

PENDING INTEREST CASES

Case Name	Interest Issue	Status
OPEN:		
<p><i>Texaco Inc. and Subsidiaries v. United States,</i> U.S. Court of Federal Claims Docket Nos. 00-00195 and 01-00461</p>	<p style="text-align: center;">870 Waiver Payment Back-off Period Credit Elect Transfers Refund Dates Foreign Tax Credits Carryback Application Other Period Credit Transfers Credit Application Ordering <i>(Soo Line)</i> 1978 Credit Transfers GATT Interest Excess Deposits Unapplied Deposits Netting</p>	<p>Case is stayed pending settlement discussions. Plaintiff submitted a partial settlement offer on 6/12/04, addressing all issues but GATT and netting, and supplemented it on 2/25/05 to address the GATT issue. Plaintiff submitted a revised combined settlement offer on 1/19/12, addressing all issues but netting, which was accepted by letter dated 3/22/12. Plaintiff submitted a settlement offer for the netting issue on 4/26/12, which the Tax Division and IRS Counsel are reviewing. The last Joint Status Report was filed on 6/2/14.</p>
<p><i>Wells Fargo & Co. United States,</i> U.S. Court of Federal Claims Docket No. 11-808</p>	<p style="text-align: center;">Netting: Different taxpayer issue (Taxpayer wants to net among merged entities regardless of when overpayments and underpayments arose)</p>	<p>Taxpayer won (6/27/14). The Court of Federal Claims held that a taxpayer may net underpayment balances and overpayment balances among merged entities. The taxpayer successfully argued that the term “same taxpayer” includes both predecessors of the surviving corporation in a statutory merger because the entities become one and the same entity as a matter of law. The court rejected the government’s argument that entities are only the “same taxpayer” if they have the same taxpayer identification number at the time of the initial tax overpayment or underpayment. The court’s reasoning presents a strong case for extending the holding to other situations such as liquidations and acquisitions when the acquiring corporation legally assumes the target’s tax liabilities, whether by operation of law or contractually.</p> <p>7/14/14: Parties discussing next steps in the litigation.</p>
<p><i>Halliburton Company. v. United States,</i> U.S. Court of Federal Claims Docket No. 06-00068</p>	<p style="text-align: center;">Overpayment interest computed incorrectly on foreign tax credit issue.</p>	<p>Government failed to allocate foreign tax credits properly, improperly suspended overpayment</p>

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	<p style="text-align: center;">Netting (same taxpayer issue)</p>	<p>interest, and failed to apply netting. Seeking additional overpayment interest on refunds allowed in 2/2000 for the 1990 tax year and 1/27/2000 for the 1991 tax year.</p> <p>Motion to Stay Proceedings pending outcome of <i>Energy East</i> case was granted on 7/23/10. Per 8/27/12 Joint Status Report, the parties were continuing to explore whether any multi-tax identification number interest netting is available. Per 11/26/13 Joint Status Report, the parties have agreed on the overpayment resulting from the proposed basis for settlement and plaintiff submitted a new offer to settle on November 15, 2013, which the government is reviewing. Per 6/26/14 Joint Status Report, the government has accepted the plaintiff's settlement offer.</p>
<p><i>Principal Life Insurance Company v. United States</i>, U.S. Court of Federal Claims Docket No. 07-00006</p>	<p style="text-align: center;">Payment/Deposit Issue</p>	<p>Payment/Deposit Issue: Government won in trial court; possible appeal after conclusion of the case. 95 Fed. Cl. 786 (2010).</p> <p>The case was divided for litigation into three phases. The payment/deposit issue was Phase I. Briefing on cross-motions for summary judgment completed on 2/26/10. Oral argument was 4/29/10. Advised Court on 6/8/10 of <i>Ford</i> decision. The Court issued a decision in favor of the taxpayer on November 12, 2010. The Court ruled that there can be no pre-assessment conversion of a deposit to a payment. Alternatively, the Court held that, even if the assessment was untimely, the government is allowed to retain payments made before assessment unless the taxpayer shows that it has paid more than is rightfully owed.</p> <p>Other issues:</p> <p>Plaintiff filed a Motion for Summary Judgment on 7/23/12. Defendant filed response and cross</p>

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		<p>motion on 11/8/12. Plaintiff filed reply and response on 1/14/13. Defendant filed reply on 3/21/13. Oral arguments were held 11/12/13. This motion addressed two of the three issues in Phase II.</p> <p>For the remaining issue in Phase II, the parties filed cross-motions for summary judgment. On May 9, 2014, the court partially granted the government's motion for summary judgment and denied the plaintiff's cross-motion. On June 27, 2014, the court denied the plaintiff's motion to certify an interlocutory appeal.</p> <p>Schedule for Phase III is still to be determined.</p>
<p><i>Ford Motor Co. v. United States</i>, U.S. District Court for the Eastern District of Michigan Docket No. 08-12960; U.S. Court of Appeals for the Sixth Circuit Docket No. 10-1934; U.S. Supreme Court Docket No. 13-113.</p>	<p>Overpayment Interest on Converted Deposits (from date of remittance versus later designation date, in accordance with Rev. Proc. 84-58)</p> <p>Interest on Carryback Recaptures (improperly netted overpayments against carryback recaptures – same issue as in <i>AT&T</i> case above)</p>	<p>Government won in trial court and on appeal; taxpayer filed petition for certiorari with Supreme Court; Supreme Court remanded to the Sixth Circuit. 105 AFTR 2d 2010-2775 (E.D.Mich.), <i>aff'd</i>, 110 AFTR 2d 2012-7044 (6th Cir.).</p> <p>Government won at the trial level. Decision and judgment issued 6/3/10. Deposit does not retroactively convert to payment, as of date of remittance rather than date of designation, for purposes of overpayment interest. Court defers to the government's interpretation. (Rev. Proc. 84-58? Litigating position?) With respect to second and third arguments, on carryback recaptures, there is no authority that constrains how the government chooses to apply the deposit. The IRS can apply the other overpayment item against the carryback recapture before applying the deposit against the remaining balance.</p> <p>Notice of Appeal filed on July 20, 2010. Ford's brief was filed on 11/1/10. Government's brief was filed on 12/20/10. Government requested additional time because the review process will take longer than usual. The "appeal has been</p>

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		<p>assigned a high priority within the Tax Division.” Ford’s reply brief was filed 1/13/2011. Oral argument was held on 6/7/12. Ford hired Latham & Watkins (the attorney who argued the <i>Home Concrete</i> case in the Supreme Court) to make the oral argument. Decision issued in favor of the government on December 17, 2012, holding that overpayment interest does not accrue on a deposit for the period before it is converted to a payment. The Sixth Circuit did not adopt the government’s constructive return theory. The court states that the government’s constructive return theory is “strained” and is contradicted by its own PLR.</p> <p>The taxpayer filed a petition for certiorari with the Supreme Court on July 24, 2013. On December 2, 2013, the Court remanded the case to the Sixth Circuit to decide a jurisdictional issue. The government, in its brief in opposition to certiorari, asserted that jurisdiction was proper only in the Court of Federal Claims, not District Court. The Supreme Court remanded to determine whether jurisdiction in District Court had been proper and, as applicable, address how that decision might affect the argument concerning waiver of sovereign immunity.</p> <p>Oral argument in the Sixth Circuit is on 7/29/14.</p>
<p><i>State Farm Mutual Automobile Insurance Co. & Subsidiaries v. United States</i>, U.S. Court of Federal Claims Docket No. 10-00794</p>	<p>Netting</p>	<p>Per Complaint, this involves overpayments and underpayments of State Farm rather than members of the consolidated group. State Farm filed a refund claim for additional overpayment interest on November 12, 2010. There appears to be nothing particularly controversial about this. It seems to be a protective suit filed because the six-year statute of limitation for State Farm’s 1987 tax year (the bulk of the amount claimed) would expire soon, before the government can complete its review.</p> <p>Plaintiff filed an Amended Complaint on 3/31/11,</p>

