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INTERNAL REVENUE SERVICE
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OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE
ADVICE

MEMORANDUM FOR DISTRICT COUNSEL, ILLINOIS CC:MSR:ILL
ATTN: HARMON DOW

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service)
CC:DOM:FS

SUBJECT: Interest netting under I.R.C. § 6621(d)

This Field Service Advice responds to your Email dated July 15, 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 Corp =

Y Corp =

YEAR 1, YEAR 2, etc. =

ISSUE:

Where Internal Revenue Code section 6621(d) provides for a zero rate of interest on equivalent underpayments and overpayments “by the same taxpayer,” whether the interest netting procedures apply to allow the netting of an overpayment made by an affiliated group of corporations filing a consolidated income tax return in year 1 against an underpayment in year 3 incurred by a reorganized consolidated group with a different parent, but which includes the old parent of the first consolidated group.

CONCLUSION:

The interest netting procedures of section 6621(d) will apply to an affiliated group of corporations filing a consolidated income tax return and its individual members, as long as the taxpayer receiving the refund is liable for both taxes at issue.

FACTS:

For the tax years 1 and 2, Y filed its income tax returns as the parent company of a consolidated group. In year 3, Y formed a holding company and reorganized, becoming a subsidiary of the new company X. For the tax years 3 and 4 X filed income tax returns as the parent of a consolidated group which included Y.

The tax years 1 through 4 are currently being examined, and the taxpayer has requested that the provisions of Rev. Proc. 99-19, 1999-13 I.R.B. 10, concerning interest netting be applied to those tax years. For tax year 1, the consolidated group parented by Y has an overpayment. For tax year 3, the consolidated group parented by X has an underpayment and for tax year 4, it has an overpayment.

LEGAL ANALYSIS

Section 6621(d) of the Internal Revenue Code provides for a net interest rate of zero to the extent of overlapping tax underpayments and overpayments by the

same taxpayer. The statute¹ is captioned “Elimination of Interest on Overlapping Periods of Tax Overpayments and Underpayments,” and provides:

To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.

Pursuant to its effective date, the statute applies to interest for periods beginning after July 22, 1998, and in special circumstances, will also apply to periods beginning before that date, if the applicable statute of limitation has not expired with regard to either the tax underpayment or overpayment, and the taxpayer reasonably identifies and establishes the overlapping periods for which the zero rate applies, and files a request before December 31, 1999.²

¹ As enacted by section 3301 of the Internal Revenue Service Reform and Restructuring Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 741, and amended by section 4402(d) of the Tax and Trade Relief Extension Act of 1998 (TTREA), Pub. L. No. 105-277, 112 Stat. 2681.

² RRA section 3301(c), as amended by TTREA section 4002(d) provides:
Effective Dates.---

(1) In General. –Except as provided in paragraph (2), the amendments made by this section shall apply to interest for periods beginning after the date of enactment of this Act [July 22, 1998].

(2) Special Rule.--- Subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments made this section shall apply for periods beginning before the date of the enactment of this Act if the taxpayer–

(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies,

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While Congress anticipated that, “where interest is payable from and allowable to an individual taxpayer for the same period, the Secretary will take all reasonable efforts to offset the liabilities, rather than process them separately using the net interest rate of zero,” it nevertheless intended a zero interest rate to apply for periods of mutual indebtedness, without regard to whether the underpayments or overpayments were currently outstanding. H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998). See Joint Committee Print, General Explanation of Tax Legislation Enacted in 1998, 105th Cong., 2d Sess. 290 (1998). In this respect, the legislative history makes clear that, “[f]or all periods in which the underpayment and the overpayment run concurrently ... the interest rate ... must be the same so that the net interest rate of zero applies.” H.R. Rep. No. 364, 105th Cong., 1 Sess. 64 and n. 41 (1997).

