

CC-2019-004

June 27, 2019

Subject: Interest and Penalties on Restitution-
Based Assessments

Cancel Date: Until further notice

Purpose

This notice updates Chief Counsel Notice CC-2011-018 (August 26, 2011) regarding the accrual of interest on restitution assessed under I.R.C. § 6201(a)(4)(A). This notice also addresses whether a failure to pay penalty can accrue on an amount of restitution assessed under section 6201(a)(4)(A).

Discussion

A. Interest Accrual on Restitution-Based Assessments

Answer 12 in Chief Counsel Notice CC-2011-018 stated that underpayment interest under section 6601 would accrue on an amount of restitution assessed under section 6201(a)(4)(A). The U.S. Tax Court held in Klein v. Commissioner that the Service lacks the authority to assess and collect underpayment interest accruing under section 6601(a) on an amount of restitution assessed under section 6201(a)(4)(A). Klein v. Commissioner, 149 T.C. No. 15 (2017). The government did not appeal this decision. Consistent with Klein, if a taxpayer challenges in litigation the accrual of interest on an amount of restitution assessed under section 6201(a)(4)(A), or otherwise seeks the abatement of interest assessed on such an amount pursuant to section 6201(a)(4)(A), the interest should be abated. If, however, the total amount of the restitution ordered by a federal district court includes interest, Klein is inapplicable to the assessment of interest included in the restitution order, and the Service should not abate such interest. Chief Counsel attorneys should review any case in which interest is included in a module containing an amount of restitution assessed under section 6201(a)(4)(A) to determine whether the interest is improperly accruing on the amount of restitution assessed under section 6201(a)(4)(A) or was properly assessed as a component of the total amount of restitution ordered by the federal district court. Documents from the district court record that may indicate whether interest under section 6601 is a component of the total amount of restitution ordered by the federal district court include the court's judgment and commitment order, a transcript of the sentencing hearing, a plea agreement, and the government's sentencing memorandum. In addition, Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS, identifies the individual components of the total amount of restitution. Title 18 interest that accrues on the amount of restitution ordered (that is, interest accruing on the amount of restitution ordered under 18 U.S.C. § 3612(f)) continues not to be assessable by the Service consistent with answer 12 in Chief Counsel Notice CC-2011-18.

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