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		<p>to slightly increase the amount claimed. The original complaint claimed netting benefit in 1987 and 1989. the Amended Complaint did not change those amounts, but added an \$8,344 benefit in 1991.</p> <p>Case suspended on July 7, 2011. Plaintiff submitted settlement offer in June and amended settlement offers in July and August. Defendant’s trial attorney completed recommendation memo. IRS recommended settlement. Office of Review rejected the settlement offer on June 1, 2012. Per 9/21/12/ Joint Status Report, the parties requested that the case be stayed indefinitely pending settlement discussions.</p> <p>Subsequent Joint Status Reports reflect ongoing discussions between defendant’s counsel, Office of Review, and IRS Counsel. The last Joint Status Report was filed 3/14/13. Office of Review had discussed the legal issues with IRS and sought the IRS position on those issues. “Defendant’s trial counsel anticipates that the IRS will respond to that letter in the very near future. After the Tax Division has confirmed the IRS’s position, defendant’s trial counsel believes that the parties will be in a position to explore the possibility of settlement.”</p> <p>The Joint Status Report on 7/12/13 reported that the parties had reached an informal understanding and that the plaintiff had submitted a new formal offer to settle the case. The defendant’s attorney intends to recommend acceptance. Per 7/11/14 Joint Status Report, the government is considering plaintiff’s amended settlement offer.</p>
<p><i>Ford Motor Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 10-00832</p>	<p>Netting</p>	<p>Per Complaint, this involves overpayments and underpayments of Ford rather than members of the consolidated group, during the period from 9/15/97 – 3/15/02. Ford filed a request for</p>

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		<p>interest netting on November 19, 2010. There appears to be nothing particularly controversial about this. It seems to be a protective suit filed because the six-year statutes of limitation for Ford's 1988 tax year would expire soon, before the government can complete its review.</p> <p>On August 1, 2011, case was suspended pending settlement negotiations. Settlement offer submitted on August 3. Defendant's trial attorney completed recommendation memo and sent to Office of Review on 9/6/11. Additional information requested from IRS Counsel. Per 9/28/12 Joint Status Report, IRS had revised amount due plaintiff, and defendant had sent computations to plaintiff. Per 11/27/12 Joint Status Report, defendant was preparing written explanation of revisions in computations for plaintiff.</p> <p>Subsequent Joint Status Reports reflect ongoing discussions (and apparently differences of opinion) between defendant's counsel, Office of Review, and IRS Counsel. As of the 5/23/13 Joint Status Report, differences of opinion had not yet been resolved: "The Office of Review attorney assigned to this matter has consulted with an IRS computation specialist regarding the interest netting computations at issue in this case. Defendant's counsel is also requesting IRS counsel's views on certain legal matters. Plaintiff's counsel, defendant's counsel, and a representative of the Office of Review held a telephone conference today to discuss these matters."</p> <p>The 7/23/13 Joint Status Report indicates that the government is considering a "potential newly-raised defense" to the netting claim. The government requested additional records on 6/20/13 and received that material on 7/10/13. The Office of Review attorney plans to complete</p>

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		<p>her review of the material in early August; IRS Counsel plans to submit a formal supplemental statement by 8/12/13.</p> <p>The 9/23/13 Joint Status Report indicates that the “potential newly-raised defense” concerns changes to the tax liabilities for 1996 and 1997. Although those years are not part of the suit, and actual adjustments to those years are barred by the statute of limitations, the government asserts that the changes can be taken into account for purposes of computing the netting benefit. Per the 11/23/13 Joint Status Report, the government is continuing to review additional administrative records.</p> <p>Per 5/28/14 Joint Status Report, submitted to Joint Committee. Office of Review still analyzing “same taxpayer” issue for netting.</p>
<p><i>AXA Financial, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 12-00626</p>	<p>Credit Application Ordering</p>	<p>Complaint filed on 9/21/12. Issue relates to the end date of overpayment interest, for an overpayment reduced by the partial reversal of a tentative carryback refund. The IRS ended overpayment interest in the carryback year as of the original due date of the return for the loss year, instead of date of actual payment of the tentative carryback refund. Answer filed 2/5/13. Joint Preliminary Status Report was filed 4/19/13.</p> <p>The taxpayer filed a motion for summary judgment on 7/19/13. The supporting brief does not mention either of the cases that have addressed this issue: <i>Coca Cola</i> (discussed below) or <i>Soo Line</i>. The taxpayer’s primary argument apparently is that the audit determination (October 2006) effectively converted part of the tentative carryback refund (November 2002) into a refund of the overpayment determined in the audit. The parties filed a motion to stay the briefing schedule while</p>

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		settlement discussions are pending. Settlement offer submitted on 12/31/13. Per 7/7/14 Joint Status Report, parties believe they can settle the case.
<i>Intel Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 13-00262	Netting	Complaint filed on 4/11/13. This appears to be a straight-forward netting case, filed as a protective measure. The taxpayer filed a netting claim on 4/25/12 when the six-year statute of limitations for filing suit was about to expire. On 9/25/13, the parties filed a motion to stay proceedings pending settlement discussions. Per 6/2/14 Joint Status Report, plaintiff submitted a formal settlement offer on March 26, 2014.
<i>IAT Reinsurance Company v. United States</i> , U.S. Court of Federal Claims Docket No. 13-00282 <i>SLK Reinsurance Company v. United States</i> , U.S. Court of Federal Claims Docket No. 13-00283 <i>Kellogg v. United States</i> , U.S. Court of Federal Claims Docket No. 13-00284	Hot Interest Interest Suspension, § 6404(g)	These related cases were filed 4/23/13. The primary issues involve IAT's and SLK's qualification as tax-exempt insurance companies, and later non-tax-exempt domestic corporations. The IRS treated them as foreign companies whose income was effectively connected to a trade or business in the US. The IRS also allocated Subpart F income to Kellogg, who owned 100% of Class A preferred stock and 1% of Class B common stock. In addition to these issues, IAT and SLK also state that the IRS improperly applied "hot interest" to the alleged underpayments. Kellogg states that the IRS improperly failed to suspend interest pursuant to IRC § 6404(g). 7/16/14: Discovery pending.
<i>Eaglehawk Carbon, Inc. v. United States</i> , U.S. Court of Federal Claims Docket No. 13-01021	Suit to recover interest on excise tax refund.	Complaint filed 12/26/13. Plaintiff alleges that interest was not paid at the overpayment rate applicable to Subchapter S corporations under Section 6621(a)(1).
<i>General Mills, Inc. v. United States</i> , U.S. Court of Federal Claims Docket No. 14-00089	Hot interest	Complaint filed 1/30/14. Plaintiff alleges that hot interest was imposed before the applicable date, which should be 30 days after receiving the computational adjustment notice from a TEFRA partnership. The IRS imposed hot interest based