In this respect, Revenue Procedure 99-19, 1999-13 I.R.B. 10, concerns the application of section 6621(d) to interest for periods prior to July 28, 1998. In order to qualify for interest netting under Rev. Proc. 99-19, both periods of limitation applicable to the tax underpayment and the tax overpayment must have been open on July 22, 1998. Id., Sec. 2.03. See also, Joint Committee Print, General Explanation of Tax Legislation Enacted in 1998, 105th Cong., 2d Sess. 290 (1998). Further, taxpayers are to submit a Form 843 (Claim for Refund and Request for Abatement) with the Service Center where taxpayer filed its most recent return, labeling the top of the Form “Request for Net Interest Rate of Zero Under Rev. Proc. 99-19.” The Form should indicate (1) the type of tax and return covered by the request; (2) the taxable periods for which taxpayer overpaid and underpaid its tax liability; (3) when the tax was paid if the underpayment is no longer outstanding; (4) when the taxpayer received a refund, if the overpayment is no longer outstanding, and (5) identify and establish the periods for which taxpayer’s underpayment and overpayment overlapped. The Form should also state that the periods have not been previously used to obtain a net interest rate of zero. Rev. Proc. 99-19, sec. 4.04(5)(a)-(e).

and

(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods.

For purposes of this advice, we assume, but you should verify, that the taxpayer has met the procedural requirements for the application of section 6621(d) interest netting, with respect to the years at issue, except for the issue of whether X and Y can be regarded as the same taxpayer for purposes of the statute. It is also clear that the underpayment for year 3 and the overpayment for year 4 may be netted because the same taxpayer requirement is met for those years.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

Section 6621(d) provides for a zero rate of interest on equivalent underpayments and overpayments by the same taxpayer. While there is uncertainty whether underpayments and overpayments within an affiliated group are by the “same taxpayer,” the legislative history of Code section 6621(d) indicates the zero interest rate is applicable in those circumstances where the Service would normally offset, were the underpayments and overpayments currently outstanding. H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998).³ In eliminating the interest rate differentials without regard to whether overpayments and underpayments are currently outstanding, Code section 6621(d) should be available in those situations where the Service would be entitled to offset.

Here, X Corp, as the common parent of the newly reorganized consolidated group, and Y Corp, as a member of that affiliated group, are each severally liable for the consolidated income tax liability of the entire group. Treas. Reg. § 1.1502-6(a); Mississippi River & Bonne Terre Ry. v. Commissioner, 39 B.T.A. 995, 1004-1005

³ Offsets under Code section 6402 are discretionary with the Service, Northern States Power v. United States, 73 F.3d 7634 (8th Cir.), cert. denied, 117 S.Ct. 168 (1996), and are performed when an overpayment and an outstanding underpayment register on Masterfile simultaneously. Section 6402(a) provides that “the Secretary ... may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment.” When an overpayment is offset against an underpayment, no interest is imposed on the overlapping period during which interest would have been imposed on the overpayment and underpayment had they not been offset. Code section 6601(f) provides for this suspension of interest: “If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.” Thus, while the operation of section 6601(f) depends on the actual crediting of overpayments, it nevertheless eliminates the running of interest on overlapping periods of underpayment and overpayment.

(1939); Turnbull, Inc. v. Commissioner, 373 F.2d 91, 94 (5th Cir. 1967), cert. denied, 389 U.S. 842 (1967). The total consolidated income tax liability, including deficiencies, may be collected from any member of the affiliated group, notwithstanding intercompany agreements between the members allocating the liability. Treas. Reg. § 1.1502-6(c). Similarly, Y, as parent of the consolidated group that filed the tax return for tax year 1 is entitled to the overpayment for that year.

In retroactively applying section 6621(d) in the context of affiliated groups, the Service should construe the terms “underpayments and overpayments by the same taxpayer” to mean the person liable for both taxes. Assuming the facts are as stated in the Private Letter Ruling you forwarded with the request for advice, this particular reorganization is treated as a downstream transfer as described in Treas. Reg. § 1.1502-75(d)(2)(ii). Thus, the new group X is treated generally as the successor to the old group parented by Y and X becomes an alternative agent for the old group. Under section 6402(a), the Service would certainly exercise its right to credit the amount of Y Corp’s consolidated group income tax overpayment against X group’s consolidated income tax liabilities, if both liabilities were outstanding. We assume, although it is not explicitly stated in the incoming, that either the overpayment has been refunded to Y or the underpayment has been paid by X, such that the liabilities are no longer both outstanding. In this situation, the Service should treat the equivalent income tax underpayments and income tax overpayments as having been made by the same taxpayer for purposes of applying the zero interest rate.

By:

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