

OVDI-OOR: Refunding payments from “Barred” years

In OVDI cases which have now moved to an opt out or removal status (or will potentially become an OOR case) and where the time period for the taxpayer to file a claim for refund will soon expire, the following guidance has been provided by the HQ team.

Timeframes. The taxpayer has 2 years from the date the payment is received to file a claim when payment was submitted for years with a barred statute. Per IRC 6511(a) claims for credit or refund of an overpayment of tax must be filed by the TP within 3 years from the time the return was filed or 2 years from the time the tax was paid. Therefore, **payments for “barred” years made by taxpayers in Opt Out or Removal cases that were made over 2 years ago, may not be refunded or credited to other years.** Please follow the instructions on the National OVD SharePoint under “Barred Refunds” to move the payments to Excess Collections prior to using DC 33 to close the barred year.

Guidance. The IRS is under no obligation to advise taxpayers of statutory provisions; however, if the facts warrant (such as discussions with the taxpayer/POA about payments and/or opt out ramifications), the agent working the case may advise the taxpayer/POA of the refund provisions and the need for the claim if time remains for the taxpayer/POA to make a timely claim for refund. The following steps may be appropriate, if you have a case that fits these circumstances:

- The agent working the case may advise the taxpayer that a written statement is required from the taxpayer or POA that simply states the taxpayer is requesting a refund of the money paid for the tax, interest and penalties on the barred years. This statement serves as an informal claim and must include a request for the tax and/or the Miscellaneous Offshore Penalty payment to be moved to an open year. It is imperative that the informal claims/taxpayer statements are date stamped on the received date.
- The agent may process the refund, as appropriate, by moving the tax or penalty payments to an open year and then refunding the money through the RAR issued to complete the opt out exam. Note: Agents must submit a Form 3870 to CCP to have the payment(s) moved. If the taxpayer previously designated portions of the original tax deficiency payment to be posted to a barred year, the taxpayer’s claim must state that the payments may be moved to an open statute year. The same instructions should be followed for the Miscellaneous Offshore penalty payment. *Note: The case must be forwarded to your OVDI Technical Advisor to obtain counsel approval for the refund to be issued before the RAR is issued to the taxpayer.*
- There is NO prohibition for an agent to advise the taxpayer that the time period to file a claim for refund will soon expire. This may be discussed in those cases where the taxpayer/POA have indicated that they plan to opt out or an opt out (or removal) examination has been initiated.