

Strengthen Taxpayer Rights in Judicial Proceedings

#45 AUTHORIZE THE TAX COURT TO ORDER REFUNDS OR CREDITS IN COLLECTION DUE PROCESS PROCEEDINGS

Present Law

Internal Revenue Code (IRC) § 6512(b) grants the Tax Court jurisdiction in deficiency suits to determine that a taxpayer made an overpayment of income tax for the period at issue and that such amount must be refunded or credited to the taxpayer.¹⁶⁸ IRC § 6511(a) generally requires a taxpayer to file a claim for credit or refund by the later of three years from the time a return was filed, or if no return was filed, two years from the time the tax was paid.

IRC § 6330 allows a taxpayer in certain instances to challenge the underlying liability in a Collection Due Process (CDP) proceeding. Unlike in deficiency cases, however, it does not grant the Tax Court jurisdiction to determine the extent to which a taxpayer has made an overpayment and is entitled to a refund or credit.¹⁶⁹ For a taxpayer in a CDP proceeding to receive a refund, the taxpayer must first fully pay the assessed tax for the taxable year(s) at issue, file a timely administrative refund claim with the IRS under IRC § 6511, and if the claim is denied, timely file a refund suit in a U.S. district court or the Court of Federal Claims.

Reasons for Change

The limitation on the Tax Court's jurisdiction to determine an overpayment and order a refund in CDP cases prevents taxpayers from obtaining resolution of their tax disputes in one forum and imposes unnecessary financial and administrative burdens on taxpayers and the court system. The Tax Court, unlike other federal courts, is a pre-payment forum that ordinarily allows taxpayers to dispute their liabilities without having to first full-pay them. In a CDP proceeding, only taxpayers who did not otherwise have an opportunity to dispute their underlying liability are permitted to contest it.

CDP taxpayers who may challenge the existence or amount of the underlying tax liability pursuant to IRC § 6330(c)(2)(B) should, similar to taxpayers in deficiency proceedings, have the opportunity to obtain a refund in a pre-payment forum, rather than be required to full-pay the liability and then incur additional time and expense to dispute the liability in another forum. A taxpayer disputing the underlying liability in a CDP case is subject to limitations similar to those that apply to taxpayers in deficiency proceedings. The court reviews the amount of the tax liability on a *de novo* basis,¹⁷⁰ and the scope of its review extends to evidence introduced at the trial that was not a part of the administrative record.¹⁷¹ Amending IRC § 6330 to explicitly grant the Tax Court the authority to determine overpayments and issue refunds in CDP cases will protect taxpayers' *right to finality*, reduce taxpayer burden, and better ensure the IRS collects the correct amount

¹⁶⁸ IRC § 6401 provides that the term "overpayment" includes "that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto." The Supreme Court has stated that an overpayment occurs "when a taxpayer pays more than is owed, for whatever reason or no reason at all." *United States v. Dalm*, 494 U.S. 596, 609 n. 6 (1990). See also *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947).

¹⁶⁹ See *Greene-Thapedi v. Comm'r*, 126 T.C. 1 (2006); *Willson v. Comm'r*, 805 F.3d 316 (D.C. Cir. 2015); *McLane v. Comm'r*, T.C. Memo. 2018-149 (2018).

¹⁷⁰ Under a *de novo* standard of review, the Tax Court will consider all relevant evidence introduced at trial. *Jordan v. Comm'r*, 134 T.C. 1, 8 (2010).

¹⁷¹ The legislative history of RRA 98 addresses the standard of review courts should apply in reviewing Appeals' CDP determinations. H.R. REP. NO. 105-599, at 266 (1998). See also IRS Chief Counsel Notice CC-2014-002, Proper Standard of Review for Collection Due Process Determinations (May 5, 2014).

of tax. Furthermore, the Tax Court could apply to CDP proceedings its long-established procedures for determining an overpayment in deficiency cases.

Refund claims in CDP cases should be subject to the limitations of IRC §§ 6511(a) and 6512(b)(3). If the claim was filed by the taxpayer within three years from the time a return was filed, the amount of the refund would be limited to the amount paid in the three-year period (plus extensions) before the notice of deficiency was mailed and the amount paid after the notice of deficiency was mailed.

Recommendation

- Amend IRC § 6330(d)(1) to grant the Tax Court jurisdiction to determine overpayments for the tax periods at issue and to order refunds or credits, subject to the limitations of IRC §§ 6511(a) and 6512(b)(3), if the court determines the amount of the taxpayer's underlying tax liability for a taxable year is less than the amounts paid or credited for that year.