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From:

Sent: Tuesday, December 08, 2009 1:15 PM

To:

Cc:

Subject: Administrative claims limitation period for payroll reporting agent victims of fraud

You have asked for our view on procedures being drafted for the Internal Revenue Manual on administratively returning amounts paid by payroll reporting agents who are defrauded. Specifically, you ask, if such an agent files a request for the return of a purported deposit of employment taxes that it made with its own funds and as a result of the fraud of its purported new client (subsequent facts reveal that the payroll was fictitious or involved fictitious employees and did not relate to any actual employment), what is the appropriate period of limitations? This fraud situation more closely resembles an excess payment of something other than tax. These amounts were not collected from an employer or an employee but were instead a remittance out of pocket by the defrauded reporting agent. They are arguably neither taxes, nor amounts excessive or wrongfully collected within the meaning of section 7422(a). They, thus, should be treated as general debts not subject to the period of limitations under section 6511, and as such, if the parties were to file a complaint in court, they would be subject to the six-year period of limitation for general claims against the government under 28 U.S.C. sections 2401 and 2501. Since this fraud situation more closely resembles an excess payment of something other than tax, we conclude that a six year statute of limitations should be applied to requests for return of these funds. This advice is limited to the administrative return of the funds and does not address whether the government has waived sovereign immunity if it is sued for the return of the funds. [REDACTED]. You did not ask about interest on the returned amounts, but since these excess remittances are not overpayments of tax, no interest should be allowed under section 6611.

Please contact me if you have any further questions.