



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler  
Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Carrybacks Affecting Docketed Years

This Field Service Advice responds to your inquiry received on July 13, 1999. 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 =

Date 1 =

Date 2 =

Date 3 =

Tax Year 1 =

Tax Year 2 =

Tax Year 3 =

Tax Year 4 =

Tax Year 5 =

ISSUE:

Should district counsel seek entry of a decision if the Internal Revenue Service has not yet completed its audit of the years from which losses have been carried back to the docketed years?

CONCLUSION:

It is preferable to wait for the audit of the nondocketed loss years to be completed before a decision is entered for the docketed carryback years.

FACTS:

On Date 1, X petitioned the United States Tax Court to redetermine deficiencies asserted for Tax Year 1, Tax Year 2, and Tax Year 3. The petition did not place in issue any specific net operating loss or credit carryback from any subsequent year. In its prayer for relief, X's petition asked the court to "[d]etermine that [petitioner is] entitled to all deductions and credits and carrybacks or carryovers of all deductions and credits allowable by operation of law."

On Date 2, X filed a Form 1139, "Corporation Application for Tentative Refund," on which it claimed an adjustment in Tax Year 2 for certain losses carried back from Tax Year 4. The Internal Revenue Service allowed X's claim.

On Date 3, X filed a Form 1139 on which it claimed an adjustment in Tax Year 3 for certain losses carried back from Tax Year 5. This claim, too, was allowed. Subsequently, X filed a Form 1120X, "Amended U.S. Corporation Income Tax Return," for Tax Year 3 claiming additional losses from Tax Year 5. This last claim has yet to be allowed.

The Service is currently auditing Tax Years 4 and 5. At this time, it is not known when the audit will be completed.

All of the issues specifically raised in the pleadings have been resolved. X maintains that the tentative carryback allowances must be allowed in full when computing any deficiencies. X further maintains that the losses claimed on Form 1120X that were carried back to Tax Year 3 must also be allowed in computing any deficiency for that year. At this point, however, the court has not asked the parties to execute settlement documents; the case has been continued indefinitely while the audit progresses.

LAW AND ANALYSIS:

Under I.R.C. § 172, losses may be carried back to preceding tax years. See I.R.C. §§ 6411 and 6511. If the carryback years are in litigation but the loss years are still under audit, it is possible that a decision may be entered before the parties have had an opportunity to resolve whether the losses are allowable in the amount claimed. Subsequent litigation over the correct amount of the carrybacks may be affected by res judicata, the judicial doctrine that prevents the splitting of causes of action. It is always preferable, therefore, for the audit of the loss year or years to be completed before decision is entered for the docketed carryback year or years. See Note to CCDM Exhibit (35)(10)00-29(a).

By continuing X's case, the Tax Court is allowing the audit of Tax Years 4 and 5 to progress before entering decision. The outcome of the audit may help the parties to settle the docketed years by mooted any disagreement over allowance of the carrybacks. Accordingly, district counsel should not now seek entry of a decision in this case.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

If you have further questions, please call the branch telephone number.

Deborah A. Butler  
Assistant Chief Counsel  
(Field Service)

By: \_\_\_\_\_  
SARA M. COE  
Chief, Procedural Branch