

## INTERIM IRM PROCEDURAL UPDATE

**DATE: 12/22/2010**

**NUMBER: SBSE-20-1210-1748**

**SUBJECT: Interest on Underpayments**

**AFFECTED IRM(s)/SUBSECTION(s): 20.2.5**

**CHANGE(s):**

Paragraph (2)(a) Exception Statement in IRM 20.2.5.3 , corrects the reference to the late filed penalty per IRC 6699 from Form 1120 to Form 1120S.

IRC 6651(f), Fraudulent Failure to File Penalty (Ref No. 686).

Paragraph (2) of IRM 20.2.5.3 explains in more detail the 50% interest component that was added to the negligence and fraud penalties prior to 1/1/1998.

2. Interest on the following penalties starts from the return due date (RDD) of the related return, the extended return due date, or July 18, 1984, whichever is later. Use the appropriate date as the start date on CC COMPA or ACT/DMI computations. This change is effective for interest accruing after July 18, 1984, with respect to certain penalties assessed on or after July 18, 1984 [IRC 6601(e)(2)(B)]. If assessed *before* July 18, 1984, use the 23C Date of the assessment as the interest start date.

a. For returns due *after* December 31, 1989, the following penalties have interest starting from the return due date or the extended return due date (whichever is later):

- IRC 6651(a)(1), Failure to File Penalty (TC 16X).

Exception: IRC 6698 and IRC 6699 are Failure to File Penalties for Form [1065](#), *U.S. Return of Partnership Income*, and Form 1120S , *U.S. Income Tax Return for an S Corporation* respectively, but interest does not start until the 23C Date, even though the penalty posts with a TC 16X.

- IRC 6662, Accuracy Related Penalty, (TC 240, Reference Number 680).
- IRC 6663, Fraud Penalty (TC 320).
- IRC 6651(f), Fraudulent Failure to File Penalty (Ref No. 686).

Note: If an extension to file is later reversed, as shown by TC 462 (Correction of a TC 460 Transaction Processed in Error), compute interest on the penalty from the original return due date.

Paragraph (2) of IRM 20.2.5.7.2 corrects the text to reflect that Computer Condition Code 8, which indicates annualization was used to compute the estimated tax penalty, only applies to BMF modules.

2. a subsequent underpayment is assessed on a tax module containing a credit elect to a succeeding tax period, the taxpayer may request that interest be computed according to Rev. Rul. 99-40. Employees may receive such requests informally, on Form [843](#), *Claim for Refund and Request for Abatement*, or by annotation on Form [3198](#), *Special Handling Notice*, for Examination Case Processing. These claims/requests impact both IMF and BMF returns for which estimated tax payments are required to be made. There is **no requirement** that such requests be filed by the taxpayer on Form [843](#). If Rev. Rul. 99-40 applies, interest should be computed under its provision. Thus, a determination should be made to apply Rev. Rul. 99-40 as it relates to unpaid installments of estimated tax. If an employee sees a TC 830 or 836 on the module, a determination should be made whether Rev. Rul. 99-40 would apply, especially on BMF and high dollar income returns for IMF. **Caution:** If the taxpayer used the annualized installment method, Form [2210](#), *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*, or Form [2220](#), *Underpayment of Estimated Tax by Corporations*, for the subsequent year must be secured before an adjustment can be made. On BMF modules, Computer Condition Code (CCC) 8 is an indicator that the annualized installment method was used.

Paragraph (5) of IRM 20.2.5.7.2 was revised to correct the If, Then Table for computing Rev. Rul. 99-40 when a refund is issued prior to the return due date.

IF	Then
The taxpayer receives a refund of some or all of the estimated tax payments prior to the unextended return due date	The underpayment interest suspension will stop on the date of the refund up to the amount of the refund. See Field Service Advice 200018025.

Paragraph (2)(e) Example in IRM 20.2.5.7.4 was revised to make an editorial change to the text.

**Example:** A claim is filed for a refund and is not processed in 45 days, so the taxpayer receives credit interest. Then, a carryback without interest is refunded and later recaptured. The recaptured carryback should not reduce the interest from the claim that had nothing to do with the carryback.

IRM 20.2.5.8 corrects the Note regarding the definition of a C Corporation to **exclude** Form 1120S, U.S. Income Tax Return for an S Corporation.