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		<p>on the 30-day letter issued to the corporate partner of the TEFRA partnership. Answer filed on 5/30/14. Joint Preliminary Status Report filed on 7/21/14 proposing briefing schedule on defendant's motion to dismiss for lack of jurisdiction: 9/19/14: Motion to dismiss; 11/18/14: Opposition; 12/18/14: Reply. Government's position is that refund claim should have been filed 6 months after the notice of computational adjustment was mailed to the partner.</p>
<p><i>Walgreen Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 14-00205</p>	<p>Netting</p>	<p>Complaint filed 3/12/14. Answer due on 8/25/14.</p>
<p><i>Ford Motor Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 14-00458</p>	<p>Netting (same taxpayer issue)</p>	<p>Complaint filed on 5/28/14. Taxpayer argues that the different entities are the same taxpayer because a foreign sales corp (FSC) is a tax fiction, the FSC liquidated into its parent, and the FSC merged into its parent.</p>
<p><i>Exelon Corp. v. Comm'r</i>, U.S. Tax Court Docket No. 029183-13</p>	<p>Netting (same taxpayer issue)</p>	<p>Petition filed on 12/13/13. Special trial session on 8/10/14 on substantive (non-interest) issue in the case. Netting issue involves underpayment and overpayment balances of members of a consolidated group prior to a merger.</p>
<p>RESOLVED:</p>		
<p><i>United States v. Tate & Lyle North American Sugars Inc. (Domino Sugar)</i>, U.S. District Court for the Southern District of New York Docket No. 97-9113; U.S. Court of Appeals for the Second Circuit Docket No. 02-6287</p>	<p>Statute of limitations that applies to recovery of interest paid on cash bond Payment/Deposit Issue</p>	<p>Resolved: Government won. 349 F.3d 84 (2d Cir. 2003), <i>aff'g</i> 228 F. Supp. 2d 308 (S.D.N.Y. 2002). Taxpayer's motion for reconsideration was denied.</p> <p>Applying the facts and circumstances test, the court held that the remittance was a cash bond. The court then held that the two-year statute of limitations for erroneous refunds does not apply to the recovery of interest erroneously paid on a cash bond. The applicable statute of limitations is 6 years, or the statute is forever open. Prior related cases 162 F. Supp. 2d 236 (S.D.N.Y. 2001), 210 F. Supp. 2d 219 (S.D. N.Y. 1999).</p>
<p><i>Pacific Gas and Electric Co. (PG&E) v. United States</i>, U.S. Court of Federal Claims Docket No. 98-00789; U.S. Court of Appeals for the Federal Circuit Docket No. 03-</p>	<p>Recovery of erroneous payments of overpayment interest by offset</p>	<p>Resolved: Taxpayer won. 417 F.3d 1375 (Fed. Cir. 2005), <i>rev'g</i> 55 Fed. Cl. 271 (2003). Petition for panel rehearing and/or rehearing en</p>

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5173		<p>banc filed on 10/26/05 and denied on 1/13/06. Government did not file petition for Supreme Court review.</p> <p>The IRS issued an Action on Decision, 2006-26 I.R.B. 1 (10/5/06), announcing that the Internal Revenue Service disagreed with, and would not follow, the Federal Circuit's decision. IRS Chief Counsel Alert (AM/C/SP IMP/BMF S 06272 6/1/06) advises that the IRS will continue to calculate interest by doing a complete module re-computation. "Counsel's position is that, within module, there is no limitations period for the Service to recover the amount of overpayment interest it previously overpaid." Thus, the IRS is not following <i>PG&E</i>, which also involved the recomputation of interest for the same module.</p>
<p><i>LaRosa's Int'l Fuel Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 97-00834 (consolidated with 97-00835); U.S. Court of Appeals for the Federal Circuit Docket No. 07-5017</p>	<p>Payment/Deposit Issue (whether remittances to an escrow account were payments that stopped the running of interest from the date of remittance)</p>	<p>Resolved: Government won deficiency interest issue. 56 Fed. Cl. 102 (2003),) <i>aff'd</i>, 499 F.3d 1324 (Fed. Cir. 2007), <i>cert. denied</i>, 553 U.S. 1079 (2008).</p> <p>Resolved: Government lost on counterclaim. 73 Fed. Cl. 625 (2006).</p> <p>The government lost its counterclaim for additional interest following a Tax Court stipulated decision and a closing agreement. These agreements and the taxpayer's payment reflected a clear intent that the case be ended.</p> <p>The government did not appeal on the counterclaim.</p>
<p><i>General Electric Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 99-00401; U.S. Court of Appeals for the Federal Circuit Docket No. 03-5153.</p>	<p>GATT</p>	<p>Resolved: Government won. 384 F.3d 1307 (Fed. Cir. 2004).</p> <p>Lower GATT rate applies to previously accrued interest outstanding on 1/1/95. Remanded in part on immaterial issue relating to \$10,000 threshold. Dismissed on remand on January 2, 2005 on plaintiff's motion.</p>

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<i>Mobil International Petroleum Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 02-00749 (Aramco Shareholders)	GATT, including similarly situated taxpayer argument Amici brief filed in <i>GE</i> case	Resolved. Dismissed without prejudice on 11/23/04.
<i>State Farm Mutual Automobile Insurance Co. v. Commissioner</i> , U.S. Tax Court Docket No. 1859-01	GATT (same issue as <i>GE</i> case)	Resolved: Government won. 126 T.C. 28 (2006). After the Tax Court's decision with respect to the deficiency was final, the taxpayer filed a Motion to Redetermine Interest, seeking additional interest. The Court denied the motion. The lower GATT rate applies when computing all of the overpayment interest, including pre-1995 interest. Rejected compounding argument and any distinctions from <i>GE</i> . No appeal filed.
<i>Exxon Mobil Corp. v. Commissioner</i> , U.S. Tax Court Docket Nos. 18618-89 and 18432-90 [docket not available on-line]; U.S. Court of Appeals for the Fifth Circuit Docket No. 06-60276; U.S. Court of Appeals for the Second Circuit Docket Nos. 11-2814 and 11-2817	GATT (same issue as <i>GE</i> case) Netting (statute of limitations issue, same issue as <i>Fannie Mae</i> case)	Resolved: Government won. 126 T.C. 36 (2006), <i>aff'd</i> , 484 F.3d 731 (5th Cir. 2007). The lower GATT rate applies when computing all of the overpayment interest, including pre-1995 interest. The Tax Court rejected comparison to commercial debtor-creditor relationships and any distinctions from <i>GE</i> . On appeal, Exxon distances itself from compounding, while the government relies heavily on compounding. Exxon made a strict statutory construction argument, which the government found inconsistent because it stops short of Super GATT argument. The Fifth Circuit ruled against the taxpayer based on the plain language of the statute. The other two Exxon cases have unrelated interest computation issues. When appealable orders are issued in those two cases, notices of appeal will be filed with the 2nd Circuit. Resolved: Taxpayer won. 136 T.C. 99 (2011), <i>aff'd</i> , 689 F.3d 191 (2d Cir. 2012). Only one period of limitations must be open to net interest

