

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Index (UIL) No.: 6611.00-00, 6513.00-00, 6511.00-00
CASE-MIS No.: TAM-142763-04/CC:PA:APJP:B)1

Chief, Appeals Office
John C. LaCoke

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year(s) Involved:
Date of Conference:

LEGEND

X:
State Y:
Year 1:
Year 6:
Year 7:
Year 8:
Year 9:
Year 10:
Year 11:
Year 12:
Year 13:
Year 14:
Year 15:

ISSUES

1. Are the estimated tax remissions that X made during Years 6 through 10, while under its mistaken view that it was subject to tax, payments of estimated tax or deposits in the nature of cash bonds?

2. Does interest accrue on X's overpayments of estimated tax from the date X made the estimated tax payments, or from the due date of the tax returns that X filed?
3. Were X's refund claims for tax Years 6 and 7 timely filed?

CONCLUSIONS

1. The estimated tax remissions that X made while under its mistaken view that it was subject to tax, are payments of tax and not deposits.
2. Interest accrues on X's overpayments of estimated tax for Years 6, 7, and 8 from the due date of X's income tax returns for those years. For Years 9 and 10, interest accrues from the dates that X made the estimated tax payments.
3. The section 6511 statute of limitations applies to X for Years 6 and 7, and the refund claims for those years were timely.

FACTS

In Year 1, State Y Legislature created X to provide competitively priced workers' compensation insurance to employers in State Y. The State Y Legislature created X as a nonprofit, independent, public corporation for the purpose of insuring employers against the risk of liability for payment of benefits claims to workers. From its inception through Year 10, X made estimated income tax payments and filed income tax returns based on its view that it was a taxable entity.

In 1997, Congress added section 501(c)(27)(B) to the Internal Revenue Code (Code), to clarify the tax-exempt status of state-created workers' compensation insurance providers. Section 501(c)(27)(B) is effective for taxable years beginning after December 31, 1997. In response to enactment of section 501(c)(27)(B), X requested confirmation of its tax-exempt status from the Internal Revenue Service (Service).

On October 18, Year 11, the Service issued a determination letter to X recognizing its exemption under section 501(c)(27)(B) beginning with Year 9. In addition, the Service ruled that X was not required to file annual information returns (Form 990, Return of Organization Exempt From Income Tax) for taxable years after Year 8.

Following receipt of its notice of exemption, X filed refund claims for Years 9 and 10. At the same time, X filed refund claims for Years 6 through 8 asserting that its income was derived from an essential governmental function that accrues to State Y, and therefore, did not receive gross income pursuant to section 115(1) of the Code. X filed refund claims for Years 6 and 7 on September 14, Year 10, and September 5, Year 11.

On March 19, Year 13, the Service refunded X's estimated tax payments in the amounts claimed, along with overpayment interest. The Service computed the interest from the due dates of the corporate income tax returns. On May 24, Year 13, X filed a claim for

additional interest arguing that overpayment interest should accrue from the date of actual payment rather than the due date of the return, since X is a tax-exempt organization and does not have a filing obligation.

On March 27, Year 14, the Service sent a Notice of Disallowance informing X that its claims for additional interest for Years 6 through 9 were disallowed in full. The Notice of Disallowance stated that payments of estimated taxes made by an entity that is later determined not to be subject to tax are treated as deposits upon which no interest is paid.

During Years 14 and 15, X contacted the Service several times, and filed a protest with the Service. When the case was ultimately transferred to Appeals, the Service informed X that its refund claims for Years 6 and 7 were barred by the statute of limitations.

DISCUSSION

Issue 1.

Revenue Procedure 84-58, 1984-2 C.B. 501, provides the Service's procedures for determining whether a remittance constitutes a payment of tax or a deposit in the nature of a cash bond. Specifically, section 4.02(1) provides that a remittance made before the mailing of a notice of deficiency that is designated by the taxpayer in writing as a deposit in the nature of a cash bond will be treated as such by the Service. Furthermore, section 4.03 provides that a remittance not specifically designated as a deposit in the nature of a cash bond will be treated as a payment of tax if it is made in response to a proposed liability. Accordingly, the taxpayer's written designation at the time of remittance will factor into whether a remittance is a deposit in the nature of a cash bond or a payment of tax.

Courts adhere to the guidelines in Rev. Proc. 84-58 when classifying a remittance as either a deposit or payment of tax. In Rodgers v. United States of America, 1998 WL 782587 (D. Nev. 1998), plaintiff sent five checks to the Service that included a notation "estimated tax payments" on the check. In 1995, after the statute of limitations had run, taxpayer filed a claim for refund arguing that the remissions were cash bonds in the form of a deposit. The court applied Rev. Proc. 84-58 and held that "absent a specific designation as deposits, these remittances are properly treated as payments, not deposits." Id. See also Zeier v. Internal Revenue Service, 80 F.3d 1360 (9th Cir. 1996).

X made estimated income tax payments and filed income tax returns for Years 6 through 10, and designated each remittance as an estimated tax payment. In accordance with Rev. Proc. 84-58, X's remittances are payments of tax and not deposits.

Issue 2.

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(d) provides, in part, that for payments of estimated tax, the provisions of section 6513 applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refunds, shall be applicable in determining the date of payment for purposes of subsection (a). Accordingly, for purposes of calculating interest on an overpayment of tax in accordance with section 6611(a), a payment of estimated tax will be overpaid for purposes of section 6611(d) on the “deemed paid” date of section 6513(b)(2).

