



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

OFFICE OF
CHIEF COUNSEL

May 31, 2000

Number: **200027051**
Release Date: 7/7/2000
CC:INTL:BR.1
WTA-N-105843-00
UILC: 6601.00-00
6091.01-00
6511.01-00
6611.07-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ASSISTANCE

MEMORANDUM FOR Donald Rivelli
Domestic and International Handbook Team

FROM: W. Edward Williams, Senior Technical Reviewer, Branch 1
CC:INTL:Br.1

SUBJECT: Returns Filed with Revenue Service Representatives Abroad -
Section 6091

This Technical Assistance responds to an inquiry from the Domestic and International Handbook Team asking for clarification regarding the statutes of limitation and interest payable by the Service on overpayments when taxpayers file returns with Revenue Service Representatives. Technical Assistance is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUES:

1. When does the period for filing a claim for credit or refund under I.R.C. § 6511 and for making an assessment under I.R.C. § 6501 begin to run for an individual income tax return with a Revenue Service Representative?
2. When does the 45 day period of I.R.C. § 6611(e) in which the Service may make a refund of any overpayment without paying interest begin to run for an individual income tax return filed with a Revenue Service Representative?

CONCLUSIONS:

1. The period for filing a claim for credit or refund or for making an assessment begins to run from the last day prescribed for filing the return, or if the return is

WTA-N-105843-00

received after the last day prescribed for filing the return, from the date a return is received by a Revenue Service Representative.

2. The 45 day period in which the Service has to make a refund of any overpayment without paying interest begins to from the last day prescribed for filing the return, or if the return is received after the last day prescribed for filing the return, from the date a return is received by a Revenue Service Representative.

FACTS:

In a Technical Assistance dated December 6, 1999, the National Office determined that United States citizens residing outside the United States as well as non-resident aliens may file a federal income tax return by mailing it or hand carrying it to a Revenue Service Representative (RSR) at a United States Embassy. The National Office also determined in that Technical Assistance that payment of any tax due must be made to the RSR with the mailed or hand carried return.

You have asked for clarification on whether the date a return filed with a RSR starts the running of statutes of limitation for making an assessment and a claim for credit or refund and the 45 day period during which refunds may be made without payment of interest.

DISCUSSION:

In the Technical Assistance dated December 6, 1999, we viewed the Assistant Commissioner (International) as functioning in the same manner as an Internal Revenue District, and equated filing with a RSR as similar to filing with a Service Center. This conclusion was based in part on I.R.C. § 6091(b) and Treas. Reg. § 1.6091-4(a)(1) and the Service's longstanding policy of allowing income tax returns of U.S. citizens residing outside the United States, as well as nonresident aliens, to be filed with RSRs.

ISSUE 1

Under I.R.C. § 6072(a), the due date for individual income tax returns is generally April 15th of the year following the close of the taxable year. Under I.R.C. § 6072(c), the due date for returns for nonresident alien individuals whose wages are not subject to withholding under chapter 24 is generally June 15th of the year following the close of the taxable year. In addition, many United States citizens and residents who live abroad may receive extensions of time to file their individual income tax returns until June 15th. See Treas. Reg. § 1.6081-5. Additional extensions may be available under I.R.C. § 6081 and the regulations thereunder.

Except for certain specifically enumerated exceptions, I.R.C. § 6501(a) provides the general rule that any tax imposed by Title 26 "shall be assessed within 3 years after the returns is filed (whether or not such return was filed on or after the date

WTA-N-105843-00

prescribed).” In general, for all taxes for a which a return must be filed, a claim for credit or refund must be filed:

- (1) within three years of the time the return was filed,¹ except, if the return was filed before it was due, the claim must be filed within three years of the return’s due date;²
- (2) within two years from the time the tax was paid, if that period ends later, or
- (3) within two years from the time the tax was paid, if no return is filed by the taxpayer.³

Thus, an early income tax return, that is, one that is hand delivered or mailed by a U.S. citizen or nonresident alien residing outside of the United States and stamped received by an RSR before its due date, is treated as filed on the last day prescribed for filing. These rules are determined without regard to an extension of time for filing granted to a taxpayer. Similarly, a payment of tax with an early income tax return is treated as paid on the last date prescribed for the payment of the tax.⁴

A return delivered by mail under a foreign postmark or by hand after the due date is not considered filed until it is received, and thus a delinquent return is considered filed when it is stamped received by the RSR.⁵

ISSUE 2

Although I.R.C. § 6611(a) requires the Service to pay interest on overpayments of tax, under I.R.C. § 6611(e)(1), no interest is payable on overpayments refunded within 45 days of the due date of the return (determined without regard to extensions), or in the case of a return filed after that due date, within 45 days after the date of filing. If the filing date is extended under the weekend/holiday rule, and the taxpayer files his return on the first business day after the weekend or holiday, the 45 day period begins to run on the day after the taxpayer files his return. If the taxpayer files the return on or before the last day for filing without taking advantage of the weekend/holiday rule, the

¹ I.R.C. § 6511(a).

² I.R.C. § 6513(a).

³ I.R.C. § 6511(a).

⁴ I.R.C. § 6513(a).

⁵ See *United States v. Lombardo*, 241 U.S. 73 (1916) (document filed when it is delivered); *Phinney v. Bank of SW Nat'l Assn.*, 335 F.2d 266, 268 (5th Cir. 1964); *Heard v. Commissioner*, 269 F.2d 911, 913 (3d. Cir. 1959).

WTA-N-105843-00

45 day period starts on the day after the last date for filing (without extensions) even though that last date falls on a Saturday, Sunday, or holiday.⁶

Filing for purposes of the 45 day rule is treated similarly as that for purposes of the statutes of limitation. Thus, an early income tax return, that is, one that is hand delivered or mailed and stamped received by an RSR before April 15 in the case of an individual, is treated as filed for purposes of the 45 day rule on April 15, the last day prescribed for filing. If the return is mailed with an official foreign postmark to an RSR before the due date of the return and it is stamped received after the due date, I.R.C. § 7502 does not apply and the return is considered filed on the date it is stamped received by the RSR.

Returns that are received by an RSR during an extension period are considered filed for purposes of the 45 day rule on the date they are stamped received.⁷ A return mailed or delivered by hand after the due date is not considered filed until it is received, and thus a delinquent return is considered filed for purposes of the 45 day rule when it is stamped received by the RSR.

Please contact this office if you have any questions regarding this memorandum.

W. EDWARD WILLIAMS
Senior Technical Reviewer
Branch 1 (International)

⁶ Rev. Rul. 75-344, 1975-2 C.B. 487.

⁷ I.R.C. § 6611(e)(1); Rev. Rul. 74-236, 1971-1 C.B. 348.