



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
May 7, 1999

CC:DOM:FS:PROC

Number: **199932016**
Release Date: 8/13/1999
UILC: 6601.01-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Assistant Chief Counsel (Field Service)

SUBJECT:

This Field Service Advice responds to your memorandum dated January 26, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

X =

Tax Year 1 =

Tax Year 2 =

Tax Year 3 =

date 1 =

date 2 =

date 3 =

date 4 =

date 5 =

date 6 =

date 7 =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

\$g =

\$h =

\$i =

ISSUES

Should X's remittance to the Internal Revenue Service be treated as a refundable payment of tax on which interest accrues? If there was a payment, when should it be treated as having been made?

CONCLUSION:

Pursuant to Rev. Proc. 84-58, 1984-2 C.B. 501, X's remittance remaining in its tax module should be treated as a payment of tax as of date 4, ninety days following the issuance of a notice of deficiency to X.

FACTS:

In date 1, the Service began an examination of Tax Year 1, Tax Year 2, and Tax Year 3 of X. On date 2, X remitted to the Service a check in the amount of \$a. In an accompanying letter, X stated the check was to cover possible deficiencies in income tax and interest, and instructed the Service to hold the remitted amount "to cover any period as a deposit in the nature of a cash bond under the provisions of Rev. Proc. 84-58, 1984-2 C.B. 501." The Service posted \$b of the remittance as a deposit for Tax Year 2, and the remainder, \$c, as a deposit for Tax Year 3.

On date 3, the Service issued to X a statutory notice of deficiency, which proposed total adjustments of \$d for Tax Year 1, Tax Year 2, and Tax Year 3. On date 4, the ninetieth day after the notice of deficiency was mailed, X petitioned the United States Tax Court to redetermine its tax liability. From the date of the petition to date 5, X appears not to have corresponded with the Service regarding the \$a remittance.

On date 5, while the Tax Court case still was pending, X wrote to the Appeals Division regarding the remittance. After acknowledging how the Service had posted the remittance, X requested that a portion of the remittance be applied as follows:

	<u>Tax Year 2</u>	<u>Tax Year 3</u>
Amount to be Applied as a Payment of Tax	\$e	\$g
Amount to be Applied as a Payment of Interest	\$f	\$h

X further requested that \$i, the balance of the original \$x remittance, remain as a cash bond deposit. On date 6, X wrote the Service to request that the \$i remaining balance be transferred to the consolidated group of which it was then a part and applied as a cash bond for a designated tax year of the consolidated group.

On date 7, the parties settled the suit pending before the United States Tax Court. They agreed income tax refunds were due for Tax Year 1, Tax Year 2, and Tax Year 3. The Joint Committee on Taxation subsequently approved payment of the refunds.

To date, Service transcripts of account reflect as deposits the amounts designated as payments in X's letter of date 5. The transcripts further reflect that the \$i balance on the original remittance was, as X requested, transferred to the consolidated group of which X was then a part.