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<p><i>The Coca-Cola Co. v United States</i>, U.S. Court of Federal Claims Docket No. 03-01155</p>	<p>Credit application ordering (<i>Soo Line</i>)</p>	<p>for period beginning before July 22, 1998. The Court rejected the government's sovereign immunity argument.</p> <p>Resolved: Taxpayer won. 87 Fed. Cl. 253 (2009).</p> <p>The Court stated that it could not look past the taxpayer's statutory entitlement to overpayment interest based on its 1991 claim and instead look at the 1985 claim, which was paid within 45 days without interest. The government ignored the 1991 recapture of the abatement leading to that refund. The Court distinguished <i>Soo Line</i> because the taxpayer's account after adjustment there resulted in an underpayment, whereas here it resulted in an overpayment. The taxpayer had retained the overpayment, whereas here it was recaptured.</p> <p>Government did not appeal.</p>
<p><i>Ford Motor Co. v. United States</i>, U.S. Court of Federal Claims No. 02-00483</p>	<p>Error in recalculating the module. Recapture of previously refunded interest on certain carryback refunds</p> <p>Possibly credit application ordering issue (<i>Soo Line</i>), possibly issue about offsetting overpayment interest (<i>PG&E</i> issue), pre-TEFRA interest issue (FS 1980/06 issue), bumping issue relating to effective dates of carrybacks (Form 2285 errors).</p>	<p>Resolved: Offset reduced taxpayer's claim to \$0.</p> <p>Taxpayer filed motion for summary judgment on 8/4/05. Government filed response and cross motion for summary judgment on 3/6/06. Taxpayer never replied due to offset. Case dismissed with prejudice on 5/17/06.</p>
<p><i>Federal National Mortgage Association (Fannie Mae) v. United States</i>, U.S. Court of Federal Claims Docket No. 00-00369; U.S. Court of Appeals for the Federal Circuit Docket Nos. 03-5162 (netting issue) and 06-5055 (statute of limitations issue)</p>	<p>Netting: applicable statute of limitations as of 7/22/98 for retroactive application of netting</p>	<p>Netting Issue Resolved: Government Won. 379 F.3d 1303 (Fed. Cir. 2004), <i>rev'g</i> 56 Fed. Cl. 228 (2003). The Federal Circuit concluded that both periods of limitations must be open to net interest for periods beginning before July 22, 1998. The conclusion was based on the government's sovereign immunity argument. Taxpayer filed motion for reconsideration on September 24, 2004, which was denied after briefing. The case was remanded to the Court of Federal Claims for a factual determination</p>

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		<p>regarding whether the statute of limitations was open for one of the years used for netting.</p> <p>Statute of Limitations Issue Resolved: Government Won. 69 Fed. Cl. 89 (2005), <i>aff'd</i>, 469 F.3d 968 (Fed. Cir. 2006), <i>cert. denied</i>, 128 S. Ct. 1110 (2008).</p> <p>On remand, the court held that no leg was open on 7/22/98 because a refund check reflected the final appeals consideration of the issues reserved in the 870-AD and thus terminated an indefinite extension agreement. Also, the two-year period of limitations for the IRS to recover an erroneous refund had expired by 7/22/98.</p> <p>The taxpayer also lost on its request that the netting issue be reversed because of a recent case interpreting sovereign immunity.</p>
<p><i>AT&T Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 01-00299</p>	<p>Netting: applicable statute of limitations as of 7/22/98 for retroactive application of netting</p>	<p>Resolved: Government won (based on <i>Fannie Mae</i>). Stipulation of dismissal with prejudice filed on 2/23/06.</p>
<p><i>Wells Fargo & Co. United States</i>, U.S. Court of Federal Claims Docket No. 02-00768</p>	<p>Netting: Different taxpayer issue (Taxpayer wants to net post-merger overpayments against pre-merger underpayments)</p>	<p>Resolved: Settled. Stipulation of dismissal with prejudice filed on 6/22/06.</p>
<p><i>Citigroup, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 99-00214</p>	<p>Netting</p>	<p>Resolved: Settled. Stipulation of dismissal with prejudice filed on 2/1/06. Netting case that had been filed due to statute of limitations concerns while tax years settled.</p>
<p><i>AT&T Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 01-00280</p>	<p>Credit transfers</p> <p>(Taxpayer is seeking additional overpayment interest on credit transfer from 1978 tax year to 1981 tax year because credit not needed in 1981 tax year until date when excessive tentative refund made for 1981 tax year.)</p>	<p>Resolved: Government won. 62 Fed. Cl. 490 (2004). Taxpayer's motion for reconsideration denied. 63 Fed. Cl. 209 (2004).</p> <p>No appeal filed.</p>
<p><i>Westar Energy, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 02-00769</p>	<p>Credit transfers (Taxpayer is seeking additional</p>	<p>Resolved: Settled. Taxpayer submitted offer in compromise on June 12, 2005. Per 6/12/07 status</p>

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	overpayment interest on credit transfers from excise tax periods to income tax period; interest is being sought for excise tax periods)	report, the offer was accepted on 6/7/07. Dismissed with prejudice by stipulation on 7/24/07.
<i>International Business Machines v. United States</i> , U.S. Court of Federal Claims Docket No. 95-00828	GATT (same as <i>GE</i>) Refund claim issue (same as <i>Computervision</i>)	Resolved: Settled. Dismissed with prejudice on 4/21/06.
<i>Ford Motor Co. v. United States</i> , U.S. Court of Federal Claims Docket No. 02-00116	Credit transfers (Government made credit transfers to closed period; taxpayer wants credits reversed back to open period and refund issued) GATT	Resolved: Settled. Stipulation of dismissal with prejudice filed on 3/1/06.
<i>Ford Motor Co. v. United States</i> , U.S. Court of Federal Claims Docket No. 02-00689	Credit transfers (Taxpayer was seeking additional overpayment interest on credit transfer for tax period from which credit transfer made until date needed in the tax period to which the credit transfer was made.)	Resolved: Settled. The case was stayed pending final resolution of <i>Marsh & McLennan</i> and then dismissed with prejudice.
<i>Merrill Lynch, Pierce, Fenner & Smith Inc. v. United States</i> , U.S. Court of Federal Claims Docket No. 02-01974	Credit transfers (Taxpayer is seeking additional overpayment interest on credit transfers from payroll tax periods to income tax period; interest is being sought for payroll tax periods)	Resolved: Settled. Parties filed periodic status reports every six weeks. Dismissed with prejudice on 8/8/07. Per 10/20/06 status report, Chief Counsel's office has completed its computations and is close to completing its recommendation. Per 6/27/07 status report, plaintiff was advised on 4/2/07 that its offer had been accepted. It is the Tax Division's practice to wait until the adjustments are posted on the transcript before providing decision documents to taxpayer.
<i>Sunoco, Inc. v. United States</i> , U.S. Court of Federal Claims Docket No. 99-00909 (consolidated with No. 00-00487); U.S. Tax Court Docket No. 019631-97; U.S. Court of Appeals for the Third Circuit Docket No. 09-2423	Overpayment interest	CFC Case Resolved: Protective suit dismissed voluntarily with prejudice on 2/25/09, following joint stipulation. Tax Court Case Resolved: Government Won. 663 F.3d 181 (3d Cir. 2011), <i>vacating</i> 122 T.C. 88 (2004).

