



OFFICE OF
CHIEF COUNSEL

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

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MEMORANDUM FOR M. K. MORTENSEN

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Small Business/Self-Employed Division
CC:SB:5:SLC
Attn: Mark H. Howard

FROM: John J. McGreevy
Senior Advisor
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CC:PA:APJP

SUBJECT: The Application of Sections 6611(d) and 6513(b)(2) of the
Internal Revenue Code

This advice responds to your memorandum dated November 22, 2002. In accordance with I.R.C. § 6110(k)(3), this advice should not be cited as precedent.

LEGEND

Taxpayer
State

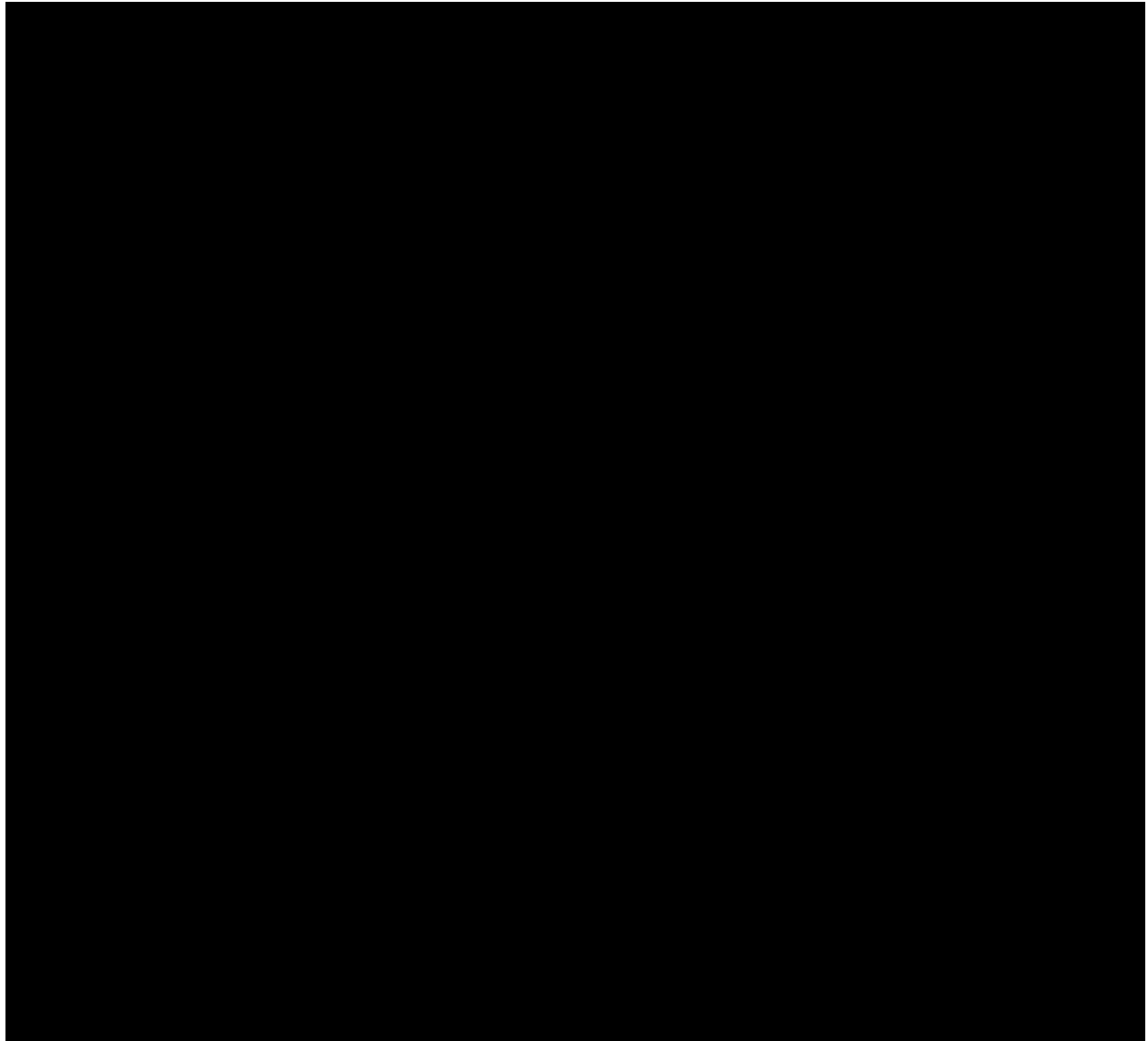
You have asked for a strategic advice memorandum evaluating Taxpayer's legal argument concerning the application of sections 6611(d) and 6513(b)(2) of the Internal Revenue Code (Code).

