ID: CCA_2011011014225841 Number: **201106013**
Release Date: 2/11/2011

Office:

UILC: 6402.00-00

From:
Sent: Monday, January 10, 2011 2:23:03 PM
To:
Cc:
Subject: Allocation of Joint Credits- Elect and Estimated,

You have asked for advice regarding allocation of an overpayment from a married couple's joint return in year 1, which was credited to estimated tax in year 2. The taxpayers were divorcing when their returns were due. They filed separately, but did have their returns completed by the same preparer. The TPW claimed 100% of the joint credit-elect from and 100% of the estimated tax payments. The TPH's separate liability was $; the TPW's separate liability was $. The TPH claimed NO pre-payment credits and in fact paid in the $ due per his separate return.

The two credits, which were posted under the TPH's SSN because they'd filed joint the previous year, were transferred from the TPH's SSN to the TPW's.

The TPH subsequently filed an amended return (presumably timely) where he claimed 50% of the credit-elect from . He did not similarly claim any part of the estimated tax payments. TPH appears to have acted unilaterally, as TPW did not file a complimentary amended return.

You raised three questions:
Question 1: Are the taxpayers' original returns valid evidence of an agreement between the spouses as to the allocation of the credit-elect from and the estimated tax payments?

Question 2: Are the credit-elect from and the estimated tax payments correctly attributable 100% to the TPW?

Question 3: Was the allowance of the TPH's amended return (see below) erroneous and must it be reversed/disallowed?

Issue 1: An overpayment in year 1 on a joint return ceases to be an overpayment and becomes an estimated tax payment once the couple elects to credit the amount to the next year's estimated taxes. See sections 6402(b) and 301.6402-3(a)(5). The allocation of estimated tax payments is not addressed in the Code, however, Reg.

1.6654-2(e)(5)(ii) explains how joint payments of estimated taxes should be allocated to separate returns. Regulation 1.6654-2(e)(5)(ii) provides for allocation of estimated tax payments to either husband, wife, or divided between each's tax liability by agreement of the parties.

Rev. Rul. 76-140, 1976-1 C.B. 376, addresses a similar factual situation, under prior Code section 6015(b). The treatment under the previous Code section is identical to the current treatment. The section has simply been renumbered with the conversion of section 6015 to addressing innocent spouse claims. Therefore, the reasoning of the Revenue Ruling remains sound.

In Rev. Rul. 76-140, we indicated the policy that where taxpayers filed consistent returns in year 2 allocating estimated tax payments, those returns would be considered evidence of an agreement between the parties as to allocation of the estimated tax payments. A subsequent refund claim, without further evidence of a different agreement between the parties, should be disallowed. As such, the taxpayers' original returns are valid evidence of an agreement between the spouses as to the allocation of the estimated tax payments, which include the credit-elect from .

Issue 2: Because the original returns for evidence an agreement between the parties to allocate 100% of the estimated tax payments to TPW, such an allocation is acceptable under Treas. Reg. 1.6654-2(e)(5)(ii).

Issue 3: If the Service issued a refund to TPH for the estimated tax payments requested on his 1040X, then an erroneous refund has been made. If TPH's account was credited but no refund was made, the credit may be reversible.

If you have any further questions or comments, please do not hesitate to contact me at the address above or . Thank you-