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		<p>Government filed a Motion for reconsideration in May 2004, which was denied on May 23, 2007. Decision entered on 2/12/09, following submission of stipulation of settled issues.</p> <p>Notice of Appeal to the Third Circuit was filed on May 11, 2009. Government's brief was filed on December 9, 2009. Last brief filed on 3/5/10. Sole issue on appeal is whether the Tax Court had jurisdiction to determine that Sunoco was entitled to additional overpayment interest on certain credits and refunds issued to Sunoco before the Tax Court petition was filed. Oral argument was held on 1/25/11. Parties filed supplemental letters regarding the Tax Court's opinion in <i>ExxonMobil</i>. Third Circuit reversed the Tax Court and ruled in favor of the government on 10/7/11. The Tax Court has jurisdiction over overpayment interest in only two limited circumstances, both of which involve a final decision of the Tax Court: (i) enforcement of a decision; and (ii) motion to redetermine interest. <i>Baumgardner</i> was different because that case involved deficiency interest on a payment to the government. The Third Circuit applied the Court of Claims' reasoning in <i>Alexander Proudfoot</i> regarding the distinction between overpayment interest and underpayment interest. The interest at issue in <i>Sunoco</i> was primarily interest paid to the taxpayer on overpayments before the notice of deficiency was issued. None of it was interest paid by the taxpayer on a deficiency.</p>
<p><i>FleetBoston Fin. Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 02-00879; U.S. Court of Appeals for the Federal Circuit Docket No. 06-5032</p>	<p>Rolling credit elect transfers, as in <i>Vendell Healthcare</i>, 222 B.R. 564 (Bankr. M. D. Tenn. 1998)</p>	<p>Resolved: Government won. 68 Fed. Cl. 177 (2005), <i>aff'd</i>, 483 F.3d 1345 (Fed. Cir. 2007).</p> <p>The Court of Federal Claims reasoned: "Like it or not, the Code does not envision such an overall balancing of interest." The Federal Circuit agreed that payments are applied to specific</p>

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	Use of interest-free balances in netting	<p>accounts and that the Code did not allow the Court to look to any overpayments that the IRS held interest-free, whatever tax account they were assigned to, in order to suspend deficiency interest. The Federal Circuit reasoned that the taxpayer's argument would render Section 6601(f) and 6611(b)(1) superfluous.</p> <p>Taxpayer relied heavily on the use of money argument. According to the Federal Circuit, "Congress did not enact a broad use-of-money principle for purposes of computing underpayment interest." The use-of-money principle is merely a principle of statutory construction and cannot be used to trump the specific statutory scheme Congress has devised. Thus, the Federal Circuit disagreed with <i>Otis Spunkmeyer, Inc. v. United States</i>, No. CV 02-5773 MJJ (N.D. Cal. 2004) (appeal dismissed), which reached the same result as <i>Vendell Healthcare</i>.</p> <p>The taxpayer did not comply with the formal requirements to apply interest netting retroactively, so the courts did not address the issue under Section 6621(d). The taxpayer did not file a written request by December 31, 1999.</p>
<i>FleetBoston Fin. Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 03-02002	Rolling credit elect transfers. Argument made in terms of netting at zero interest rate.	Resolved: Government won. Case was suspended until final judgment in case 02-879T was entered. Complaint dismissed with prejudice on 6/12/08.
<i>Plotnik v. United States</i> , U.S. Court of Federal Claims Docket No. 03-00801	Lost refund check (Taxpayer is seeking additional overpayment interest to date of replacement check.)	Resolved. Judgment entered for plaintiff following government's answer and motion for entry of judgment. No appeal filed.

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<p><i>Computervision v. United States</i>, U.S. Court of Federal Claims Docket No. 90-00284; U.S. Court of Appeals for the Federal Circuit Docket No. 05-5014</p>	<p>Rolling credit elect transfers; Interest netting and suspension Statute of limitations on deficiency interest claims</p>	<p>Resolved: Government won. 62 Fed. Cl. 299 (2004), <i>aff'd</i>, 445 F.3d 1355 (Fed. Cir. 2006) , <i>reh'g en banc denied</i>.</p> <p>No timely refund claim. Court rejected reliance on refund claim challenging tax (DISC) issue because interest is a separate legal theory and independent ground for the refund.</p> <p>Court rejected netting claim because both legs of statute were closed. Court erroneously stated that six year statute runs from due date of return, rather than when overpayment allowed. The overpayment in this case was the rolling credit elect transfer reflected on the tax returns and finally paid. The government sent the Court a letter on June 1, 2006, apprising the Court of “an apparent error in its opinion.” In a Supplemental Opinion on Petition for Rehearing, the Court stated that it did not need to decide when the overpayment period expired because the underpayment period clearly was closed. 467 F.3d 1322 (Fed. Cir. 2006). Thus, the earlier comments about when the overpayment period expired were dicta.</p>
<p><i>Bear Stearns Companies v. United States</i>, U.S. Court of Federal Claims Docket No. 03-02874</p>	<p>Netting</p>	<p>Resolved: Dismissed. Complaint filed 12/31/03 because 6-year statute was expiring. Court granted extension of time to file answer to July 9, 2005. Stipulation of dismissal with prejudice filed 8/31/05. Answer never filed.</p>
<p><i>Mobil Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 04-01230</p>	<p>Old GATT</p>	<p>Resolved: Dismissed. Mobil filed voluntary motion to dismiss, which was granted on 10/27/04, without prejudice.</p>
<p><i>Citibank (West), FSB v. United States</i>, U.S. Court of Federal Claims Docket No. 04-01518</p>	<p>GATT Interest (Old GATT and similarly situated taxpayer argument for 1995-1998)</p>	<p>Resolved; Dismissed. Complaint filed on 10/4/04. Motion to Dismiss filed by government on 1/13/05. In response, plaintiff filed voluntary motion to dismiss.</p>
<p><i>Riggs Bank v. United States</i>, U.S. Court of Federal Claims Docket No. 04-00303</p>	<p>Overpayment interest on refund of estate taxes resulting from payment of Canadian tax. Special provision restricts interest on credit resulting from foreign death taxes.</p>	<p>Resolved: Settled. Plaintiff’s summary judgment motion on liability granted (12/29/04). Second summary judgment motion filed on damages. Dispute is over proper starting date for</p>

