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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3464 - Refund or Credit of Overpayments Before Final Determination

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Section 3464

A. Provision(s) covered: Section 3464 (Code §§ 6213(a), 6512(a) & (b)) Refund or Credit of Overpayments Before Final Determination

B. Background: The IRS may be enjoined from collecting a deficiency pending the period during which a taxpayer may petition the Tax Court and, if a Tax Court petition is filed, until the decision is final. Courts, however, do not have authority to order a refund of amounts collected during the prohibited period. The IRS has no authority to refund any portion of an overpayment determined by the Tax Court while a case is on appeal, even though a portion of the refund might not be contested on appeal.

C. Change(s): This section modifies I.R.C. § 6213(a) to allow any federal court with jurisdiction to order a refund of any amount collected during a period when the Service was barred from collecting the deficiency. In addition, the section modifies I.R.C. § 6512(a) to allow an action for recovery of an overpayment in two additional situations:

1. when the Service collected an amount during a period when it was barred from doing so; and
2. when a notice of appeal is filed from a decision of the Tax Court, and the Service has not refunded or credited that portion of an overpayment determined by the Tax Court that is not contested on appeal.

D. Impact: With respect to the modifications to I.R.C. §§ 6213(a) and 6512(a) and (b), the IRM and CCDM must be changed to reflect the fact that the Service must issue a refund pursuant to orders of a court. These documents must also be modified to direct the Service to refund or credit an overpayment determined by the Tax Court, to the extent that the overpayment is not contested on appeal.

E. Necessary Actions

1. Actions/Procedures: Update IRM and CCDM to incorporate these amendments.
2. Things we CAN do: Prepare guidance to field counsel and Appeals setting forth how to determine whether an overpayment determined by the Tax Court should be refunded or credited pending appeal from the Tax Court's decision. Ensure that pro forma decision documents in CCDM and Handbooks provide for this procedure.
3. Advise affected personnel that they may be requested or directed to refund or credit overpayments pursuant to the new provision while a litigation "freeze" code remains on the module.
4. Issue a notice advising Chief Counsel personnel of the new provision and that new procedures will be forthcoming.
5. Things we CANNOT do: Advise taxpayers that agreed refunds cannot be issued until the court decision becomes final.

F. Other Special Comments

The amendments contemplate that a court would have jurisdiction to review the Service's actions regarding refund or credit of overpayments while a case is on appeal. We believe that the trial court retains jurisdiction over this issue while the merits of the case are on appeal.

We believe that this provision does not affect the Service's rights under §6402(a) to credit the agreed overpayment to another outstanding liability of the taxpayer. That is, the court cannot order a refund when the Service would otherwise credit the overpayment to another account.

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