

ID: CCA_2010020514013235

Number: **201024051**

Office:

Release Date: 6/18/2010

UILC: 6511.00-00

From:

Sent: Friday, February 05, 2010 2:01:32 PM

To:

Cc:

Subject: Claim Allowance Under IRC Sec. 6511 ()

This Chief Counsel Advice responds to your request for assistance. My reviewer concurs in the response.

ISSUE

Whether taxpayer's "Revised Supplemental Claim" (defined, *infra*) received by the Service in October 2009 was a timely amendment to its timely filed Form 1120X for tax year , or whether it was a new claim barred by the statute of limitations.

CONCLUSION

Taxpayer's Revised Supplemental Claim was a timely amendment, rather than a new claim barred by the statute of limitations.

FACTS

The taxpayer filed a Form 1120 for the tax year on 9/15/06. On Form 1120, the taxpayer claimed a loss of \$X.

After filing Form 1120, the taxpayer discovered a mathematical error in the loss claimed on Form 1120 and determined that the actual

loss was $\$(X+Y)$. On 9/14/09, the taxpayer filed a Form 1120X claiming a loss of $\$(X+Y)$.

Following an audit in October 2009, the taxpayer discovered yet another mathematical error and determined that the proper amount of the loss was actually $\$(X+Y+Z)$. The taxpayer informed the Service of this error in a "Revised Supplemental Claim" no later than October 31, 2009.

The Service concedes that the Revised Supplemental Claim accurately reflects the loss suffered by taxpayer. However, because the claim was provided more than three years after Form 1120 was filed, the Service has asked whether it may accept the Revised Supplemental Claim.

LAW AND ANALYSIS

Section 6402(a) of the Internal Revenue Code authorizes the Secretary of the Treasury to make refunds when a taxpayer overpays taxes. The regulations under section 6402 provide that “refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable, unless, before the expiration of such period, a claim therefore has been filed by the taxpayer.” Treas. Reg. § 301.6402-2(a)(1).

Section 6511(a) provides that a claim for credit or refund of an overpayment of any tax in respect of which the taxpayer is required to file a return shall be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later, or if no return is filed by the taxpayer, within two years from the time the tax was paid. Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitations prescribed in section 6511(a), unless a claim for credit or refund is filed by the taxpayer within such period.

Treas. Reg. § 301.6402-3(a)(5) states that “a properly executed . . . amended return . . . on [Form] 1120X . . . shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such . . . amended return”

The facts indicate that the taxpayer filed Form 1120X one day before the three-year statute of limitations in section 6511(a) expired. Clearly, the plain language of the above-referenced statutes and regulations indicate that the amended claim of \$(X+Y) on Form 1120X was timely.

However, the question posed asks whether the Service may issue a refund/credit for the Revised Supplemental Claim which was provided shortly after the three year statute of limitations imposed by section 6511(a) had expired.

Even though the Revised Supplemental Claim was filed outside the period of limitations provided for in section 6511(a), that does not necessarily mean that the taxpayer is barred from having the Revised Supplemental Claim accepted by the Service as a timely amendment to Form 1120X. Instead, with respect to supplemental claims for refund that are ostensibly untimely, two considerations need to be addressed to determine if a supplemental claim constitutes an amendment. If these two

requirements are satisfied, there is no specific time period within which a supplemental claim must be filed.

First, a supplemental claim will not be considered an amendment to the original claim if it would require the investigation of new matters that would not have been disclosed by an investigation of the original claim. Larson v. United States, 89 Fed. Cl. 363, 387 (2009); United States v. Andrews, 302 U.S. 517, 524-26 (1938); Pink v. United States, 105 F.2d 183, 187 (2d Cir. 1939). Such a supplemental claim is a new claim, rather than an amendment to the existing timely claim. The policy ground for not allowing time-barred claims that vary from timely claims is that “[t]he Commissioner does not possess the time or resources to perform extensive investigations into the precise reasons and facts supporting every taxpayer’s claim for refund.” Stoller v. United States, 444 F.2d 1391, 1393 (5th Cir. 1971).

Second, a supplemental claim will not generally be considered an amendment if the Service took final action on the original claim by either rejecting or allowing the claim in whole or in part. In either case, once the Service has taken final action on the original claim, the supplemental claim becomes untimely because there is no longer any claim left to amend. Larson v. United States, 89 Fed. Cl. at 385; Mondschein v. United States, 338 F.Supp. 786 (E.D.N.Y. 1971), aff’d, 469 F.2d 1394 (2d Cir. 1973); Edwards v. Malley, 109 F.2d 640 (1st Cir. 1940), aff’g 38-1 U.S.T.C. (CCH) ¶ 9026 (D. Mass. 1937).

The revenue agent assigned to the instant case advises that: (1) the Service has not taken final action on the original claim, and (2) the Service’s original investigation revealed the Revised Supplemental Claim as the correct amount of the loss. Thus, we conclude that the Revised Supplemental Claim was a timely amendment to the taxpayer’s Form 1120X for tax year .

We hope that you find this information helpful. If you require further assistance, please do not hesitate to contact at .

Regards,