

Office of Chief Counsel
Internal Revenue Service
Memorandum

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subject: I.R.C. § 6621(d) and Six Year Statute of Limitations under 28 U.S.C. §§ 2401 and 2501

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether the Internal Revenue Service (IRS) has the authority to allow and pay overpayment interest after the six-year period of limitations for filing a suit under 28 U.S.C. §§ 2401 and 2501 expires, if the taxpayer filed its claim for additional interest with the IRS within the six-year period but did not file suit within the six-year period.

CONCLUSION

Yes, the IRS may allow and pay overpayment interest after the six-year period of limitations for filing a suit under 28 U.S.C. §§ 2401 and 2501 expires, if the taxpayer filed its claim for additional interest with the IRS within the six-year period but did not file suit within the six-year period.

FACTS

Taxpayer filed a claim with the IRS for additional overpayment interest under I.R.C. § 6621(d) at the time when, all statutory periods for filing a claim for refund of underpayment interest were closed, but the six-year statutory period for filing a suit for additional overpayment interest under 28 U.S.C. §§ 2401 and 2501 (the six-year period) was open. After the taxpayer filed its administrative claim, but before the IRS finished allowing and paying the claim, the six-year period of limitations expired without the taxpayer filing a suit in Federal District Court pursuant to 28 U.S.C. § 2401 or in the Federal Court of claims pursuant to 28 U.S.C. § 2501.

LAW

The government may pay interest only if authorized to do so by a specific statutory provision. United States ex. rel. Angarica v. Bayard, 127 U.S. 251 (1888). Section 6611 of the Internal Revenue Code (Code) authorizes the IRS to pay interest on any tax overpayment. Section 6601 requires the taxpayers to pay interest on any tax underpayment. The interest accrues at the rates established in section 6621(a)(1) for overpayment and section 6621(a)(2) for underpayment.

In 1998 Congress added new section 6621(d) of the Code to provide that a net interest rate of zero applies to interest accruing on or after October 1, 1998, on equivalent overlapping tax underpayments and tax overpayments. Additionally, if certain conditions are met, Section 6621(d) applies to interest accruing before October 1, 1998. The IRS issued three revenue procedures to provide guidance on application of section 6621(d). Rev. Proc. 2000-26, 2000-1 C.B. 1257, applies to interest accruing on or after October 1, 1998. Rev. Proc. 99-43, 1999-2 C.B. 579, which modified and superseded Rev. Proc. 99-19, 1999-1 C.B. 842, applies to interest accruing before October 1, 1998.

Filing a claim for refund with the IRS is a jurisdictional prerequisite for filing a suit for refund; however, no such statutory prerequisite exists for filing a suit for additional overpayment interest. See I.R.C. § 7422 and 28 U.S.C. §§ 2401 and 2501. But, in Rev. Proc. 99-19, Rev. Proc. 99-43, and Rev. Proc. 2000-26 the IRS has requested taxpayers to file administrative claims for the application of the net interest rate of zero because the Service has not been able to automatically determine when the net interest rate of zero applies. The revenue procedures set forth the claim requirements and time limits for filing them. In general, if the period of limitation for refunding underpayment interest is closed at the time a claim under section 6621(d) is filed, but the period for paying additional overpayment interest is open, the IRS will apply the net rate of zero by increasing overpayment interest owed to the taxpayer. Rev. Proc. 99-43 section 4.04(2) and Rev. Proc. 2000-26 section 4.03(2).

The revenue procedures further provide that “[a] claim for payment of additional interest allowable on an overpayment pursuant to §6611 must be filed within the 6-year period in which a suit must be filed pursuant to 28 U.S.C. §§ 2401 and 2501.” See Rev. Proc.

99-43 section 4.02(2) and Rev. Proc. 2000-26 section 4.02(2). In setting forth this requirement, the Service relied on Rev. Rul. 57-242, 1957-1 C.B. 452, which provides that overpayment interest under section 6611 may be allowed and paid by the IRS upon taxpayer's request at any time within six years from the date on which the schedule, listing the overpayment, is signed. Id.

