

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

**Office of Chief Counsel
Internal Revenue Service**

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memorandum

CC:DOM:IT&A:1/TL-N-8288-97
DBAuclair

date: APR 29 1998

to: Associate District Counsel, Salt Lake City
CC:WR:RMD:SLC

from: Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

subject: Significant Service Center Advice Regarding
Abatement of Interest

This responds to your memorandum requesting advice on the application of § 6404(e)(1) of the Internal Revenue Code when the Service sends a taxpayer a notice that contains an incorrect amount of tax due to fully satisfy the taxpayer's liability.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraphs III.D.4 and IV.A.5 of Chief Counsel Notice N(35)000-143. This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

ISSUE

Whether the Service may abate interest accruing from the date the Service sends the taxpayer a notice stating an incorrect amount due to fully satisfy the taxpayer's liability (including interest and penalties) to the date the Service sends the taxpayer a notice stating the correct amount.

CONCLUSION

The Service may abate interest attributable to sending the taxpayer a notice stating an incorrect amount due to fully satisfy the taxpayer's liability if stating the incorrect amount due is the result of an unreasonable error or delay in the Service's performance of a ministerial act or a managerial act.

Under the facts you describe, stating an incorrect amount due is attributable to an unreasonable error in the Service's performance of a ministerial act. Accordingly, the Service may abate interest accruing on the difference between the correct amount that should have been stated in the notice and the incorrect amount that was stated in the notice, for the period from the date the Service sent the taxpayer a notice stating the incorrect amount due to the date the Service sent the taxpayer a notice stating the correct amount due.

FACTS

In the situations you describe, the Service sends notices to a taxpayer that incorrectly state the amount of tax due (including interest and penalties) to fully satisfy the taxpayer's liability. The amount is incorrect because the computer is not instructed to update the taxpayer's account to reflect the most recent accrual of interest. In these cases, updating the account for accrued interest does not involve the interpretation of federal tax law. In some cases, the Service sends several incorrect notices to the same taxpayer over a period of time. Also in some cases, the taxpayer enters into a payment agreement based on the incorrect notice. At some later date, the Service sends another notice to the taxpayer which correctly states the amount due to fully satisfy the taxpayer's liability, including the most recent accrual of interest.

DISCUSSION

As enacted by the Tax Reform Act of 1986, section 6404(e)(1) provided that the IRS may abate interest attributable to any error or delay by an officer or employee of the IRS (acting in an official capacity) in performing a ministerial act. In Taxpayer Bill of Rights 2 (TBOR2), Congress amended section 6404(e)(1) to permit the IRS to abate interest attributable to any unreasonable error or delay in performing a managerial as well as a ministerial act. This amendment is effective for interest accruing with respect to deficiencies or payments for taxable years beginning after July 30, 1996.

Section 6404(e)(1) applies only to interest relating to (1) a deficiency as defined in § 6211(a) (relating to income, estate, gift, generation-skipping, and certain excise taxes); or (2) a payment of any tax described in § 6212(a). Further, an error or delay in performing a ministerial or managerial act will be taken into account only if no significant aspect of the error or delay is attributable to the taxpayer involved, and if it occurs after the Service has contacted the taxpayer in writing with respect to the deficiency or payment.

