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INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
November 9, 1999

Third Party Contact:
Index (UIL) No.: 6611.03-00
CASE MIS No.: TAM-111920-99 / CC:DOM:IT&A:B1

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:

LEGEND:

X =

Year 1 =

Year 2 =

Year 3 =

Year 6 =

$a =

$b =

$c =

$d =

$e =

$f =

$g =

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ISSUE:

For purposes of determining the date on which interest begins to accrue on an overpayment of tax, is the overpayment reduced by any portion credited to the succeeding year's estimated tax?

CONCLUSION:

In determining the date on which interest begins to accrue on an overpayment of tax, the overpayment is reduced by any portion credited to the succeeding year's estimated tax. Therefore, interest is allowable under § 6611 on the date when the payments of tax, less amounts credited to the succeeding year's estimated tax, exceed the tax liability.

FACTS:

X, a calendar year corporation, timely filed its federal income tax return for the year ending December 31, Year 1, on the extended due date of September 15, Year 2. The Year 1 return reflected a total tax liability of $a, total tax payments of $b, and an overpayment of $c, which X elected to apply to its Year 2 estimated tax on September 15, Year 2.

On March 19, Year 3, X amended its Year 1 income tax return and paid an additional tax liability of $d, plus interest. On May 3, Year 6, pursuant to an Internal Revenue Service examination of X's Year 1 return, X paid additional tax in the amount of $e, plus deficiency interest. Subsequent to the payment of this deficiency assessment, X filed a claim for refund in the amount of $f (more than $e). The Service disallowed the claim, and X filed suit for refund in United States District Court. The court determined that X was entitled to a refund of $g (less than $e), plus interest.

The Service refunded $g to X along with the underpayment interest on $g that X had paid. Also, as a result of the reduction in X's tax liability by $g, the Service contends that X is entitled to overpayment interest on $g beginning on May 3, Year 6 (the date X paid $e). X agrees that it is entitled to overpayment interest on $g beginning May 3, Year 6, but contends that it is also entitled to interest on this amount for the period between March 15, Year 2 and September 15, Year 2.

LAW AND ANALYSIS:

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(b)(1) provides that interest shall be allowed and paid on a credit

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from the date of the overpayment to the due date of the amount against which the credit is taken.

Section 6402(b) provides that the Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

Section 301.6611-1(h)(2)(vii) of the Regulations on Procedure and Administration provides that if the taxpayer elects to have all or part of the overpayment shown on its return applied to its estimated tax for its succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated tax for such year or the installments thereof.

Section 301.6611-1(b) of the Regulations on Procedure and Administration provides that there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability.

In the present case, X elected to credit the entire amount of the overpayment shown on its Year 1 return ($c) to an installment of its Year 2 estimated tax. It is well settled that no interest is payable on an overpayment of tax to the extent such overpayment is credited to the succeeding year's estimated tax. Owens-Corning Fiberglas Corp. v. United States, 462 F.2d 1139 (Ct. Cl. 1972) (upholding the validity of § 301.6611-1(h)(2)(vii) of the Regulations on Procedure and Administration). Further, in determining the date on which interest begins to accrue on an overpayment of tax, the overpayment is first reduced by any portion credited to the succeeding year's estimated tax. See Martin Marietta Corporation v. United States, 572 F.2d 839 (Ct. Cl. 1978).

Applying the provisions of § 301.6611-1(b) and the cases cited above, the "date of overpayment" on which interest begins to accrue is the date on which the amount of the tax payments, less the amount credited to the succeeding year's estimated tax, is in excess of the correct tax liability for the year. To hold otherwise would have the effect of allowing interest on the amount of the overpayment credited to the succeeding year's estimated tax. Here, the date on which X's tax payments, less the amount credited to the Year 2 estimated tax, exceeds the correct Year 1 tax liability is May 3, Year 6, when X paid the $e deficiency. On that date, X overpaid its tax by $g, and overpayment interest begins to accrue. Accordingly, because the correct amount of the Year 1 overpayment was subsequently determined to be less than $c (the amount of the credit elect), X is not entitled to overpayment interest for the period between March 15, Year 2, and September 15, Year 2.

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X contends that the "use of money" concept as described in May Department Stores, Co. v. United States, 36 Fed. Cl. 680 (1996), *acq.*, AOD CC-1997-008 (Aug. 4, 1997) and Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978) supports its position. X correctly indicates that the Internal Revenue Service could not assert deficiency interest on the $e deficiency for the period between March 15, Year 2 and September 15, Year 2, because, after taking into account the $e deficiency, its taxes were overpaid for that period. X concludes that because the Internal Revenue Service had the use of X's money for the six month period between March 15 and September 15 of Year 2, it owes X interest for that period on the $g court ordered refund.

The May Department Stores and Avon Products cases interpret § 6601 of the Code, which requires taxpayers to pay interest if any amount of internal revenue tax "is not paid on or before the last date prescribed for payment." The courts in these cases concluded that a tax must be both due and unpaid before deficiency interest can begin to accrue, and a tax is not both due and unpaid where the Service has the use of the taxpayer's money.

Unlike May Department Stores and Avon Products, the issue here involves the calculation of overpayment interest under § 6611, not deficiency interest under § 6601. The two statutes provide different rules for computing interest, and it is not necessarily the case that if the Service is precluded from charging underpayment interest during the period which it had the use of the taxpayer's money, it must therefore pay overpayment interest during this period. The court in Avon Products recognized the distinction between §§ 6601 and 6611, noting that although the taxpayer in that case was not subject to deficiency interest while the Service had the use of its money, § 301.6611-1(h)(2)(vii) of the regulations specifically prevents the payment of overpayment interest during such period. Avon Products at 345. Likewise, in this case, the fact that the government could not charge deficiency interest for the period between March 15, Year 2, and September 15, Year 2, does not entitle X to overpayment interest for that period.

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.

/s/ David B. Auclair
Senior Technician Reviewer, Branch 1
Income Tax & Accounting Division