

ACTION ON DECISION

SUBJECT: Doyle, Dane, Bernbach, Inc. v. Commissioner
79 T.C. 101 (1982)
T.C. Dkt. No.14077-78

Issue: Whether an accrual method taxpayer must include in its gross income for 1975 amounts representing claimed refunds of New York State franchise taxes and New York City general corporate taxes paid for 1972 which became refundable by virtue of a net operating loss incurred in 1975 and carried back to 1972.

Discussion: The Service issued an action on decision that non-acquiesced in the decision of Doyle, Dane, Bernbach, Inc. v. Commissioner, 1988-1 C.B. 1. In a revenue ruling published elsewhere in this issue of the Internal Revenue Bulletin, the Service has concluded that New York State's approval of corporate franchise tax refund claims resulting from net operating loss carrybacks is not ministerial but involves substantive review. Accordingly, a New York State corporate franchise tax refund attributable to a net operating loss carryback is includible in the income of a taxpayer using the accrual method of accounting when the taxpayer receives payment or notice that the refund claim has been approved, whichever is earlier. See Rev. Rul. 2003-3.

Recommendation: Acquiescence. The action on decision approved on June 27, 1988 is withdrawn and replaced with this action on decision.

Reviewers:

NORMA ROTUNNO
Attorney
Branch 2
Associate Chief Counsel (Income Tax &
Accounting)

Approved:

By: _____
B. JOHN WILLIAMS, JR.
Chief Counsel