



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
SMALL BUSINESS/SELF-EMPLOYED: AREA 6

FROM: ASSISTANT CHIEF COUNSEL
ADMINISTRATIVE PROVISIONS AND JUDICIAL PRACTICE
CC:PA:APJP

SUBJECT: Payment of Credit Interest on a Transferred Overpayment

This Chief Counsel Advice responds to your memorandum dated July 13, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer
Year 1
Year 2
Year 3
Year 8
Year 9

ISSUES

1) Whether the transfer of Taxpayer's Year 1 and Year 2 overpayments to Taxpayer's 2nd quarter Year 9 estimated tax installment constitutes a credit elect under section 6402(b)?

2) Whether the transfer of Taxpayer's overpayments to its 2nd quarter estimated tax installment on May 15, Year 8 constitutes a credit to an "outstanding tax liability" under section 6402(a)?

3) Whether Taxpayer is entitled to interest on its overpayments transferred from Year 1 and Year 2 to its 2nd quarter Year 9 estimated tax installment under section 6611?

CONCLUSIONS

1) The transfer of Taxpayer's Year 1 and Year 2 overpayments to Taxpayer's 2nd quarter Year 9 estimated tax installment does not constitute a credit elect under section 6402(b).

2) The transfer of Taxpayer's overpayments to its 2nd quarter estimated tax installment on May 15, Year 8 does constitute a credit to an "outstanding tax liability" under section 6402(a).

3) Taxpayer is entitled to interest on its overpayments transferred from Year 1 and Year 2 to its 2nd quarter Year 9 estimated tax installment under section 6611.

FACTS

The Service audited Taxpayer for Year 1 and Year 2 and determined overpayments for both tax years. Taxpayer requested that its overpayments for both tax years be credited to its 2nd quarter estimated tax installment for Year 9. The Service complied with Taxpayer's request and credited the overpayment to Taxpayer's 2nd quarter estimated tax installment. The Service treated the transfer as a "credit elect"¹ under section 6402(b) and Treas. Reg. § 301.6402-3(a)(5), and, thus, the Service did not allow interest on the overpayment.

Taxpayer claims interest on the Year 1 and Year 2 overpayments under section 6611(b)(1). Taxpayer claims that it is not barred from receiving overpayment interest because the transfer does not constitute a credit elect, and, therefore, section 6402(b) and Treas. Reg. § 301.6402-3(a)(5) do not apply. According to Taxpayer, a credit elect is defined as a credit to the "subsequent" year. Taxpayer claims that since its Year 1 and Year 2 overpayments were transferred to its 2nd quarter Year 9 estimated tax installment, the transfer was not a credit to a subsequent year, and, thus, the transfer does not constitute a credit elect and Taxpayer is not barred from receiving interest on the overpayments under Treas. Reg. § 301.6402-3(a)(5).

LAW AND ANALYSIS

¹After reviewing Taxpayer's May 11, Year 8 letter, we are not convinced that Taxpayer was requesting a "credit elect" pursuant to section 6402(b).

ISSUE 1

Section 6402(b) of the Internal Revenue Code 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 301.6402-3(a)(5) of the Regulations on Procedure and Administration provides that a return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return (or amended return) is filed. If the taxpayer indicates on its return (or amended return) that all or part of the overpayment shown by its return (or amended return) is to be applied to its estimated income tax for its succeeding taxable year, such indication shall constitute an election to so apply such overpayment, and 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 income tax for such year or the installments thereof. See Treas. Reg. § 301.6611-1(h)(2)(vii)

(Emphasis added.)

In Crane v. Commissioner, the Supreme Court held that “the words of statutes – including revenue acts – should be interpreted where possible in their ordinary, everyday senses.” Crane v. Commissioner, 331 U.S. 1, 6 (1947). In Stephenson v. Commissioner, the Tax Court held that according to the plain language of section 301.6402-3(a)(5), the election applies only to the taxable year immediately succeeding the taxable year for which such return is filed. Stephenson v. Commissioner, T.C. Memo 1995-32. (Petitioner elected to apply his 1984 overpayment to his 1987 estimated taxes. The immediately succeeding tax year for 1984 is 1985. The Court held that Petitioner's 1984 overpayment could not be credited to his 1987 estimated tax liability pursuant to Treas. Reg. § 301.6402-3(a)(5), because 1987 is not the immediately succeeding tax year for 1984.)

Taxpayer requested that its Year 1 and Year 2 overpayments be credited to its 2nd quarter Year 9 estimated tax installment. The Service credited Taxpayer's overpayment to its 2nd quarter estimated tax installment and treated the transfer as a “credit elect” under section 6402(b). Section 6402(b) and Treas. Reg. § 301.6402-3(a)(5) require that an overpayment be credited against the estimated taxes for the immediately succeeding tax year. The immediately succeeding tax year for Year 1 is Year 2 and for Year 2 is Year 3. Taxpayer's Year 1 and Year 2 overpayments were credited to its 2nd quarter Year 9 estimated tax installment, Year 9 is not the immediately succeeding tax year for Year 1 or Year 2. Therefore, the

transfer cannot constitute a credit elect under section 6402(b).

ISSUE 2

Section 6402(a) provides that, in the case of an overpayment, the Secretary, may credit the amount of such overpayment against any tax liability and shall, subject to certain subsections not relevant here, refund any balance.

Section 301.6402-1 of the Regulations on Procedure and Administration provides that the Commissioner, within the applicable period of limitations, may credit any overpayment of tax against any outstanding tax liability owed by the person making the overpayment and the balance, if any, shall be refunded to that person by the Commissioner.

On May 11, Year 8, Taxpayer requested that its Year 1 and Year 2 overpayments be applied to its 2nd quarter Year 9 estimated tax installment. Taxpayer's 2nd quarter estimated tax installment was due on May 15, Year 8. The Service credited Taxpayer's overpayments against its 2nd quarter Year 9 estimated tax installment on May 15, Year 8. Thus, at the time the Service credited Taxpayer's overpayments, Taxpayer's 2nd quarter estimated tax installment was due and constituted an "outstanding tax liability." Since Taxpayer's 2nd quarter estimated tax installment constituted an "outstanding tax liability," the transfer of Taxpayer's overpayments to its estimated tax installment on May 15, Year 8 constituted a credit to an "outstanding tax liability" under section 6402(a) .

ISSUE 3

The government may only pay interest if specifically allowed by a statutory provision. See, U.S. ex. Rel. Angarica v. Bayard, 127 U.S. 251 (1888). Section 6611(a) of the Internal Revenue Code provides, in general, that interest shall be allowed and paid on any overpayment of any internal revenue tax at the overpayment rate established under § 6621.

Section 6611(b)(1) adds that in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken.

Taxpayer was determined to have overpayments for Year 1 and Year 2. Taxpayer requested that its Year 1 and Year 2 overpayments be credited to its 2nd quarter Year 9 estimated tax installment. As we discussed in issue 2, the Service transferred the overpayments to Taxpayer's 2nd quarter Year 9 estimated tax installment and that transfer should be treated as a credit under section 6402(a). Accordingly, Taxpayer is entitled to interest under section 6611(b)(1) from the date of the overpayment to the due date of the amount against which the credit was

taken.

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.

Please call if you have any further questions.

CURTIS G. WILSON
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Branch 1