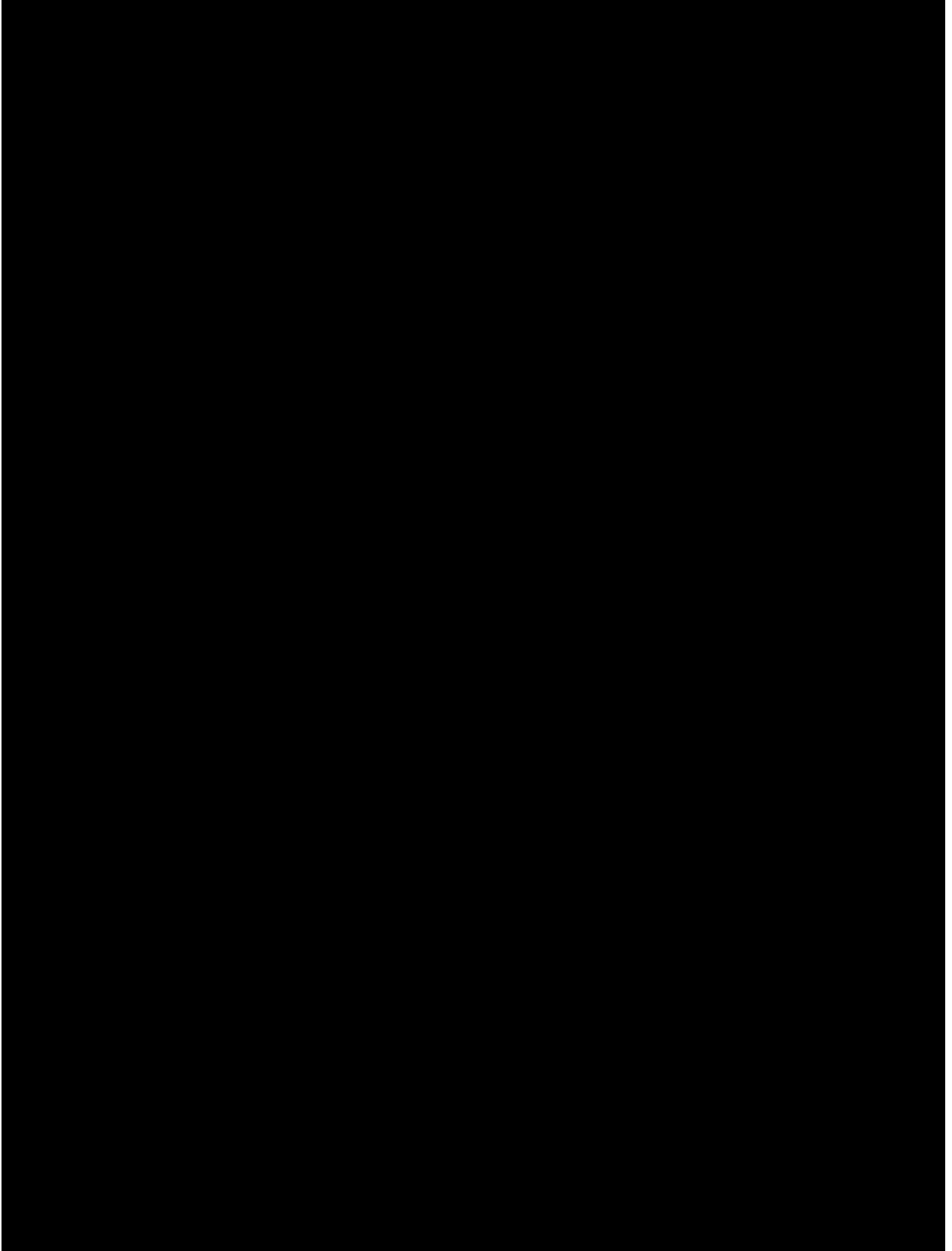
The facts of the case are not in dispute. Taxpayer is a domestic mutual insurance company created by the State legislature. Taxpayer made estimated income tax payments and filed income tax returns based on its view that it was a taxable entity. However, Taxpayer subsequently requested, and received, a determination letter from the Service stating that it was exempt from federal taxation. Following the receipt of its notice of exemption, Taxpayer filed refund claims for the years that were open. The Service approved Taxpayer's claims for refund. The only issue remaining is the date that overpayment interest begins to accrue on Taxpayer's refunds.

