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From:

Sent: Friday, November 15, 2024 07:53:57 AM

To:

Cc:

Bcc:

Subject: Perfected Protective Claim Question

Hi [REDACTED],

You asked whether a protective claim for refund may be filed on a Form 843, and if not whether the taxpayer may still file such a claim on a Form 1040X. In brief, although IRS regulations clearly provide that the appropriate refund claim for an individual income tax return filed after an original return is the Form 1040X, the IRS may treat a protective claim for refund filed on a Form 843 as properly filed if the IRS waives the formality requirement for such filings.

This question is addressed by Treas. Reg. § 301.6402-2(a) which provides the general rules for a refund claim, and § 301.6402-3(a), which specifically provides refund claim requirements for a refund of income tax. Generally, a claim for refund must request a refund of an overpayment, be timely filed, and meet all applicable filing requirements (e.g., signed under penalty of perjury, mailed to the correct office as instructed, etc.). Section 301.6402-3(a)(2) provides that in the case of an overpayment of income taxes for a taxable year of an individual for which a Form 1040 has been filed, a claim for refund shall be made on a Form 1040X. For additional information on claims for refund generally, IRM 4.10.11.2 provides a good summary of refund claims and their rules. By filing a refund claim on a Form 843 for an income tax refund, the taxpayer failed to follow this long-established rule.

Although the IRS may choose to reject what the taxpayer filed for not following the formal refund claim rules for an overpayment of income tax, the IRS does have the discretion to process certain wrongly-submitted forms. When a taxpayer submits a refund claim that meets all enumerated requirements but fails to satisfy some formality (e.g., it is not filed on the correct standard form), it may be treated as an informal refund claim. *See Martti v. United States*, 121 Fed.Cl. 87 (2015) (citing *United States v. Kales*, 314 U.S. 186, 194 (1941) (“To qualify as an informal claim, the claim must (1) be submitted within the limitations period, (2) have a written component, and (3) adequately give the IRS notice that the plaintiff is seeking a refund for certain years.”)); *see also Jackson v. Commissioner of Internal Revenue*, T.C. Memo. 2002-44 (Feb. 12, 2002) (same).

As stated, the IRS may waive the requirement that a claim for refund be made on a particular form and adjudicate an informal claim as though it were a formal claim. This is known as the waiver doctrine. *See Angelus Milling Co. v. Comm’r*, 325 U.S. 293, 297-98 (1945); *see also Blue v. United States*, 108 Fed.Cl. 61, 69 (2012). The waiver doctrine applies where there is clear evidence the IRS understands the claim made despite the departure in form, and the IRS dispenses with the formal requirements and proceeds

to examine the merits of the claim. *Angelus Milling*, 325 U.S. at 297-98. To that end, the IRS has discretion to process the refund claim at issue here though it was submitted on an incorrect form.

Please let me know if you have any questions or if I can be of any further assistance in this matter. Thank you!

