

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: R. Craig Schneider
General Attorney
Small Business/Self-Employed

from: Pamela W. Fuller
Senior Technician Reviewer
CC:PA:APJP:B01

subject:

This Chief Counsel Advice responds to your memorandum dated February 11, 2004. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

X
Year 1
Year 2

ISSUES

1. When an income tax return reflecting an overpayment of tax is postmarked on the extended due date for filing the return, but the Service receives the return two days later, when does the section 6611(e)(1) 45-day interest-free period start?
2. Does IRM section 20.2.4.7.2.2 reflect the Service's position in Revenue Ruling 74-236?
3. When is an overpayment "refunded" to a taxpayer for purposes of section 6611(e)(1) of the Code?

CONCLUSIONS

1. When an income tax return reflecting an overpayment of tax is postmarked on the extended due date for filing the return, but the Service receives the return two days later, the section 6611(e)(1) 45-day interest-free period starts on the date of the United States postmark.¹
2. IRM section 20.2.4.7.2.2 does not reflect the Service's position in Revenue Ruling 74-236.
3. An overpayment is refunded to a taxpayer for purposes of section 6611(e)(1) when the refund check is issued.

FACTS

X mailed its Year 1 Corporate Income Tax Return (Form 1120) to the Service on September 15, Year 2, pursuant to an approved extension of time to file. The Service received the return on September 17, Year 2, in an envelope bearing a September 15, Year 2, postmark date.

The Service scheduled X's overpayment on October 29, Year 2, 44 days after the postmark date and 42 days after the date of receipt. The refund check was dated and mailed to X on November 2, Year 2, 48 days after the postmark date and 46 days after the date of receipt. The refund check did not include overpayment interest.

The Service calculated the starting date of the 45-day period in accordance with the Internal Revenue Manual (IRM). IRM section 20.2.4.7.2.2(3) provides that:

forty-five days should be added to the later of: 1) the normal return due date, 2) the return received date, without regard to extensions, 3) the Return Processible Date (RPD) if present (also known as the Correspondence Received Date); or 4) the received date of a formal or informal claim when determining whether the 45-day period has been met. If the refund is not made on or before that date, interest must be allowed on the refund.

The Service calculated the ending date of the 45-day period by using the date on which the overpayment was scheduled.

When the Service schedules a taxpayer's overpayment, it sends a report to Financial Management Service (FMS) showing that the taxpayer is entitled to a refund check. FMS processes the information and mails the refund check to the taxpayer. In a typical

¹ Section 7502(f) of the Code extends the United States Postmark requirement to dates recorded or marked by private designated delivery services.

case, the date on the refund check is the date the check is mailed to the taxpayer. X argues that the scheduling date was not the date the overpayment was refunded. X maintains that an overpayment is not refunded within the meaning of section 6611(e)(1) until the refund check is issued, i.e., the date set forth on the check.

LAW & ANALYSIS

1. When an income tax return reflecting an overpayment of tax is postmarked on the extended due date for filing the return, but is received by the Service two days later, when does the section 6611(e)(1) 45-day interest-free period start?

Section 6611(e) provides that no interest will be paid if a refund is made within 45 days after the last date prescribed for filing the return (determined without regard to an extension of time for filing) or, if the return is filed after such last date, the refund is made within 45 days after the return is filed.

Section 7502(a)(1) provides, in relevant part, that if any return required to be filed within a prescribed period or on or before a prescribed date is, after that period or date, delivered by United States mail to the place at which the return is required to be filed, the date of the United States postmark stamped on the cover in which the return is mailed is deemed to be the date of delivery of the return.

Section 7502(a)(2) provides, in relevant part, that subsection (a) will apply only if the postmark date falls on or before the prescribed date for filing the return (including extensions), and the return was deposited in the mail in the United States, postage pre-paid and properly addressed.

Under section 7502(a) a return filed on or before the extended due date, but received by the Service after the extended due date, is deemed filed on the postmark date. Therefore, in that situation, for purposes of section 6611(e), the 45-day interest-free period begins on the date that the return was postmarked.

This analysis is consistent with Revenue Ruling 74-236, 1974-1 C.B. 348, the facts of which are nearly identical to this case. In Rev. Rul. 74-236, the taxpayer timely mailed its 1970 return that reflected an overpayment to the Service by registered mail on September 15, 1971, pursuant to an approved extension of time. The Service received the return on September 17, 1971.

At issue was whether the section 6611(e) 45-day interest free period began on the date the return was timely mailed, pursuant to an extension of time to file, or from the date the return was actually received by the Service. The Revenue Ruling held that the return was deemed filed as of the postmark date, and accordingly, the 45-day interest-free period began on the postmark date.

In this case, X timely mailed its Year 1 income tax return on September 15, Year 2, pursuant to an extension of time to file. The envelope reflected a postmark date of

September 15, Year 2. The Service received X's return on September 17, Year 2. Under section 7502(a), X's return was deemed filed on the postmark date, September 15, Year 2. Therefore, the starting date for calculating X's 45-day period under section 6611(e) is September 15, Year 2.

