of limitations for filing a claim for refund under § 6511(a) to determine if the refund claim is timely. Therefore, the affected taxpayer's claim for refund in this scenario will be timely if it is filed on or before the date that is 3 years and 90 days from the date the original return was filed.

As with scenarios 4 and 5, the § 6511(b)(2)(A) limitation on the amount of the refund is not an issue in this scenario. The claim for refund must be filed on or before the date that is 3 years and 90 days from the date the original return was filed to be considered timely, and § 6511(b)(2)(A) only limits refund amounts for timely claims that are filed after January 13, 2001. The 3-year and 90-day limitations period under § 6511(a) in this scenario will expire before January 13, 2001. Therefore, if the affected taxpayer files a timely claim for refund in this scenario, the affected taxpayer may receive a refund of amounts deemed paid on April 15, 1997.

G. Scenario 7: In the seventh scenario, the affected taxpayer filed the original return for 1996 before April 15, 1997, and seeks to file an amended return claiming a refund.

Under § 6513(a), for purposes of § 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. The last day prescribed for filing is determined without regard to filing extensions or disregarded periods under § 7508A. Therefore, the original return in this scenario was deemed filed on April 15, 1997.

Under Notice 97-62, affected acts are those for which the period of performance began to run before November 2, 1997. The original return in this scenario was deemed filed on April 15, 1997. Thus, the statute of limitations in § 6511(a) for filing a claim for refund, which began to run when the original return was deemed filed, started to run before November 2, 1997. Hence, the filing of a claim for refund in this scenario is an affected act.

Notice 97-62 provides that for affected acts, the period of performance of which began before August 5, 1997, 90 days will be disregarded under § 7508A in determining whether the act was performed timely. In this scenario, 90 days are added to the 3-year period of limitations for filing a claim for refund under § 6511(a) to determine if the claim for refund was timely. Therefore, the affected taxpayer's claim for refund in this scenario was timely if it was filed on or before July 14, 2000

(the date that is 3 years and 90 days from the date the original return was deemed filed).

As with scenarios 4, 5, and 6, the § 6511(b)(2)(A) limitation on the amount of the refund is not an issue in this scenario. The claim for refund must be filed on or before the date that is 3 years and 90 days from the date the original return was deemed filed to be considered timely, and § 6511(b)(2)(A) only limits refund amounts for timely claims that are filed after January 13, 2001. The § 6511(a) limitations period in this scenario expired on July 14, 2000, which was before January 13, 2001. Therefore, if the affected taxpayer in this scenario filed a timely claim for refund, the affected taxpayer may receive a refund of amounts deemed paid on April 15, 1997.

If you have any questions, please contact Bridget Finkenaur at 622-4940.

CURTIS G. WILSON

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