



Tax Reduction Letter

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Private Letter Ruling 9127004

March 20, 1991

ISSUE

Is the ending date for interest on a deficiency eliminated by a net operating loss carryback or investment tax credit carryback the filing date of the return for the year in which the loss or credit arose or the later date on which the return was actually filed?

FACTS

The taxpayer (hereafter referred to as X) is a corporation involved in the business of selling and renting ***** to industrial and commercial operations. For the taxable year ended June 30, 1982, X had a deficiency of *****. For the taxable year ended June 30, 1984, X had an investment tax credit carryback. For the taxable year ended June 30, 1985, X had both a net operating loss carryback and an investment tax credit carryback.

The return for the taxable year ended June 30, 1984, due September 15, 1984, was filed on August 6, 1986. The return for the taxable year ended June 30, 1985, due September 15, 1985, was filed on December 10, 1986. Neither return was filed timely. X applied the loss and credit carrybacks to the deficiency for the taxable year ended June 30, 1982, reducing the deficiency to *****. The District Director computed interest as follows: (1) interest on the entire deficiency of ***** was computed as if the interest ran from September 15, 1982, the date the tax was due for the taxable year ended June 30, 1982, to August 6, 1986, the date the return was actually filed for the taxable year ended June 30, 1984; and (2) interest on the balance of the deficiency remaining after reduction by the carryback from the taxable year ended June 30, 1984, was computed as if the interest ran until December 10, 1986, the date the return was actually filed for the taxable year ended June 30, 1985.

The taxpayer contends that (1) interest on the entire deficiency should run only until September 15, 1984, the filing date for the taxable year ended June 30, 1984; and (2) interest on the reduced balance should run only until September 15, 1985, the filing date for the taxable year ended June 30, 1985. Thus, the taxpayer contends that the deficiency should be reduced as of the respective dates the returns for the carryback years should have been filed by, not the dates the returns were actually filed.

APPLICABLE LAW AND REGULATIONS

Section 6151(a) of the Internal Revenue Code provides, in part, that when a return of tax is required, the person required to make such return shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

Section 6601(a) of the Code provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.

Section 6601(d)(1) of the Code provides that if the amount of any tax is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises. Section 6601(d)(2) provides, in part, that if any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest for the period ending with the filing date for the taxable year in which the credit carryback arises.

Section 6601(d)(3) of the Code provides that the term "filing date" has the meaning given to such term by section 6611(f)(3)(A).

Section 6611(f)(3)(A) of the Code provides that the term "filing date" means the last date prescribed for filing the return for the taxable year (determined without regard to extensions).

Section 301.6601-1(e)(1) of the Procedure and Administration Regulations provides, in part, as follows:

The carryback of a net operating loss, net capital loss, investment credit, or work incentive program (WIN) credit shall not affect the computation of interest on any income tax for the period commencing with the last day prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss or credit arises. For example, if the carryback of a net operating loss, a net capital loss, an investment credit, or a WIN credit to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the annual rate, referred to in the regulations under section 6621 from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose.

The reason that the language quoted above refers to interest running until "the last day of the taxable year in which the loss or credit arose" rather than to the filing date for that year is that the regulations reflect the prior rather than the current language of section 6601(d) of the Code. See section 346(c)(2)(A) of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 580, which amended section 6601(d)(1) by substituting "the filing date for the taxable year" for "the last day of the taxable year". A comparable amendment was also made to section 6601(d)(2).

In *Avon Products, Inc. v. U.S.*, 588 F.2d 342, (2d Cir. 1978), the court interpreted section 6601(a) of the Code to mean that interest on an underpayment can only be charged when the tax is both due and unpaid, reasoning that interest is charged only for the loss of the use of money.

The tax credits and net operating loss that X carried back from the taxable years ended June 30, 1984, and June 30, 1985, reduced the deficiency for the taxable year ended June 30, 1982. Such reductions were effective as of the filing dates of the returns for the years in which the credits and the net operating loss arose even though the returns for those years were filed late. In the situation presented the filing dates were September 15, 1984, and September 15, 1985. Section 6611(f)(3)(A) of the Code.

Under the principle of the Avon Products case, interest is charged only for the period during which the government is deprived of the use of its money. Accordingly, interest on the entire deficiency of ***** returns until September 15, 1984, at which time the deficiency was reduced by the carryback that arose in the taxable year ended June 30, 1984. Interest on this reduced deficiency runs until September 15, 1985, at which time the deficiency was further reduced by the carryback that arose in the taxable year ended June 30, 1985.

CONCLUSION

The ending date for interest on a deficiency eliminated by a net operating loss carryback or investment tax credit carryback is the filing date of the return for the year in which the loss or credit arose, and not the later date on which the return was actually filed.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.