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		interest because interest is allowable only because of retroactive treaty. Parties stipulated judgment on 1/21/05, and satisfaction of judgment filed 6/2/05.
<i>BASF Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 05-00298	Overpayment interest on corrected refund issued after return of erroneous refund. Erroneous refund was consistent with original return. Corrected refund was consistent with revised return filed on same day as original return.	Resolved: Settled. Motion to suspend filed on 11/1/05. On 9/28/06, plaintiff was advised of administrative resolution of the case. On 11/8/06, plaintiff received refund check. Case dismissed with prejudice on 11/29/06.
<i>Parker Hannifin Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 05-01041	Based on “rolling credit elect transfers” as in <i>FleetBoston</i> – abatement of deficiency interest for any period during which there was an overpayment, as a result of excess estimated tax payments and overpayment credit elects, in subsequent tax years.	Resolved: Taxpayer won procedural issue; government won on merits. Motion to dismiss for failure to file a timely refund claim denied on 5/23/06. 71 Fed. Cl. 231 (2006). Court held that original claim was timely filed and then supplemented (after the limitations period had expired but before original refund claim was disallowed) by a germane amendment. The original claim was based on a credit elect issue of \$9,000; the amendment raised the claim to \$3.6M, also based on credit elect issue. Court assumed that the date when a credit is allowed is the date when Form 2188 is signed by authorized IRS representative, not the posting date as the taxpayer argued. The government did not prove when Form 2188 was signed. Case stayed pending resolution of <i>FleetBoston</i> above. Case dismissed on 11/26/07.
<i>Huskins v. United States</i> , U.S. Court of Federal Claims Docket No. 05-01273	Payment/Deposit	Resolved: Taxpayer won on return of deposit and withdrew claim for interest. 75 Fed. Cl. 659 (2007). Government’s notice of appeal withdrawn.
<i>Metaldyne Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 06-00074.	Netting	Resolved: Settled. Complaint filed 1/27/06. Answer filed on 6/26/06. Case stayed on 8/14/06 pending settlement negotiations. Computation specialist completed review on 3/26/07. On 7/20/07, taxpayer submitted settlement offer. On 7/26/07, government recommended that settlement offer be accepted. On 9/11/07, case

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		dismissed with prejudice.
<p><i>Tenet Healthcare Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 05-01131</p>	<p><i>PG&E</i> Issue Government recouped statutory interest erroneously paid on tentative refund by offset against refund made more than 2 years after erroneous refund.</p>	<p>Resolved: Settled. Complaint filed 10/21/05. Answer filed 12/20/05. Motion to Suspend Proceedings granted on 2/9/06. Formal settlement offer submitted on 8/27/08 and revised on 9/23/10 adding netting. On 5/10/11, case dismissed with prejudice.</p>
<p><i>Old Republic Life Ins. Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 06-00393</p>	<p><i>PG&E</i> Issue Government recouped excessive statutory interest more than two years after it was paid.</p>	<p>Resolved: Settled. Complaint filed 5/12/06. Answer filed 9/11/06. Case stayed on 12/11/06, and joint status reports due every 60 days. On 4/13/07, plaintiff submitted a settlement offer, which was revised on 6/5/07. Recommendation memo filed by 8/17/07. Case dismissed with prejudice on 1/2/08.</p>
<p><i>United States v. Sarubin</i>, U.S. District Court for the District of Maryland Docket No. 05-1501; U.S. Court of Appeals for the Fourth Circuit Docket No. 06-2069</p>	<p>Start date for deficiency interest</p>	<p>Resolved: Government won. 507 F.3d 811 (4th Cir. 2007), <i>rev'g</i> 98 AFTR 2d 2006-5656 (D. Md. 2006). Judgment entered on 12/21/07.</p> <p>Lower court held that start date for deficiency interest begins when the IRS certified a transcript that included a total amount due, rather than as of due date of return. Court reasoned that the certified transcript listed an amount due and did not reference additional interest due and owing. Fourth Circuit held that transcript was misconstrued.</p>
<p><i>General Electric Corp. v. United States</i>, U.S. Court of Federal Claims Docket No. 06-00489</p>	<p>Erroneous offset, which reduced netting benefits because of cash bond.</p> <p>Jurisdictional issue because no refund claim filed for year to which offset was made</p>	<p>Resolved: Government won. 87 Fed. Cl. 221 (2009), <i>appeal dismissed</i>, 333 Fed. Appx. 513 (Fed. Cir. 2009).</p> <p>Government filed motion to dismiss on 2/7/08 because offset was within the Service's discretion under IRC § 6402(a). GE filed cross-motion arguing that netting is mandatory. If netting applies, an overpayment will accrue interest if it exceeds the underpayment as reduced by the cash bond. (First, reduce the deficiency by the cash bond. Then apply netting.) By contrast, if the offset is made first and then the cash bond is applied, no underpayment interest will accrue but</p>

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		<p>there also will be no net overpayment balance on which to accrue interest. Thus, if netting is mandatory, taxpayer will receive the full interest benefit of the government's use of its money. If netting is not mandatory, the cash bond may not be needed to stop underpayment interest.</p> <p>Briefing completed on 4/4/08. Additional briefs filed in August and September 2008 addressing government's ability to offset under Section 6402(a). Government's motion to dismiss granted on 2/13/09.</p> <p>Notice of Appeal filed on 4/13/09. Voluntarily dismissed by appellant on 5/18/09.</p>
<p><i>Strategic Housing Finance Corp. of Travis County v. USA</i>, U.S. Court of Federal Claims Docket No. 06-00741; U.S. Court of Appeals for the Federal Circuit Docket No. 2009-5078</p>	<p>Whether arbitrage rebates are deposits for which no refund claim is required and whether interest is payable on the return of such rebates</p>	<p>Resolved: Government won. 86 Fed. Cl. 518 (2009), <i>aff'd</i>, 608 F.3d 1317 (Fed. Cir. 2010), <i>cert. denied</i>, 131 S. Ct. 1513 (2011).</p> <p>Motion to dismiss filed on 6/7/07. Briefing completed on 5/27/08. Supplemental briefs filed after the Supreme Court issued its opinion in <i>United States v. Clintwood Elkhorn Mining Co.</i>, 128 S.Ct. 1511 (Apr. 15, 2008). That decision held that a refund claim is required to recover taxes paid under IRC 4121 that are unconstitutional under the Export Claim. Government's motion to dismiss granted on 2/27/09. The Court of Federal Claims interpreted <i>Clintwood Elkhorn Mining Co.</i> as holding that refund claim provisions apply to any claim encompassed in the Internal Revenue Code. The payment of arbitrage rebates is required under Section 148(f) of the Internal Revenue Code, so a refund claim was required. The Court of Federal Claims also ruled that the arbitrage rebates were not deposits because (i) remittance of more than required amount does not transform payment into remittance; (ii) plaintiff made payment to retain tax-exempt status, not to stop the accrual of interest; (iii) plaintiff's remittance cannot be</p>

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		<p>withdrawn at any time because doing so would convert bonds into arbitrage bonds, which would impose liability on the bondholders for tax on the bond interest; and (iv) the IRS was not required to compute the amount owed; the regulations impose that duty on the plaintiff. Motion to Amend Judgment filed on the deposit issue stressing contest factor. Denied on May 29, 2009, because Court considered plaintiff's deposit arguments when deciding to dismiss the case. Besides, the argument would not cure plaintiff's failure to file a refund claim. The arbitrage rebate was encompassed by the "any sum" language of Section 7422(a).</p> <p>Notice of Appeal filed on 4/28/09. Briefing completed on 11/9/09. The focus of the taxpayer's argument is that the amounts remitted were tax deposits that are not subject to the refund claim requirement. The government does not dispute that tax deposits are not subject to the refund claim requirement but holds that the remittances here were amounts collected under the Internal Revenue Code and therefore subject to the refund claim requirement. The taxpayer argues that the refund claim requirement applies only to claims subject to the six-month waiting requirement of Section 6532(a)(1). The Federal Circuit held that arbitrage rebates are payments and not deposits and were an "other sum" for which a refund claim must be filed before suit is filed. The Federal Circuit agreed that Section 6532(a)(1) covers only taxes but held that Section 7422(a) covers three distinct items – tax, penalties, and other sums. The payments were clearly other sums.</p> <p>In its petition for certiorari, the taxpayer argues that the Federal Circuit's holding creates an unlimited period of time after the date the nontax amount is collected by the IRS for non-taxpayers to file a claim and institute suit. According to the</p>

