

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

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Attention:

from: Nancy M. Galib
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(Procedure & Administration)

subject: Interest collection period

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether section 6601 underpayment interest that is assessed during the section 6501 assessment period applicable to the tax to which the interest relates bears its own collection period under section 6502 or must be collected within the collection period for the tax.

CONCLUSION

Underpayment interest assessed during the section 6501 period applicable to the tax to which the interest relates generally does not bear its own section 6502 collection period but must be collected within the collection period applicable to the tax.

FACTS

The taxpayer timely filed a return reporting a liability and did not make any payments before or with the return. The Service assessed the tax, effective on the return due date, and assessed underpayment interest two years later, within the section 6501

period applicable to the tax to which the interest relates. When the interest was assessed, there were eight years remaining under section 6502 for collecting the tax.

LAW AND ANALYSIS

Interest is imposed on an underpayment of tax from the last date prescribed for payment of the tax. I.R.C. § 6601(a). Interest is assessed, collected and paid in the same manner as taxes. Section 6601(e)(1).

The Service generally has three years from the later of the due date or filing date of the return to assess the tax. I.R.C. § 6501. The Service generally has 10 years from the date of assessment to collect the tax. I.R.C. § 6502.

Underpayment interest may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected. Section 6601(g) [originally section 6601(h)]. Section 6601(g) was enacted in 1958, and no similar statutory provision existed before that time. Reg. § 301.6601-1(f)(1), as published in 1957, stated:

(f) Applicable rules.—(1) Any interest prescribed by section 6601 shall be assessed and collected in the same manner as tax and shall be paid upon notice and demand by the district director. ... Interest on a tax may be assessed and collected at any time within the period of limitation on collection after assessment of the tax to which it relates. For rules relating to the period of limitation on collection after assessment, see section 6502.

No similar provision was contained in a regulation before 1957.

The legislative history to section 6601(g) recognized the need to eliminate the risk of a contention that assessment of interest was limited to the section 6501 period for assessment of the tax.¹ See also GCM 31841 (Dec. 5, 1960), which suggested the addition of language to a technical advice memorandum consistent with that legislative purpose.²

¹ S.Rep. No. 1983, 85th Cong., 2d Sess. (July 28, 1958), at p. 100, states: "It has been contended that interest to be collectible must be assessed within the limitation period for the assessment of the tax on which the interest has accrued. The House bill makes it clear (by providing an exception to the general rule of 6601(f)(1) [now (e)(1)]) that interest may be assessed and collected at any time during the time when the tax involved may be collected. Your committee has accepted this clarification."

² "The question arises, therefore, whether interest must be assessed within the period provided by the statute for assessment of a deficiency in tax. We do not believe such to be the case. It will be noted that section 301.6601-1(f)(1), in prescribing the manner in which interest shall be assessed, provides that interest may be assessed and collected at any time within the period of limitation on collection after assessment of the tax to which it relates."

The long-standing application of section 6601(g) since its enactment is that assessment and collection of underpayment interest under section 6601 are limited to the collection period of the underlying tax to which the interest relates. Generally, the Service limits collection of underpayment interest to the collection period of the tax to which it relates. See, e.g., I.R.M. 25.6.9.4.2, Statute of Limitations --"Interest may be assessed and collected as long as the underlying tax can be collected. I.R.C. section 6601(g);" IRM 20.2.5.2, Statutory Period for Assessment and Collection of Interest (same).

Case law has not addressed the precise question, but the rationale in cases addressing section 6601(g) appear to adopt views consistent with this guidance. See, e.g., Field v. United States, 381 F.3d 109, 111-14 (2d Cir. 2004); Gingerich v. United States, 78 Fed. Cl. 164, 168-71 (2007); United States v. Toyota of Visalia, 772 F. Supp. 481, 487-90 (E.D. Cal. 1991).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



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