

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

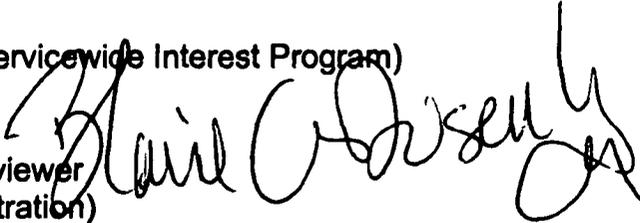
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date: June 20, 2008

to: Russ J. Thieleman
(Program Manager, Servicewide Interest Program)

from: Blaise G. Dusenberry
Senior Technician Reviewer
(Procedure & Administration)



subject: Request for Counsel Advice - Overpayment Interest made on Deposits under IRC section 6603

This memorandum responds to your request for legal advice. This advice may not be used or cited as precedent.

For purposes of this memorandum, we define and use the following terms:

6603 deposit – a deposit made pursuant to the provisions of Rev. Proc. 2005-18, 2005-1 C.B. 798, including an 84-58 deposit properly converted under the revenue procedure.

84-58 deposit – a deposit made pursuant to Rev. Proc. 84-58, 1984-2 C.B. 509.

original deposit – a remittance by the taxpayer of an amount intended to be held as a deposit by the Service for a particular liability (designated for both type and tax period).

proposed liability – the amount in dispute for which a deposit is made.

assessed underpayment – the determined underpayment resulting from the proposed liability for which a deposit has been made.

excess deposit – the amount of a deposit that exceeds the assessed underpayment to which it relates.

You have asked several general questions concerning section 6603 of the Internal Revenue Code and presented several scenarios, which we have summarized as follows:

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1. Is annual interest netting, as described in Revenue Procedure 94-60, prohibited in connection with interest under section 6603?
2. Is interest under section 6603 allowed in the various scenarios? If so, at what interest rate and from what date is it calculated?
 - a. A deposit made pursuant to section 6603 exceeds the assessed underpayment for which it was designated.
 - b. A cash bond, remitted on or before October 22, 2004, under Rev. Proc. 84-58, is properly converted to a 6603 deposit and the deposit exceeds the assessed underpayment for which it was designated.
 - c. A cash bond, remitted after October 22, 2004, and before March 28, 2005, under Rev. Proc. 84-58, is properly converted to a 6603 deposit and the deposit exceeds the assessed underpayment for which it was designated.
 - d. A cash bond, remitted on or before October 22, 2004, under Rev. Proc. 84-58, is designated, after May 27, 2005, as a 6603 deposit and the deposit exceeds the assessed underpayment for which it was designated.
 - e. A cash bond, remitted after October 22, 2004, and before March 28, 2005, is designated, after May 27, 2005, as a 6603 deposit and the deposit exceeds the assessed underpayment for which it was designated.
3. Does the later abatement of an assessed underpayment related to a deposit for which interest had been previously allowed under section 6603 affect the computation of any interest previously allowed?

Question 1

Rev. Proc. 94-60, 1994-2 C.B. 774, provides, in essence, that when a taxpayer receives an excessive tax refund as defined by Rev. Proc. 94-60 and interest is paid on the refund, interest will be calculated by the Service in a manner that effectively eliminates the interest differential under section 6621. For the period for which the taxpayer was paid interest on the excessive tax refund, the Service will charge interest at the same rate on the portion of the tax underpayment that does not exceed the excessive tax refund. Also, for any period for which interest is not paid on the excessive tax refund, the Service will not charge interest on the portion of the tax underpayment that does not exceed the excessive tax refund. Interest at the underpayment rate will be charged on the portion of the tax underpayment that exceeds the excessive tax refund from the original due date of the tax return, and on the entire tax underpayment from the date of the refund check. In computing the interest charged for any period, previously accrued interest will be treated in the same manner as the portion of the tax underpayment to which the interest relates.

Neither Rev. Proc. 2005-18 nor section 6603 and its legislative history specifically preclude the interaction of Rev. Proc. 94-60 with interest accruing under section 6603. It is difficult to see, however, how the two revenue procedures will apply to the same fact pattern. Rev. Proc. 96-40 applies to the computation of deficiency interest on a subsequently determined deficiency following an excessive refund on which overpayment interest is computed. Interest under section 6603 (and Rev. Proc. 2005-18) is computed on the return to a taxpayer of an eligible deposit, not a refund of tax. If you identify any fact pattern in which both appear to apply, please coordinate with our office for further guidance.

Question 2

The primary purpose for making a deposit is to suspend the accruing of underpayment interest on a potential or disputed underpayment. Historically, in addition to suspending the accruing of underpayment interest, taxpayers retained control over the return of the deposit (without the need to file a claim for refund) and were able to prevent the Service from automatically retaining any excess deposit and applying it to other outstanding liabilities under the authority granted by section 6402.¹ The cost for these benefits was that a taxpayer received no interest on the return of any excess deposit not used to satisfy the proposed liability.

