

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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(Wage & Investment)

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subject: Statute of Limitations

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

ISSUES

If the Service becomes aware of an overpayment as a result of additional levied funds, does the section 6511 period of limitations apply to limit the amount the Service can refund to the taxpayer?

FACTS

The Service has encountered situations in which tax liabilities are fully paid, either by a delinquent taxpayer payment or by a State Income Tax Levy Program (SITLP) payment. Since the SITLP is an automated levy process, additional SITLP payments are sometimes applied after the liability is paid in full, resulting in an overpayment. Later, during a manual review of taxpayer transcripts, the Service becomes aware of the overpayment. At the time the Service becomes aware of the overpayment, the taxpayer has not requested a refund.

LAW AND ANALYSIS

Section 6511 provides the period of limitations on filing a credit or refund claim. If a return was filed, a claim for refund must be filed within three years from the date the return was filed, or two years from the time the tax was paid, whichever period expires later. I.R.C. § 6511(a). Section 6511(b)(2) places a limit on the amount of refund that a taxpayer may recover, this is often referred to as the “look-back” period. If the claim for

credit or refund is filed within three years of the filing of the return, the taxpayer is entitled to a refund of taxes paid within the three years immediately preceding the filing of the claim, plus the period of any extension of time for filing the return. I.R.C. § 6511(b)(2)(A). If the claim for credit or refund is not filed within three years of the filing of the return, the taxpayer is entitled to a refund of only those taxes paid during the two years immediately preceding the filing of the claim. I.R.C. § 6511(b)(2)(B).

If no claim is filed, the credit or refund cannot exceed the amount that would be allowable under section 6511(b)(2)(A) or (B) if a claim were filed on the date the credit or refund is allowed. I.R.C. § 6511(b)(2)(C). For purposes of section 6511(b)(2)(C), a refund is considered "allowed" on the date on which the Secretary first authorizing the scheduling of the overassessment. See I.R.C. § 6407; Treas. Reg. § 301.6407-1. Any refund or credit made after the expiration of the period of limitation on credit or refund would be an erroneous refund. I.R.C. § 6514(a)(1).

If the Service becomes aware of an overpayment, the Service may refund the overpayment within the period of limitations described in section 6511. Assuming there was no agreement extending the period of limitations on assessment under section 6501(c)(4), if the Service allows the refund more than three years from the filing of the return, the taxpayer is only entitled to a refund of the taxes paid during the two-year period immediately preceding the date the refund is allowed under section 6511(b)(2)(B).

Neither the Service nor the courts have the authority to issue a refund in excess of the amounts paid within the applicable look-back period. See Commissioner v. Lundy, 516 U.S. 235 (1996) (Tax Court cannot award a refund of any overpaid federal taxes that were not paid within the section 6511(b) look-back period).

The Service may only issue a refund of those amounts paid within the applicable look-back period.

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Please call (202) 317-6845 if you have any further questions.