ANALYSIS

You have asked whether the IRS is authorized to allow and pay additional overpayment interest if, after the taxpayer filed its claim, but before the IRS finishes allowing and paying the claim, the six-year period of limitations expires without the taxpayer filing a suit in Federal District Court pursuant to 28 U.S.C. § 2401 or in the Federal Court of claims pursuant to 28 U.S.C. § 2501. The administrative requirement for filing a claim for additional overpayment interest pursuant to Rev. Proc. 99-43 and Rev. Proc. 2000-26 is independent from the requirement for filing a suit for additional interest under 28 U.S.C. §§ 2401 and 2501 to fully protect taxpayers rights.

Revenue Ruling 57-242 holds that an administrative claim for additional overpayment interest will not stop the running of the six-year period of limitations and that a taxpayer must file suit prior to the expiration of the six-year period to “fully protect” its rights to additional overpayment interest. See Rev. Rul. 57-242, and Rev. Proc. 2000-26. Though “fully protect” is not defined in the revenue ruling, a fair and logical interpretation is that it means preserving the right to judicial review. Revenue Procedure 2000-26 reinforces this interpretation.¹

Some level of confusion regarding this issue may have resulted from literal construction of Rev. Rul. 56-506, 1956-2 C.B. 959, which holds that “no allowance of interest on a refund or credit of an overpayment of tax may be made after the expiration of six years from the date of the allowance of the refund or credit unless a taxpayer has filed a civil action against the United States within such period.” Although literally this ruling may appear contrary to the Service's position expressed here (and in Rev. Rul. 57-242), the cases cited in Rev. Rul. 56-506 lead us to conclude that the ruling addressed only whether the IRS could allow and pay overpayment interest when the taxpayer filed its suit under 28 U.S.C. §§ 2401, 2501 after the expiration of the six-year period.

Neither Rev. Rul. 56-506 nor the cases cited therein contemplate taxpayers' filing administrative claims for additional overpayment interest before the expiration of the six-year period. See Colgate-Palmolive-Peet Co. v. United States, 58 Fed.2d 499 (1932) and Dissolution for Engineers Public Service Co. v. United States, 137 F. Supp. 716

¹ “The only manner in which a taxpayer can fully protect its rights to additional overpayment interest is by filing a civil suit against the United States prior to the termination of the 6-year statutory period set forth in 28 U.S.C. §§ 2401 and 2501.” Rev. Proc. 2000-26 section .02(2).

(1956) (deciding that the cause of action accrues on the date of the allowance of the refund or credit, the courts dismissed the cases in favor of the government because plaintiffs commenced their actions against the United States after expiration of the six-year period of limitations). Accordingly, we believe that your facts are distinguishable from those addressed in revenue ruling 56-506 and that the ruling does not resolve the situation at issue.

On the other hand, Rev. Rul. 57-242, which specifically discusses taxpayers filing administrative claims for overpayment interest, resolves the issue. It holds that overpayment interest under section 6611 “may be allowed and paid upon request at any time within six years” from the date on which the schedule listing the overpayment is signed. The phrase “at any time within six years” modifies only “upon request,” therefore, the logical reading of the ruling is that it provides a time limit on when taxpayers must file their claims with the IRS for overpayment interest, but no time limit on when the IRS may allow and pay overpayment interest.

CONCLUSION

For the foregoing reasons, we conclude the IRS may allow and pay additional overpayment interest if the taxpayer files an administrative claim for additional interest within the six-year period of limitations under 28 U.S.C. §§ 2401 and 2501 and it expires without the taxpayer filing a suit. Irrespective of whether the taxpayer files a suit, the IRS continues to have authority under section 6611 of the Code to consider a timely filed administrative claim for additional interest. The IRS should continue to caution taxpayers that filing a claim for overpayment interest with the IRS within the 6-year period of limitation does not toll or protect the six-year statute under 28 U.S.C. §§ 2401 and 2501. See Rev. Proc. 2000-26 and Rev. Rul. 57-242.

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Please call (202) 622-4910 if you have any further questions.