



TaxNewsFlash

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Federal Circuit: “Same taxpayer rule,” no netting of overpayment and underpayment interest

The U.S. Court of Appeals for the Federal Circuit today affirmed the U.S. Court of Federal Claims’ grant of summary judgment for the government, finding that the taxpayer was not entitled to recover interest on its tax overpayments (under the “interest netting provision” of the Code) because the taxpayer and its subsidiary were not the same party.

The case is: *Ford Motor Co. v. United States*, 2017-2360 (Fed. Cir. November 9, 2018). Read the Federal Circuit’s [decision](#) [PDF 127 KB]

Summary

The Court of Federal Claims in May 2017 granted summary judgment for the government in a refund proceeding concerning the taxpayer's request to apply the interest netting rules of section 6621(d). The federal claims court held that the taxpayer was not entitled to net its overpayment interest with underpayment interest of a foreign sales corporation (FSC) that was owned by the taxpayer because the taxpayer and the FSC were not the same taxpayer (as required under section 6621(d)).

The taxpayer applied to balance the interest it owed and paid on underpayments of taxes with interest received from the IRS on tax overpayments. The taxpayer made an overpayment to the IRS for the taxes it owed in 1992, while a former foreign sales corporation (FSC) owned by the taxpayer had tax underpayments between 1990 and 1998. While the interest netting rules allow a taxpayer, under certain circumstances, to “net” accrued interest on equivalent underpayments and overpayments, the IRS denied the taxpayer's attempts to net its overpayment against the FSC's underpayments because the taxpayer and the FSC were not the same taxpayer as required by section 6621(d). The Court of Federal Claims today agreed with the

government that the taxpayer and its former FSC were not the same taxpayer. Read [TaxNewsFlash](#)

Today, the Federal Circuit affirmed.

The Federal Circuit observed that the meaning of “same taxpayer” is not found in the statute’s text or other parts of the Internal Revenue Code, nor does statute’s legislative history offer a clear indication of its scope. Yet, the appeals court found that the legislative history reveals that section 6621(d) is a “remedial statute” designed to expand the IRS’s authority to implement interest netting, and that Congress did not choose the term “same taxpayer” in a legal vacuum.” The court found that Congress had legislated against a background of legal principles that shed light on which persons or entities qualify as the “same taxpayer” for section 6621(d) interest netting purposes. The court, thus, determined whether two taxpayers are the “same” for purposes of section 6621(d) by examining whether background legal principles support treating them as such.

The Federal Circuit found:

Based on Moline Properties’ holding that corporations with legitimate business purposes are separately taxable, we recognized that “a parent corporation and its subsidiary corporation [should] be accorded treatment as separate taxable entities.”

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