By enacting section 6603, Congress provided for the payment of interest on certain deposits. While no regulations have been promulgated under section 6603, Rev. Proc. 2005-18 sets forth certain procedures to be used by taxpayers to make, withdraw, or identify deposits to suspend the running of interest on a potential underpayment under section 6603.²

Section 6603(a) provides that a taxpayer may make a deposit with the Service that may be used by the Secretary to pay certain taxes under the Code. Section 6603(b) provides that, to the extent that a deposit is used by the Service to pay tax, the tax shall be treated as paid on the date the deposit is made for purposes of computing interest on underpayments under section 6601.

Section 6603(c) provides that the Service will return to the taxpayer any amount of a deposit that the taxpayer requests in writing be returned unless the amount has previously been used to pay tax or the Service determines that collection of tax is in jeopardy. Section 6603(d) authorizes the payment of interest on a deposit that is returned to the taxpayer to the extent (and only to the extent) that the deposit is attributable to a disputable tax, defined in section 6603(d)(2) and (3). Section

¹ Section 6402 provides that in the case of any overpayment, the Secretary, within the applicable period of limitation, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsection 6402 (c) and (d), refund any balance to such person.

² The revenue procedure also invites comments from the public regarding the rules and standards relating to section 6603. No comments were received.

6603(d)(4) provides that the rate of interest is the Federal short-term rate determined under section 6621(b), compounded daily.

To receive interest under section 6603, a taxpayer must comply with the provisions of Rev. Proc. 2005-18. To the extent that a deposit properly identified exceeds the proposed liability for which it was deposited, that amount may be returned to the taxpayer, with interest under section 6603, without the need for a taxpayer to file a claim for refund. Any excess deposit will generally be returned only if tax collection is not otherwise in jeopardy.

A taxpayer can "convert" an 84-58 deposit into a 6603 deposit upon which interest can accrue by providing a written statement to the Service in accordance with Section 5 of Rev. Proc. 2005-18. The required written statement must include (a) the date(s) and amount(s) of the original deposit(s); (b) the type(s) of tax to which the 84-58 deposit was applied; (c) the tax year(s) to which the 84-58 deposit was applied; and (d) the statement described in section 7.02 of Rev. Proc. 2005-18 identifying the amount of and basis for the disputable tax.

Generally, the date the Service receives the written statement will be treated as the date on which an amount is deposited for purposes of section 6603(d). Sec. 5.01 of Rev. Proc. 2005-18. However, if a taxpayer had provided a written statement to the Service before May 27, 2005, requesting that an amount held as a deposit under Rev. Proc. 84-58 on October 22, 2004, be converted to a 6603 deposit, the converted deposit will be treated as if made on October 23, 2004, for purposes of section 6603(d). Sec. 10 of Rev. Proc. 2005-18.

Rev. Proc. 2005-18 is the only published guidance on section 6603. It was primarily designed to provide for the suspension of deficiency interest on a proposed liability for the period for which a deposit is properly made for such purpose. It does not specifically address how section 6603 interest will be computed. In the absence of further guidance, we believe the correct computational period for 6603 interest is from the date of the 6603 deposit to the date the deposit or excess deposit is returned to the taxpayer.

Section 6603(d)(4) statutorily provides that the rate of interest is the Federal short-term rate determined under section 6621(b), compounded daily. Any payment of section 6603 interest will be at that rate. Further, once an 84-58 deposit has been properly converted to a 6603 deposit, it ceases to matter that the original deposit was made pursuant to Rev. Proc. 84-58 and the rules concerning section 6603 will apply as appropriate.

Under the scenarios you presented, for (a – c), interest on the excess deposit, if properly identified as a disputable tax, will be allowed from the date of the deposit until the date the excess is returned to the taxpayer. Section 6621(b) provides the applicable rate of tax.

Under (d), interest on the excess deposit, if properly identified as a disputable tax, will be allowed from October 23, 2004, until the date the excess is returned to the taxpayer. Section 6621(b) provides the applicable rate of tax.

Under (e), interest on the excess deposit, if properly identified as a disputable tax, will be allowed from the date of the deposit until the date the excess is returned to the taxpayer. Section 6621(b) provides the applicable rate of tax.

Question 3

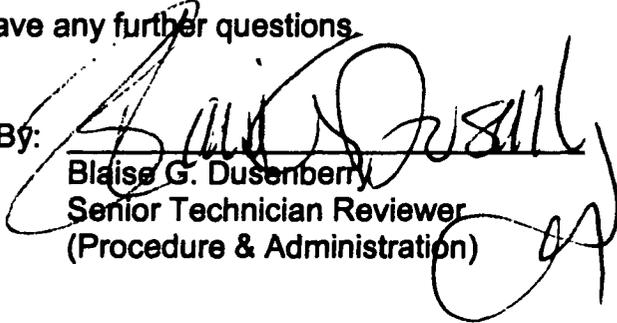
The later abatement of an assessed underpayment related to a deposit for which interest had been previously been allowed under section 6603 does not affect the computation of interest previously allowed. Interest under section 6603 is paid by the Service on a returned deposit; it is not related to a payment of tax that might ultimately be refunded to the taxpayer.

The payment of interest under section 6603 necessarily implies that a deposit is returned to the taxpayer and not used to satisfy an outstanding liability. Once a deposit is used to satisfy an outstanding liability, it becomes a payment of that liability. It is then subject to the normal rules for filing a claim for refund and for interest under sections 6511 and 6611.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call 202-622-4910 if you have any further questions.

By:


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