

CC-2014-007

July 31, 2014

Application of the Accuracy-Related or
Fraud Penalty in Tax Court Cases
Subject: Involving Disallowed Refundable Credits
Effective until further
Cancel Date: notice

Purpose

This notice provides litigating guidelines for handling Tax Court cases involving the accuracy-related or fraud penalty determined with respect to disallowed refundable credits in light of the Tax Court's opinion in Rand v. Commissioner, 141 T.C. No. 12 (2013).

Background

Section 6662(a) imposes an accuracy-related penalty on any underpayment of tax attributable to one or more of the actions listed in section 6662(b). Section 6664(a) defines the term underpayment as the amount by which any tax imposed by the Code exceeds the excess of the sum of the amount shown as tax by the taxpayer on his return (tax shown on the return), plus the amounts not so shown previously assessed (or collected without assessment), over the amount of rebates made.

In Rand, the Service argued that the disallowed refundable credits should be taken into account when determining the tax shown on the return and that the resulting tax shown on the return could be a negative amount. The court agreed that disallowed refundable credits must be taken into account when determining the tax shown on the return, but held that disallowed refundable credits cannot reduce the tax shown on the return below zero. This holding, in certain cases involving disallowed refundable credits, will result in a limitation on the amount of the accuracy-related or fraud penalty for which the taxpayer is liable.

Procedures for Handling Pending and Future Tax Court Cases

Pending any future guidance, Counsel attorneys handling docketed Tax Court cases should ensure that any accuracy-related penalty or fraud penalty involving disallowed refundable credits is calculated in accordance with the Tax Court's decision in Rand. Do not treat claims for refund or credit based on erroneous refundable credits as a negative amount of tax shown on the return when determining the amount of an underpayment subject to penalty under section 6662 or 6663. When a statutory notice has determined a section 6662 or 6663 penalty on a disallowed refund claim based on an erroneous refundable credit, Counsel attorneys should concede that portion of the penalty. For example, a taxpayer filed a return erroneously claiming a recovery rebate credit of \$1200, \$200 of which offsets tax otherwise due, and \$1000 of which is the basis for a refund claim. To the extent the statutory notice of deficiency

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