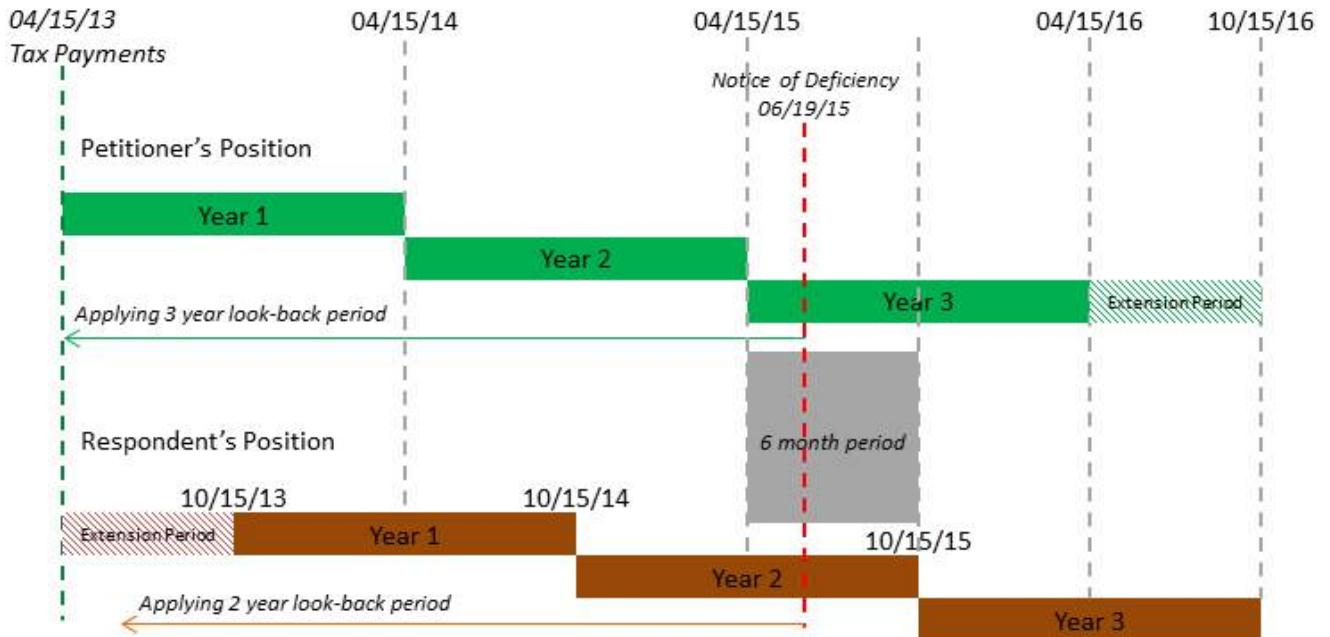


2012 Tax Return



Flush language, section 6512(b)(3): "In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years."

Petitioner's position (the green boxes, above): The deficiency notice was issued during the 3rd year (plus the 6 month extension) following the due date of the return, and applying the 3-year look-back period in final flush language of section 6512(b)(3), the Court may order a refund.

Respondent's position (the brown boxes, above): The deficiency notice was issued during the 2nd year following the extended due date of the return, and applying a 2-year look-back period, the Court may not order a refund. Under that position, because of the extension to file, if a deficiency notice (the red line, above) is issued from 4/16/15 through 10/15/15 (the "black hole" area, above), then the 2-year look-back period applies, despite clear legislative intent to treat all taxpayer's the same during the first 3 years.

Under Lundy and section 6512(b)(3) prior to the 1997 amendment, an extension of time to file a tax return had no bearing on the look-back period calculation. As the Lundy Court observed, the Tax Court need only look at the date the notice of deficiency was issued and then determine whether any taxes