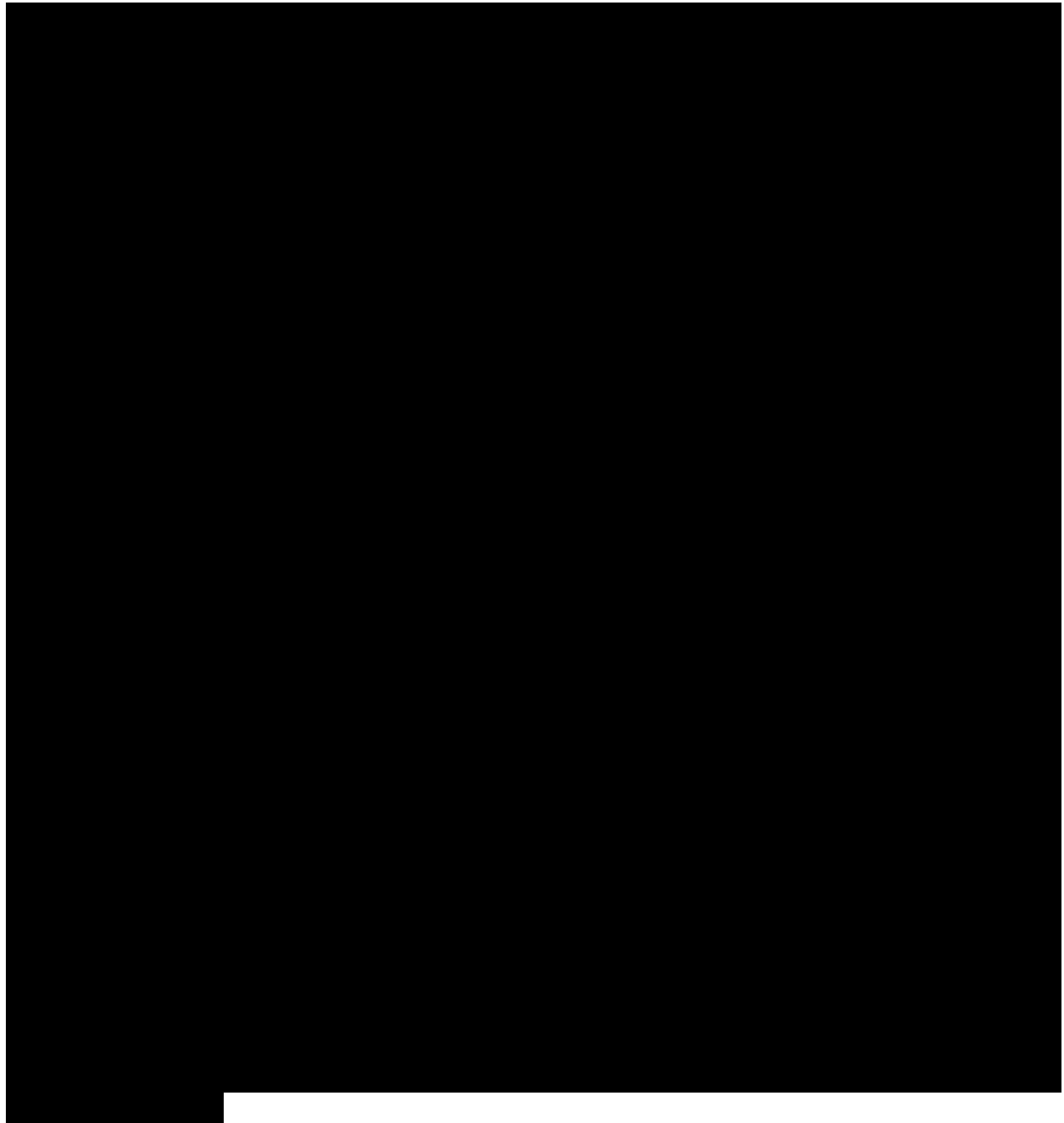
The Complex Interest Unit at the Ogden Service Center Campus has requested advice on the question of whether the Service should pay overpayment interest to Taxpayer using the actual dates of each “estimated tax payment,” or whether the Service should calculate the refund interest using the due date of the return, per the standard rule of section 6611(d) (referring to 6513(b)).

The taxpayer cites State of Michigan v. United States, 141 F.3d 662 (6th Cir. 1998), in support of its theory that because it was never required to file income tax returns, the “deemed dates of payments” stated in sections 6513(b) and 6611(d) don’t apply because they are tied to an event -- the filing of an income tax return -- that does not apply to the taxpayer.

HAZARDS AND OTHER CONSIDERATIONS







This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.