



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Sara M. Coe
Chief, Field Service Procedural Branch
CC:DOM:FS:PROC

SUBJECT: Expedited refund in Joint Committee case

This Field Service Advice responds to your memorandum dated December 11, 1998 . 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 =

Authorized representative:

ISSUE(S):

1. In considering a request for an expedited refund in a Joint Committee case, does a district director have discretion not to require security on interest accruing upon the tax refund?
2. Assuming that such discretion exists, what factors should be taken into account in determining whether that discretion should be exercised in whole or in part?

CONCLUSION:

In considering a request for an expedited refund in a Joint Committee case, the Service does have discretion to require the taxpayer to provide security for any underpayment interest that may be payable if the taxpayer was subsequently required to repay the entire amount of the tax refund. In exercising its discretion, the district director may consider the amount of tax, the anticipated time to complete the examination, current interest rates, and any factors affecting the financial well-being of the taxpayer.

FACTS:

Near the completion of an audit, the taxpayer X requested that the Service expedite its anticipated refund of income tax for the years in the audit cycle. The taxpayer requested a refund of tax in excess of \$1,000,000, together with overpayment interest, payable under I.R.C. § 6611, on the refunded amount. The taxpayer agreed to provide security in the form of a letter of credit for the tax refund amount, but was initially unwilling to provide security for any interest. When the district director insisted that X also provide security for interest in an amount at least equal to amount of interest being paid to the taxpayer X with the tax refund, X agreed.

LEGAL ANALYSIS

1. In considering a request for an expedited refund in a Joint Committee case, a district director has discretion whether to require security on all or any portion of the underpayment interest that may become due from the taxpayer upon a subsequent determination that the taxpayer is liable for the full amount of the refunded tax.

Section 6405(a) of the Internal Revenue Code provides that no refund or credit of income tax in excess of \$1,000,000 may be made until after a report is submitted to the Joint Committee on Taxation. However, modified procedures are authorized at IRM 457(10).5 where a taxpayer requests that a refund be made prior to the completion of survey or examination action and no disadvantage to the government will occur. A security bond is substituted for the tax being refunded in advance. These procedures apply where:

- 1) a refund is claimed in excess of \$25,000,
- 2) any examination or survey action will not be completed within six months,
- 3) a modified expedite refund request report is sent to the Joint Committee,
- 4) the taxpayer posts bond or other security, as required by the Service, and
- 5) the taxpayer provides an executed written security agreement.

Under these procedures, the Service does not have discretion to forego security on an expedited tax refund. IRM 457(10).5 requires the taxpayer to post bond or similar security “for the amount of the refund.”

However, the Service does have discretion to forego security on related interest:

At the discretion of the district director, an additional amount of bond or security may be required with respect to interest on the refund in the event all or part of the refund must be repaid. This amount should be measured by the reasonable anticipated time to complete the examination and the interest rate currently in effect under IRC 6621.

IRM 457(10).5(1)(c). The discretionary security is for potential underpayment interest that may be due, pursuant to I.R.C. § 6601, on the refunded amount if the refunded tax must be repaid to the Service at the end of the audit. The overpayment interest on the amount expeditiously refunded is relevant only in calculating the anticipated underpayment interest.¹

The purpose of the required bond or other security is to protect the Service from the taxpayer’s nonpayment of the tax if it is subsequently determined that the taxpayer was not entitled to the refund. The security will enable the Service to quickly recover the amount that was refunded by enforcing the bond or other security agreement regardless of the taxpayer’s financial condition at the end of the audit. In evaluating the need for obtaining security on the interest, the Service can consider any factors that might affect the Service’s ability to collect the tax and underpayment interest.

2. In determining whether to obtain security for all or part of the potential underpayment interest on the tax being refunded, the district director should consider the amount of the tax refund, the amount of potential underpayment interest and any factors that might affect the taxpayer’s ability to pay the tax plus underpayment interest at the end of the audit.

IRM 457(10).5(1)(c) directs that the amount of discretionary security on potential underpayment interest should be measured by the reasonably anticipated time to complete the audit and the current interest rates. That is, the Service should compute the amount of underpayment interest that would be due on the refunded amount of tax as of the future date when the tax underpayment caused by making

¹ Rev. Proc. 94-60, 1994-2 C.B. 774 directs the Service, in recovering taxes that have been refunded, to use the lower overpayment interest rate to compute the amount of underpayment interest for any period for which overpayment interest was paid.

the refund is expected to be determined. An actual computation using a future payment date and current interest rates can be done, using the taxpayer's accounts for the years at issue.

In determining whether to exercise the discretion, the district director should consider the amount of the tax and potential underpayment interest as well as the taxpayer's anticipated ability to pay that amount at the end of the audit. The purpose of the bond or other security instrument is providing "security" for the repayment, if necessary, of the refunded tax and the payment of whatever underpayment interest that can be expected to have accrued on that tax. Key factors could be:

- 1) the amount of the refund;
- 2) the amount of underpayment interest that would have accrued at the time the expedited refund request was made;
- 3) the anticipated length of the audit and the amount of any additional underpayment interest that would accrue if, at the end of the audit, it was determined that the taxpayer was required to repay tax in the full amount of the refund;
- 4) the strength of the taxpayer's position and the likelihood that the Joint Committee will approve the refund;
- 5) the taxpayer's financial condition;
- 6) the extent of the taxpayer's business within the United States and the amount of the taxpayer's assets within the United States; and
- 7) any events that might affect the financial well-being of the taxpayer.

Once these factors are considered, the district director may determine that the overpayment interest is a low estimate of the underpayment interest that might be due as of a future date and, therefore, may be an appropriate measure of the security that is needed.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

For this case, we recommend that you have the agent estimate the amount of underpayment interest that would be due on the potential recovery of the entire tax refund as of the expected completion date for the audit. The agent should also document the factors which led him to recommend that security be obtained for any part of the underpayment interest.