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		taxpayer, the Federal Circuit split the refund claim requirement from the limitations period and held that the limitations period did not apply to non-taxpayers.
<i>Pennoni v. United States</i> , U.S. Court of Federal Claims Docket No. 06-00861	Illegal recovery of erroneous refund; whether refund claim procedures apply	Resolved: Government won. 79 Fed. Cl. 552 (2007). Supplemental briefs filed after the Supreme Court issued its opinion in <i>Clintwood Elkhorn Mining Co.</i> Opinion granting government's motion to dismiss on 2/26/09. Case dismissed on 2/27/09. Court held that an allegation of erroneous tax collection requires a refund claim. The taxpayer filed an informal refund claim but never perfected it with the filing of a formal refund claim. According to the court, the taxpayer should have filed Form 1040X and made a statement under penalties of perjury. Notice of appeal not filed.
<i>ThyssenKrupp, USA, Inc. v. United States</i> , U.S. Court of Federal Claims Docket No. 07-00529	Erroneous suspension of overpayment interest because return not in processible form. Credit elect transfer	Resolved: Settled. Complaint filed 7/26/07 and amended on 10/25/07. Answer filed on 1/14/08. Joint Motion to stay proceedings filed on 3/5/08. On 4/25/08, government recommended administrative resolution. Case transferred to Office of Review on 4/28/08. Case dismissed with prejudice on May 17, 2010.
<i>McDonnell Douglas Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 07-00617	Netting	Resolved: Settled. Complaint filed 8/20/07. Case filed to preserve rights under six-year overpayment interest statute. Answer filed 2/15/08. Settlement offer made on 4/1/08, and periodic status reports filed every 90 days. Office of Review completed its work by 12/31/08. Case was sent to Joint Committee. Revised settlement offer submitted on 1/28/11. The Tax Division accepted the revised offer on 5/27/11. Case dismissed with prejudice on 8/17/11.
<i>Energy East Corp. v. United States</i> , U.S. Court of Federal Claims Docket No. 07-00812; U.S. Court of Appeals for the Federal Circuit Docket No. 10-	Netting (same taxpayer issue)	Resolved: Government won 92 Fed. Cl. 29 (2010), <i>aff'd</i> , 645 F.3d 1358 (Fed. Cir. 2011).

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5132		<p>Taxpayer wanted to net pre-merger income tax overpayments of subsidiaries against pre-merger income tax underpayments of new parent. The taxpayer argues that the corporations were all members of the same consolidated group when the IRS determined the deficiencies and overpayments sought to be netted, even though they related to pre-merger years.</p> <p>The government argued that the same taxpayer means the same taxpayer id number but recognizes that pre-merger overpayment may be netted against post-merger underpayments. <i>See</i> nn. 6 & 9 of taxpayer's MSJ. The government later backed off this position and took the position that Congress did not intend for netting to apply to consolidated groups.</p> <p>The court's analysis was generally written very broadly. It focused on the "same taxpayer" and emphasized the waiver of sovereign immunity and the lack of authorization to expand zero rate interest netting beyond the explicit terms of Section 6621(d).</p> <p>The court did not point out and contrast circumstances in which the IRS has allowed interest netting between different TIN's, such as when one taxpayer is liable for another taxpayer's underpayments because of joint and several liability for a consolidated return or because of a merger. If the IRS changes its position now, in light of this case, these fact situations will likely be litigated in the future.</p> <p>On appeal, the taxpayer took an alternative middle ground position: allow the netting of interest that accrues among members of a consolidated group in post-acquisition periods, regardless of when the overpayment or underpayment arose. Because of its facts, the taxpayer is not arguing for the middle ground</p>

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		<p>originally adopted by the government: allow the netting of post-acquisition underpayments against pre-acquisition overpayments. The underpayments and overpayments in <i>Energy East</i> both arose before the parent acquired the two subsidiaries.</p> <p>The government suggested an extreme position that netting is restricted to only the same EIN, and possibly not even then if there has been a significant change to the corporation..</p> <p>The Federal Circuit agreed with the Court of Federal Claims that the taxpayer must be the same “when the overpayments and underpayments were made.” Section 6621(d) does not “allow interest netting for any corporation that files a consolidated return.”</p>
<p><i>Southern California Edison Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 07-00874</p>	<p>Overpayment interest on erroneous refund that was later converted to a partial refund of an overpayment Six-year statute of limitations issue as to whether cause of action arose with erroneous refund or with conversion to partial refund</p>	<p>Resolved by Settlement. Complaint filed 12/14/07. Answer filed 3/28/08. Joint Stipulation filed on 3/12/09. Plaintiffs made settlement offer on 5/22/09, which was accepted by the Attorney General per the 12/9/09 Joint Status Report. Stipulation for Dismissal filed on 1/26/10.</p>
<p><i>In re Pransky</i>, U.S. District Court for the District of New Jersey Docket No. 97-20528</p>	<p>Use of time-barred overpayments for interest computation purposes only</p>	<p>Resolved: Government won. 304 B.R. 671 (Bankr. D.N.J. 2004).</p> <p>Time-barred overpayments may not be used in netting because no interest accrues on a time-barred overpayment. Also, since the <i>Fannie Mae</i> appeal, to net periods beginning before 7/22/98, the period of limitations for both the underpayment and the overpayment must be open.</p>
<p><i>Consol Energy, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 09-00234</p>	<p>Netting (Facts fundamentally identical to Issue 5 of CCA 200407015 – netting of pre-merger overpayment against post-merger underpayment)</p>	<p>Resolved: Voluntarily Dismissed. Complaint filed on 4/15/09 to protect rights under statute of limitations. Case dismissed voluntarily with prejudice by taxpayer on 6/1/09.</p>