Note; "C" Corporation is any BMF taxable entity with a significant Form [1120](#) , *U.S. Corporation Income Tax Return*, filing requirement (except Form 1120S, *U.S. Income Tax Return for an S Corporation*), and any BMF taxable entity without a significant Form [1120](#) filing requirement, but having an Exempt Organization Section present with a Corporate Indicator

Paragraph (4) of IRM 20.2.5.8.1 was revised to state that the Service will NOT follow the court case ruling of *Med James, Inc. v. Commissioner*, 121 T.C. 147,151 (2003); carryback credits are not considered payments for purposes of determining a threshold underpayment.

4. The Service will NOT follow the court case ruling of *Med James, Inc. v. Commissioner*, 121 T.C. 147,151 (2003). Thus, carryback credits will not be used to reduce tax when determining the existence of a threshold underpayment. The carryback will be treated like a payment, applied as of the due date or late filed date of the loss year return. If the *Med James, Inc. v. Commissioner*, 121 T.C. 147,151 (2003) position was previously considered and allowed, do not change that result. at the time of assessment, the LCU rate will not apply to that assessment.

Paragraph (2) of IRM 20.2.5.8.1.1 was revised to expand the example to state that 6603 deposits and cash bonds are not considered as payments for purposes of the large corporate underpayment (LCU) rate.

Exception: The taxpayer has a threshold underpayment that exceeds \$100,000 and submits a "6603 deposit" or a deposit in the nature of a cash bond that reduces the underpayment to below \$100,000. The taxpayer is subject to the additional 2% interest, because the "6603 deposit" or cash bond is not considered as payment of the liability for purposes of charging the LCU rate.

Paragraph (3) of IRM 20.2.5.9 was added to explain how to compute interest when both large corporate underpayment (LCU) and tax motivated interest (TMT) apply.

3. If the taxpayer is liable for both TMT interest and LCU interest (see IRM 20.2.5.8, *Special Application of 2% Interest for Periods Before and After December 31, 1997*), compute debit interest by adding 120% to the 2% interest rate

Editorial change was made to Paragraph 4, 5th bullet item of IRM 20.2.5.9.2.1 .

4. The total TMT interest on the module will be the sum of all Ref. No. 222 amounts.

Item 4 in Figure 20.2.5-2 of IRM 20.2.5.9.5.2 was revised to add the title of IRM 20.2.6.5.1 referenced in the text with editorial change to Paragraph (2).

4. The payment of \$21,277.84 is allocated per IRM [20.2.6.5.1](#), *Payment Allocation*. Non-TMT tax, penalty and interest (including the normal interest computed on the tax motivated assessment as of December 31, 1984) are fully paid as of July 2, 1990. Add together the "total interest" amounts from Step 2 and Step 3 to arrive at the total TMT interest associated with motivated tax as of July 2, 1990.

Paragraph (3) of IRM 20.2.5.10.1 was revised to correct the reference from "Figure 20.2.5-3" to "Exhibit" and add the title of Exhibit 20.2.5-3 referenced in the text.

3. If the installment privilege was taken and a deficiency is assessed, the deficiency amount is prorated to the installments. Interest is charged from the due date of the first installment to the date of payment [IRC 6152(c)]. See Exhibit 20.2.5-3, *Revenue Ruling 99-40 Example* for computing the allowable installment privilege on deficiencies.

Paragraph (1)(d) of IRM 20.2.5.11 was revised to add the title of IRM 20.2.5.3 referenced in the text.

1 (d). Debit interest is computed on penalties from the due dates set forth in IRM 20.2.5.3, *Interest on Penalties and Additions to Tax*.

IRM 20.2.5.13(3) (b) was revised to add the title of IRM 20.2.5.4 referenced in the text.

3(b). Apply the offset as a payment on the credit availability date. The offset credit is to be treated the same as a payment in regards to notice grace periods. See IRM 20.2.5.4, *Notice and Demand and Debit Interest* above. The earliest available credit is always offset first, regardless of the year (prior or later) it is offset to.

IRM 20.2.5.13(3) (c) was revised to clarify information regarding the debit interest computation ending date.

3(c). Continue debit interest to the applicable computation ending date; waiver date plus 30 days (if applicable), payment date or 23C Date, whichever is earlier.

IRM 20.2.5.16(2) was revised to add the title of IRM 20.2.5.6 referenced in the text.

2. The initial return or agreement after a Substitute for Return (SFR) has posted. Subsequent agreements follow normal procedures. See IRM 20.2.5.6, *Suspension of Interest on Deficiencies*

IRM 20.2.5.16(3) was revised to add the title of IRM 20.2.5.9.4 referenced in the text.

3. For TEFRA adjustments with return due dates ending on or before August 5, 1997, see IRM 20.2.5.9.4, *870 Waiver Date Processing regarding TMT Interest and TEFRA*.