

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:03:MJarboe
POSTN-123733-11

Via Facsimile

date: August 26, 2011

to: James B. Wallace
Director of Tax Policy & Procedures - Exam

from: Mitchel S. Hyman
Senior Technician Reviewer
(Procedure & Administration)

subject: Request for Advice: Code Sections IRC § 6404(e)(1) and IRC § 7524

Background

Your office has requested our advice on the following scenario. A taxpayer requests interest abatement based on the taxpayer's assertion that the Service failed to send the annual reminder notices required under section 7524 for the taxpayer's unpaid tax assessment. The taxpayer claimed that the Service's failure to send annual reminder notices lulled the taxpayer into believing that the tax liability had been paid. After the tax assessment was made, the taxpayer was properly sent notice and demand for payment and other collection notices for the tax years at issue, but a review of the taxpayer's transcripts show that for a period of several years, the annual reminder notices were not sent to the taxpayer. There were no other contacts between the taxpayer and the Service during this period. You ask whether interest that accrued during the period that the annual reminder notices were not sent, can be abated in this scenario.

Issue

Can the Service's failure to send an annual reminder notice qualify the taxpayer for an interest abatement under section 6404(e)(1)?

Conclusion

No. Because under the circumstances described above the failure to pay is attributable to the taxpayer and not to the Service, the requirements for interest abatement under section 6404(e)(1) are not met, and the Service does not have the authority to abate interest.

PMTA 2011-27

Law and Analysis

Under section 6404(e)(1), the Service, may, in its discretion, abate assessed interest on any deficiency attributable in whole or in part to any unreasonable error or delay by the Service in performing a ministerial or managerial act, or any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to the Service being erroneous or dilatory in performing a ministerial or managerial act. Additionally, section 6404(e)(1) authorizes abatement only where no significant aspect of the error or delay can be attributed to the taxpayer involved.

Section 7524 provides that the Service shall send an annual written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.¹ The annual reminder notice is automatically computer-generated on a balance due account. It informs the taxpayer of its balance due as of the notice date, including penalties and interest. These notices are mailed to the taxpayer's last known address through regular mail, and the fact of mailing is reflected in the notice history on the taxpayer's IDRS transcript for any particular tax year.

The regulations under section 6404, define ministerial act as "a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place." Treas. Reg. § 301.6404-2(b)(2).² We conclude that an inadvertent failure to send the annual reminder notice on a balance due account can be a ministerial act. The taxpayer, however, must still show that any error or delay by the Service caused the accrual of interest for a specific period, and that no significant aspect of the failure to pay the liability could be attributed to the taxpayer. A taxpayer who claims interest abatement based solely on the Service's failure to send annual reminder notices cannot establish either of these elements. If a taxpayer has not heard from the Service for over a year concerning a delinquent tax and the taxpayer questions the amount owed, the taxpayer should contact the Service to ascertain the current status of the tax account. Absent

¹ The legislative history of 7524 reflects that the purpose of the statutorily-required notice is to serve as a reminder to the taxpayer that, regardless of whether the Service is actively pursuing a given delinquency at a given time, the taxpayer still owes the amount at issue. See P.L. 104-168, Taxpayer Bill of Rights 2 (1996), House Committee Report, 95 H. Rpt. 595. In explaining section 7524, the legislative history provides that "[t]he fact that the taxpayer did not receive a timely, annual reminder notice does not affect the tax liability." P.L. 104-168, Taxpayer Bill of Rights 2 (1996), House Committee Report, 104 H. Rpt. 506.

² The authority to abate interest for managerial acts applies to tax years beginning after July 30, 1996. A managerial act is an administrative act which involves the permanent loss of records or the exercise of judgment or discretion relating to management of personnel. Treas. Reg. § 301.6404-2(b)(1). To the extent that the Service's failure to send an annual reminder notice could ever be considered a managerial act, the analysis below is equally applicable.

any incorrect representations from the Service concerning the status of the delinquent tax account, the failure to pay cannot be attributable to the Service but is instead attributable to the taxpayer. See, e.g., Sher v. Commissioner, T.C. Memo. 2009-86, 7 (2009) (finding that amongst other factors, the taxpayer must show “a correlation between a specific period of delay in payment and an error or delay by the IRS”); see also Treas. Reg. § 301.6404-2(c), Example 11 (finding that the Service has the discretion to abate interest where the interest accrues as a result of the Service providing incorrect information to a taxpayer regarding the amount due to satisfy the taxpayer’s tax liability). Under the circumstances addressed here, the continued accrual of interest is directly due to the taxpayer’s failure to full pay the tax and not to any actions or representation by the Service. Because the requirements for interest abatement under section 6404(e)(1) are not met, the Service does not have the authority to abate interest.

Please call (202) 622-3600 if you have any further questions.