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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: Interest on Overpayments

This Field Service Advice responds to your memorandum, dated November 10, 1998, seeking advice on the extent of the Government's liability for interest on an overpayment of tax used as a credit against a later tax deficiency. This 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:

X =

Year 1 = Year 2 = Year 3 = Year 4 = Year 5 = Year 6 = Year 7 = Year 8 = Year 9 =

ISSUE:

Where the Service offsets overpayments in Years 1-4 against underpayments for later Years 7 and 8, is X entitled to additional statutory interest under § 6611 of the Internal Revenue Code from the statutory due date of the underpaid tax, against which the overpayment is credited, to the later date that the underpayment actually arose and the offset was effective.

CONCLUSION:

The statutory terms of § 6611 should not be construed to allow X overpayment interest up until the date the underpayment actually arose and the offset was effective. Overpayment interest runs only to the due date of the income tax return for the year in which the overpayment is applied, not the actual date the underpayment arose.

FACTS:

X reported overpayments on its returns for Years 7 and 8, and elected, pursuant to Treas. Reg. § 301.6402-3(a)(5), to apply them to its estimated tax liabilities for the next succeeding years, Years 8 and 9, respectively. <u>See</u> Code § 6402(b).¹ The return overpayments were used to pay the third installment of estimated taxes in the succeeding years. Later, on audit, the Service determined X had overpaid its income taxes in Years 1-4, and had underpaid in Years 7 and 8. The deficiencies the Service subsequently determined for Years 7 and 8 were less than the overpayments reported on X's returns. Thus, although X had originally overpaid its taxes in the surplus and created deficiencies.

The Service offset overpayments (determined on examination of Years 1 through 4) against the underpayments for Years 7 and $8.^2$ See § 6402(a). See also Treas. Reg.

¹ When the taxpayer makes such an election, no interest is allowed on the portion of the overpayment that is credited. Treas. Reg. § 301.6611-1(h)(2)(vii).

² The overpayments for Years 1 through 4 are separate and distinct from the "return overpayments" X originally reported for the Years 7 and 8.

§ 301.6402-1. The Service proposes to compute interest on the overpayments from the date the overpayments arose to the due date of the tax for Years 7 and 8, pursuant to § 6611. Seeking symmetrical treatment with respect to interest on the overpayments (in Years 1-4) that were used to offset the underpayments (in Years 7 and 8), X claims interest should run on the overpayments up until the date of the offset (the due date of the third installment for estimated taxes, September 15, Year 8, and September 15, Year 9)³, not the original due dates of Year 7 and 8 taxes (March 15, Year 8, and March 15, Year 9).

LAW AND ANALYSIS

Code § 6151(a) provides that "when a return of tax is required under this title or regulations, the person required to make such return shall ... pay such tax at the time ... fixed for filing the return (determined without regard to any extension of time for filing the return)." <u>See also</u>, Treas. Reg. § 1.6151-1(a). Code § 6072 governs the time for filing income tax returns. "Returns of corporations [required] under section 6012[,⁴] made on the basis of a calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and ... returns made on the basis of a fiscal

³ These are the dates the Government was actually deprived of the use of X's return overpayments as a payment of the Year 7 taxes and the Year 8 taxes, because this was when the return overpayments were applied as estimated tax payments in the succeeding years.

⁴ Section 6012 (a)(2) requires every corporation subject to taxation under subtitle A to make returns of income.

year shall be filed on or before the 15th day of the third month following the close of the fiscal year."

§ 6072(b). <u>See also</u>, Treas. Reg. § 1.6072-2(a). Thus, the last day fixed by law for the payment of income tax is the due date of the return (determined without regard to any extension of time). Accordingly, the due date of the amounts (here the underpayments for Years 7 and 8) against which the overpayment was credited, is the due date of the returns for the years in which the taxes were underpaid. Overpayment interest runs only to the due date of the income tax return for the year in which the overpayment arose.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

The courts, as evidenced by <u>May Department Stores v. United States</u>, 36 Fed. Cl. 680 (1996), <u>acq.</u> AOD CC-1997-008 (Aug. 4, 1997), and <u>Avon Products, Inc. v. United States</u>, 588 F.2d 342 (2d Cir. 1978), have employed a use-of-money analysis in interpreting the statutory terms of section 6601, which are substantially similar to the terms used in section 6611 and regulation § 301.6611-1(h)(2)(i). Nevertheless, the conclusion that interest runs only to the due date of the income tax return is compelled by our interpretation of the regulation as having a fixed meaning for the term "due date" for the payment of tax.

By:

GEORGE E. BOWDEN Technical Assistant CC:DOM:FS

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