In general, section 6513 of the Code provides rules for determining when a return is deemed filed and when tax is considered paid; however, the Code provides a specific rule for determining when payments of estimated tax are deemed paid. Section 6513(b)(2) states that for purposes of sections 6511 or 6512 for prepaid income tax, any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

In State of Michigan v. United States, 141 F.3d 662, 667 (6th Cir. 1998), the issue was what date overpayment interest begins to accrue on overpayments that resulted from estimated tax payments when the education trust (MET) that made the estimated tax payments is found to be exempt from federal income tax as an instrumentality of the state. The Sixth Circuit relied on MNOPF Trustees Ltd. v. United States, 123 F.3d 1460, 1465 (Fed. Cir. 1997), in concluding that sections 6611(d) and 6513(b)(2) did not apply because MET was exempt from federal taxation as an instrumentality of the state and, therefore, had no obligation to file a tax return. Consequently, the court concluded that interest should accrue from the date of each estimated tax payment. State of Michigan, 141 F.3d at 667.

In MNOPF Trustees, the issue was what date overpayment interest begins to accrue on taxes unnecessarily withheld from payments made to a tax exempt entity. The Service argued that, based on the late return provision of section 6611(b)(3), interest should accrue from the date the refund claims were filed. MNOPF argued that interest should accrue from the date the withholdings were paid to the Service. The Federal Circuit held that section 6611(b)(3) did not apply because MNOPF was a tax-exempt organization, and, therefore, was not required to file tax returns. The court also held that sections 6611(d) and 6513(b)(3) did not apply because those sections only relate to taxable income and the taxpayer was exempt from federal taxation. Instead, the court held that, pursuant to section 6611(b)(2), interest accrues on the organization’s overpayment from the date the returns reporting the withheld taxes were filed with the Service because it is the date the overpayment was deemed paid.

Overpayment interest for Years 6 through 8.

State Y Legislature created X to provide competitively priced workers' compensation insurance to employers in State Y. The State Y Legislature created X as a nonprofit, independent, public corporation for the purpose of insuring employers against the risk of liability for payment of benefits claims to workers. For Years 6 through 8, X made estimated income tax payments and filed income tax returns based on its view that it was a taxable entity.

The Service subsequently determined that X was entitled to refunds for Years 6 through 8 on the grounds that X's income was excludible from gross income under section 115(1). However, the fact that income is excludible from gross income does not necessarily provide an exception from the filing requirement of a corporation imposed by section 6012(a)(2). See Rev. Rul. 78-316, 1978-2 C.B. 304. Accordingly, X was required to file income tax returns for Years 6 through 8.

Because X was required to file returns for Years 6 through 8, the deemed payment rule for estimated tax payments under section 6513(b)(2) applies to those years. Therefore, pursuant to section 6611(d), interest on the overpayments for Years 6 through 8 runs from the due dates of the returns for those years. Both MNOPF Trustees and State of Michigan are distinguishable from the situation in the present case. MNOPF Trustees case involved labor organizations exempt from tax under section 501(a) and (c)(5). Accordingly, the taxpayer was not required to file a return. State of Michigan involved an education trust that was held to be an instrumentality of the State of Michigan and, accordingly was not a taxable entity.

Overpayment interest for Years 9 and 10.

In 1997, Congress added section 501(c)(27)(B) to the Code to clarify the tax-exempt status of state-created workers' compensation insurance providers. Section 501(c)(27)(B) is effective for taxable years beginning after December 31, 1997. In response to enactment of section 501(c)(27)(B), X requested confirmation of its tax-exempt status from the Service.

On October 18, Year 11, the Service issued a determination letter to X recognizing its exemption under section 501(c)(27)(B) beginning with the Year 9. In addition, the Service ruled that X was not required to file annual information returns (Form 990, Return of Organization Exempt From Income Tax) for years after Year 8.

For Years 9 and 10, the issue is whether the deemed payment rule under section 6513(b)(2) applies for purposes of section 6611(d) when a taxpayer is exempt from tax and not required to file an income tax return. For Years 9 and 10, X was a tax exempt entity pursuant to section 501(c)(27)(B) and was not required to file income tax returns. In light of State of Michigan and MNOPF Trustees, we conclude that the deemed paid provision of section 6513(b)(2) cannot be applied to X for Years 9 and 10. Accordingly, interest on X's overpayment for Years 9 and 10 runs from the date that X made the actual payments of the estimated taxes.

Issue 3.

Section 6511(a) provides, in general, that a claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax 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 the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

Section 6511(b)(2)(A) provides that if the claim was filed by the taxpayer during the 3 year period prescribed in subsection (a), the amount of the credit or 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 the period of any extension of time for filing the return.

On October 18, Year 11, the Service issued a determination letter concluding that X was a section 501(c)(27)(B) tax-exempt organization for Years 9 and 10. For Years 6 through 8, however, X did not base its claims for refund on the fact that it was a tax-exempt organization. Rather, X based its claims for refund on the section 115(1) gross income exclusion. The income exclusion under section 115(1) does not necessarily exempt a corporation from the obligation to file an income tax return pursuant to section 6012(a)(2). See Rev. Rul. 78-316. Because X properly filed income tax returns for Years 6 and 7, section 6511 applies to those years.

In this case, X filed its claims for Years 6 and 7 within the 3-year period described in section 6511(a). Moreover, the estimated tax payments made for Years 6 and 7 were made within the 3-year lookback period described in section 6511(b)(2)(A). Accordingly, X's claims for refund for Year 6 and 7 were timely.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.