LAW AND ANALYSIS

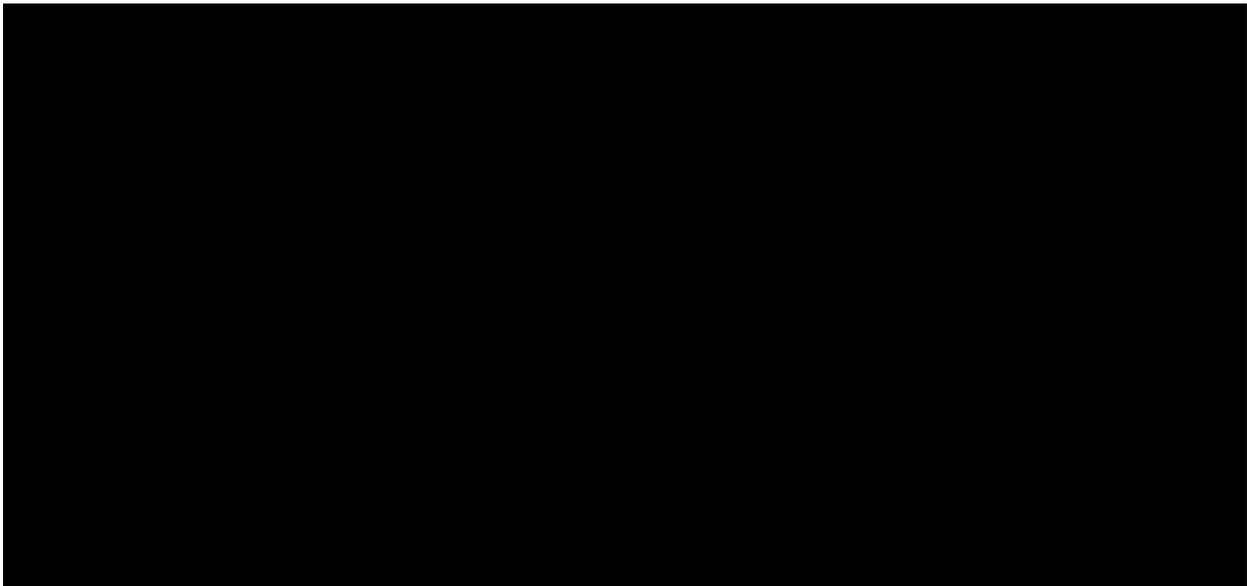
Under Rev. Proc. 84-58, the circumstances under which a remittance is made to the Service dictate whether the remittance will be treated as a payment of tax or as a deposit in the nature of a cash bond. A remittance made before the mailing of a notice of deficiency that is designated by the taxpayer as a deposit will be treated as such by the Service. *Id.* at § 4.02(1). Following the mailing of a notice of deficiency, part or all of the deposit will be posted to the taxpayer's account as a payment of tax occurring at the expiration of the applicable period within which a petition can be filed with the United States Tax Court, provided the taxpayer has not rerequested before then that the deposit continue to be treated as a deposit after the mailing of the notice of deficiency. *Id.* at § 4.02(3). No interest will be allowed

or paid on a deposit, or any portion of a deposit, returned to a taxpayer before or after assessment. Id. at § 5.04. Interest will be allowed on overpayments of tax. Id. at § 5.05. In the event that a deposit is posted to a taxpayer's account as a payment of tax, interest will run on an overpayment later determined to be due, but only from the date the amount was posted as a payment of tax. Id.

In this case, prior to date 4, the ninetieth day following the mailing of a notice of deficiency, X did not request the Service to continue treating its remittance as a deposit in the nature of a cash bond. The language of § 4.02(3) appears to dictate that the Service should have posted X's remittance as a payment of tax, effective date 4, and should not have continued to treat the remittance as a deposit. Under this analysis, the Service should not have honored X's request of date 6, to apply \$i of the original remittance as a deposit for a tax year of the consolidated group of which X was then a part, since the total X had remitted (\$a) was less than the liability proposed against X (\$d). See id. at § 4.02(3).

A tax is overpaid when a taxpayer pays more than is owed. United States v. Dalm, 494 U.S. 596, 609 n.6 (1990). On date 7, the parties stipulated that X was entitled to refunds for the years at issue before the Tax Court. By remitting \$a towards its possible liabilities for those years, X, therefore, had remitted more than was owed.

Taxpayers are invited to rely upon Rev. Proc. 84-58. In this case, X appears to have misread its provisions. We do not think, however, that X's apparent error should dictate how interest runs in this case. Under the analysis above, \$a would have become a payment as of date 4. Accordingly, we think that it is appropriate to allow X interest on \$a, the original remittance, less \$i, the amount transferred out of X's tax module at X's direction, from date 4.





DEBORAH A. BUTLER
Assistant Chief Counsel
(Field Service Division)

By: _____
SARA M. COE
Chief
Procedural Branch
Field Service Division