2. Whether IRM section 20.2.4.7.2.2 must be revised to reflect the Service's position in Revenue Ruling 74-236?

The IRM is inconsistent with Rev. Rul. 74-236. Chief Counsel will contact the appropriate program analyst to discuss whether changes should be made to IRM section 20.2.4.7.2.2.

3. When is an overpayment "refunded" to a taxpayer for purposes of section 6611(e)(1) of the Code?

Section 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.

Section 6611(e)(1), however, provides that no interest will be paid if the overpayment is "refunded" within 45 days after the last day prescribed for filing the return (determined without regard to any extension of time for filing the return) or, if the return is filed after such last date, the refund is made within 45 days after the date the return is filed. This rule is often referred to as an "interest-free" period.

Neither section 6611 nor the regulations thereunder define "refunded" for purposes of section 6611(e). It is a well-settled principle of statutory interpretation that the plain meaning of a statute should control unless ambiguity exists. See Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992). Thus, we look to the ordinary meaning of the term "refunded" for guidance.

Black's Law Dictionary defines the word "refund" as "1. The return of money to a person who overpaid, such as a taxpayer who overestimated tax liability or whose employer withheld too much tax from earnings. 2. The money returned to a person who overpaid." See Black's Law Dictionary 1285 (7th ed. 1999). The plain meaning of the word "refund" indicates that an overpayment is refunded on the day that the Service returns or repays the overpayment. In this case, the date of the check reflects the date on which the Service returned the overpaid funds to X. Accordingly, we conclude that the Service refunded X's overpayment on November 2, Year 2.

Our interpretation is consistent with the legislative history of section 6611(e). Prior to the enactment of section 6611(e) there was no interest-free period, as we know it today. Section 6611(b) required the Service to calculate overpayment interest to a date no more than 30 days preceding the date of the refund check. The 30-day "back-off"

period was burdensome to the Service during peak filing season, as it required the Service to interrupt the refund process in order to compute small amounts of additional interest if it was unable to issue the refund within 30 days. For example, if a return was due and filed on March 15, and the Service issued a refund check dated April 15, the Service would have to calculate overpayment interest from March 15 to March 16 because interest would be payable starting the day after the due date of the return, and 30 days preceding the date of the refund check would be March 16. To alleviate this burden, the Service asked that the 30-day back-off period be replaced with a 60-day period. Congress agreed that the 30-day period was not long enough, however, instead of enacting a 60-day back-off period, it enacted section 6611(e), giving the Service a 45-day “interest-free” period for overpayments of income tax refunded within 45 days after the due date of the return, without regard to extensions.² See Memorandum of Material Changes in Existing Law Incorporated in the Draft of Administrative Provisions, 1954 Code Advisory Group, chapter 107, page 3; Internal Revenue Code of 1954, A Bill to Revise the Internal Revenue Laws of the United States, H.R. Rep. No. 83-1337, at A418 (1954); Internal Revenue Code of 1954, A Bill to Revise the Internal Revenue Laws of the United States, S. Rep. No. 83-1622, at 590 (1954).

The definition of “refunded” was not discussed by the drafters of section 6611(e). However, the legislative history suggests that Congress expected the Service to calculate the 45-day interest-free period by using the same date that was used to calculate the back-off period in section 6611(b), i.e., the date of the refund check. First, the date of the check was the only date Congress mentioned when contemplating this provision; second, the provision was essentially an extension of section 6611(b); and, third, the date of the check, though not as favorable to the Service as the date of scheduling, was harmonious with the purpose of section 6611(e).

Finally, our interpretation of refunded is also consistent with the one case that defined “refunded” for purposes of section 6611(e). Unfortunately that case, United States v. Weyerhaeuser, No. 9292 (W.D. Wash. 1971), is unreported and has no precedential value. Nevertheless, it illustrates how a court is likely to construe the term refunded. In Weyerhaeuser, the Service certified the taxpayer’s overpayment for refund, and forwarded the schedule to the disbursing center for preparation of the check 45 days after receiving taxpayer’s return. The refund check was issued to the taxpayer 5 days later. In its opinion, the court stated, “refund means you get the money,” and held that the word certification does not mean refunded, for purposes of section 6611(e). Transcript at page 11. The Service issued an Action on Decision (AOD) recommending that the case not be appealed. United States v. Weyerhaeuser, AOD CC-1971-419 (October 19, 1971). Despite having reservations about the correctness of the decision, the AOD acknowledged that the Service’s position was not easily supportable and would not likely have been reversed on appeal. We agree.

² The 45-day interest-free period was subsequently extended to cover additional types of taxes, amended returns, claims for refund, and, Service initiated adjustments. See The Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 66 (1993).

Based on the plain meaning of the term refunded, we conclude that an overpayment is refunded for purposes of section 6611(e) when the refund check is issued. We further conclude that the date of the refund check generally provides the best evidence of when the refund check has been issued. Therefore, X is entitled to interest on its Year 1 overpayment because the date of the refund check indicates that the Service did not refund X's overpayment within the applicable 45-day period.

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Please call (202) 622-4910 if you have any further questions.