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<p><i>RH Donnelley Corp. v. United States</i>, U.S. District Court for the Eastern District of North Carolina Docket No. 09-00097</p>	<p>870 Waivers</p>	<p>Resolved: Government Won. 104 AFTR 2d 2009-7682 (E.D. N.C.).</p> <p>Taxpayer not entitled to suspension of deficiency interest on second assessment because it paid the first assessment before notice and demand for payment was made. Interest would have been suspended under IRC § 6601(c) had the taxpayer waited to make payment, but it did not. Taxpayer did not appeal.</p>
<p><i>Magma Power Co. & Midamerican Energy Holdings Co. v. United States</i>, U.S. Court of Federal Claims Docket No. 09-00419; U.S. Court of Appeals for the Federal Circuit Docket No. 13-5024</p>	<p>Netting (same taxpayer issue)</p>	<p>Resolved: Taxpayer Won. 101 Fed. Cl. 562 (2011).</p> <p>Complaint filed on 6/25/09. Taxpayer wants to net pre-acquisition underpayments against the post-acquisition overpayments that are attributable to it. This is the opposite fact situation from that accepted by the IRS, which likely would no longer be accepted now. The government is taking an extremely narrow view of the same taxpayer, one that is so narrow that it likely would bar interest netting for consolidated groups.</p> <p>Answer filed 1/22/10. After two extensions, JSR filed 5/7/10, requesting stay of proceedings for settlement discussions. On 5/11/10, court stayed the case until 7/12/10 for settlement discussions. Joint Status report filed on 7/16/10 advised that settlement was unlikely and requested briefing schedule for summary judgment motions. Plaintiff's motion filed on 11/12/10. Defendant's filed on 1/5/11; plaintiff's reply and opposition filed on 2/1; defendant's reply on 3/4; and 3/11 (consolidated statement of uncontroverted facts). Oral argument held on May 11th. Notice of Additional Authority (<i>Energy East</i> Federal Circuit decision) filed by government on 6/21/11.</p> <p>The court rejected the same taxpayer definition by the CFC in <i>Energy East</i> and concluded that</p>

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		the plain meaning interpretation of the “same taxpayer” is same taxpayer id number. It also rejected the government’s extreme position that consolidated taxpayers are excluded from the interest netting provisions. Stipulated judgment entered on 9/25/12. Notice of appeal filed on October 20, 2012, and dismissed on December 13, 2012.
<p><i>Consolidated Edison, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 09-00652</p> <p><i>Consolidated Edison, Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 06-00305 (LILO case); U.S. Court of Appeals for the Federal Circuit Docket No. 12-5040</p>	<p>Credit balance erroneously frozen from refund;</p> <p>Credit elect transfer;</p> <p>Netting</p>	<p>Resolved: Dismissed. Complaint filed on 10/2/09. Court allowed Consolidated Edison to amend its Complaint in the LILO case to add the interest issues. Separate interest case dismissed on 5/28/10.</p> <p>Interest Issues Settled, pending appeal of tax issue. Amended complaint in LILO case filed 5/19/10; answer filed on 7/19/10.</p> <p>The trial court ruled for the taxpayer on the underlying LILO issue. 90 Fed. Cl. 228 (2009). Interest issues were addressed in the process of computing damages for judgment.</p> <p>Per 10/12/10 status report, parties are working towards settlement of interest issues. Parties disagree on how close they are.</p> <p>Netting, date of payment, and credit elect transfer issues appear fairly straight-forward.</p> <p>Taxpayer submitted an amended offer to compromise the interest issues on 2/9/11. IRS recommendation received in February, and trial attorney’s recommendation memo completed in March. Settlement offer subsequently tweaked and approved by taxpayer after April. Case sent to Principal Deputy Assistant Attorney General by September 13, 2011, for final action. Judgment entered on 11/4/11.</p> <p>The government appealed. The trial court’s</p>

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		<p>decision on the underlying LILO issue was subsequently overturned. 703 F.3d 1367 (Fed. Cir. 2013), <i>rev'g</i> 90 Fed. Cl. 228 (2009).</p> <p>The court held a status conference on 4/17/13. The plaintiff indicated the deadline for filing a writ of certiorari to the Supreme Court is 6/25/13. A Joint Status Report is due 7/1/13. "If the plaintiff does not appeal the decision, the defendant shall indicate the remaining steps the Department of Justice must take to process the balance of plaintiff's refund and include an estimate of the amount of time required to process the refund."</p>
<p><i>Schneider National, Inc .and Subsidiaries v. United States</i>, U.S. Court of Federal Claims Docket No. 08-00067</p>	<p>Netting Credit Elect Transfer</p>	<p>Resolved: Settled: Refund check mailed to plaintiff in September 2010 and a stipulation of dismissal was entered 2/14/2011.</p> <p>Based on the complaint and amended complaint, this appears to be a garden variety netting and credit elect transfer case, with no unusual facts or legal arguments.</p>
<p><i>Pfizer, Inc. v. Unites States</i>, U.S. Court of Federal Claims Docket No. 07-00344</p>	<p>Netting</p>	<p>Resolved: Settled. Refund checks delivered in August 2010 and a stipulation of dismissal was entered 11/2/2010.</p> <p>Based on the complaint and amended complaint, this appears to be a garden variety netting case, filed only as a protective matter while the IRS was reviewing the refund claim.</p> <p>After reviewing the government's computations, the plaintiff submitted an amended complaint, increasing the amount to be recovered, apparently consistent with those computations.</p>
<p><i>The Cheesecake Factory Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 12-00432</p>	<p>Offsetting Case</p>	<p>Resolved: Government won. No appeal.</p> <p>Complaint filed on July 2, 2012. Plaintiff instructed (via 1120 and 1120X) the IRS to apply a portion of its 2003 and 2004 overpayments to 2005. The IRS did not make the offset and late</p>

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		<p>payment penalties were imposed. Motion to Dismiss filed by government on 12/5/12 based on res judicata grounds – 2005 was already decided before the Tax Court. No answer filed. Response to motion to dismiss filed 3/4/13; reply filed 4/29/13.</p> <p>The court granted the government’s motion to dismiss on 7/3/13 and entered judgment the same day. With limited exceptions not relevant here, after a taxpayer files a petition in Tax Court for the redetermination of a deficiency, it can no longer file a refund suit. Because the Tax Court had already made a determination concerning the deficiency for the 2005 tax year, this refund suit could not go forward.</p> <p>The taxpayer did not file a notice of appeal by the 9/3/13 deadline.</p>
<p><i>Coltec Indus., Inc. v. United States</i>, U.S. Court of Federal Claims Docket No. 12-00311</p>	<p>Netting (Same taxpayer issue and special rule for netting for pre 7/22/98 periods)</p>	<p>Resolved: Dismissed with prejudice.</p> <p>Complaint filed on May 11, 2012. A portion of the claim is also pending in Tax Court and is included in the Complaint only as a protective matter.</p> <p>Dismissed with prejudice on 1/19/14.</p>
<p><i>Coltec Indus., Inc. v. United States</i>, U.S. Tax Court Docket No. 020422-07</p>	<p>Motion to Redetermine Interest</p>	<p>Resolved.</p> <p>Granted in part as to 1999 tax year. Netting claims for 1997 and 1998 denied because recovered in the Court of Federal Claims case.</p>
<p><i>Deutsche Bank AG v. United States</i>, U.S. Court of Federal Claims Docket No. 08-00569; U.S. Court of Appeals for the Federal Circuit Docket No. 13-5062.</p>	<p>Whether suspension of overpayment interest was proper because return not in processible form.</p>	<p>Resolved: Government won. 742 F.3d 1378 (Fed. Cir. 2014), aff’g 95 Fed. Cl. 423 (2010).</p> <p>Interest suspension was proper because return was not in processible form. Interest does not begin to run on an overpayment until the return reporting the overpayment is filed in processible form. The return was not in processible form</p>

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		because the taxpayer failed to file a required attachment that was needed for mathematical verification.