Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:Postf-103263-02
VLHamilton

date: February 28, 2002

to: Team Manager
LMSB:CTM:[redacted]

from: Area Counsel
(Natural Resources:Houston)

subject: [redacted]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This is the final memorandum in response to your request for Area Counsel Advice on the below described issue, which memorandum incorporates two changes suggested by the National Office. The changes are minimal and nonsubstantive, one correcting a citation to the language of the U.S.-U.K. Tax Convention, and a second one slightly revising the statement of the issue.

ISSUE

Whether a refund approved by U.S. Competent Authority is barred by the expiration of the statute of limitations.

CONCLUSION

In accordance with the provisions of the Mutual Agreement Provisions of the U.S.-U.K. Convention for the Avoidance of Double Taxation, the refund cannot be barred by the expiration of the statute of limitations.

FACTS

When [redacted] (hereinafter "[redacted]") filed its [redacted] Federal Income Tax return, there was $[redacted] of income from a U.K. related company reported on the Domestic Return. During the course of the CEP examination of that tax return, [redacted] raised a claim showing a duplicate reporting of this income in the U.S. and U.K. The claim was denied by Examination and Appeals. Subsequently, U.S. Competent Authority was asked to review the issue. In [redacted], the U.S. Competent Authority withdrew the adjustment in its entirety. The taxpayer filed a protective claim in early [redacted].

You state that the case is new to you, and currently you have none of the files.

DISCUSSION

Law:

Section 6511 requires, as relevant here, that no refund of any tax shall be allowed or made after the expiration of the period of limitation unless a claim for refund is filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, whichever period expires the later.

Analysis:

[redacted] is entitled to the claimed refund regardless of the timeliness of its refund claim in the present situation. At least by 1975, the United States and United Kingdom executed an Income Tax Convention between the two countries (hereinafter the "Treaty"). The Technical Explanation of Article 25 of the Treaty states:

> In the case of the United States, where an agreement is reached between the competent authority which requires the United States to make a refund of tax or to extend any other similar credit, such refund or credit will be made, assuming presentation of his case to the competent authority within a reasonable period, notwithstanding any procedural barriers otherwise existing under United States law, including any statute of limitations.

See also Paragraph 2 of Article 25 of the Treaty.

Rev. Rul. 72-437, 1972-2 C.B. 660, discusses the issue of an agreement by competent authorities allowing for refund where the refund was barred by a statute of limitations with respect to a U.S. German Income Tax Convention. This ruling concludes that a refund of Federal income tax is allowable to carry out the agreement between the competent authorities reached under a mutual agreement procedure even if the refund is otherwise barred by the statute of limitations. This ruling notes that there is such a provision in the U.S.-U.K. Income Tax Convention.

We have no definite facts regarding the timing of the request by [redacted] to competent authority. It would appear from your description of the facts, however, that [redacted] made this request to the competent authority within a reasonable period after the claim for refund was denied by Appeals. Hence, the situation would fall under the authority of the U.S.-U.K. Mutual Agreement Provision allowing for the refund even if the statute of limitations on the [redacted] year is barred.

The letter from the Competent Authority to the taxpayer's counsel also states: "We are providing the Industry Director with instructions for implementing our determination for the tax year at issue." In discussing this statement with the Competent Authority Analyst, she stated that this means that the responsibility for the refund would be with the agents responsible for the examination. As the case is in your jurisdiction, you would be the proper party to effect the refund.

Counsel does recommend, however, that you obtain the files with respect to this refund request in order to verify that the correct amount of the refund is as the taxpayer has indicated.

If you have any further questions, please do not hesitate to contact us.

DAVID J. MUNGO
Associate Area Counsel (LMSB)

By:_____
VIRGINIA L. HAMILTON
Attorney (LMSB)

cc: Mary Kay Lee-Martinez
International Counsel