DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 12, 2018

Control No. AP-08-1218-0014
Expiration Date: 12/12/2020
Affected IRMs: 8.20.7,
8.22.5, 8.22.6, 8.22.8

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Anita M. Hill */s/ Anita M. Hill*
              Director, Case and Operations Support

SUBJECT: Handling of IRC 6201(a)(4) Interest and Penalty Additions in Collection Due Process Cases with Restitution Based Assessments.

This memorandum provides guidance to Appeals Technical Employees (ATE) who work Collection Due Process (CDP) cases. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: This memorandum serves to provide guidance in the handling of CDP cases involving restitution-based assessments (RBA), in response to a Tax Court decision in Klein v. Commissioner, 149 T.C. No. 15 (2015).

Background/Source(s) of Authority: Section 6201, *Assessment Authority*, Section 6320, *Notice and Opportunity for Hearing Upon Filing of Notice of Lien*, Section 6330, *Notice and Opportunity for Hearing Before Levy*.

Procedural Change: Cases in CDP and Equivalent Hearings (EH) that include one or more restitution-based assessments with interest and penalty additions will be handled following the guidance included with this memorandum.

Effect on Other Documents: This guidance will be incorporated into the above IRM sections within two years of the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Questions concerning this guidance may be directed to Appeals Sr. Analyst Timothy J. Sample. Appeals employees should elevate questions through their management chain following established procedures on How to Contact an Analyst.

Attachment: Procedures

cc: www.irs.gov

The IRM sections below provide updated guidance to the Appeals Technical Employee (ATE) when handling CDP cases with restitution-based assessments.

IRM 8.22.5.2.2.3 (MM-DD-YYYY)
Feature Codes

(1) Added feature code "RB" (Restitution Based).

IRM 8.22.6.9.1 (MM-DD-YYYY)
Restitution-Based Assessments (RBA)

(3) When restitution is ordered by a federal district court in a tax case, the restitution amount is based on the estimated tax loss to the government. This restitution amount may include tax, Title 26 interest and Title 26 penalties through a certain date (typically the sentencing date) and cannot be challenged in a subsequent civil administrative or judicial proceeding. In determining how to handle a review of interest and penalties on an RBA in a CDP or equivalent hearing, you will have to submit a secure E-mail inquiry to *SBSE TECH SVS Criminal Restitution to determine whether the amount of restitution ordered included Title 26 interest and/or penalties. The restitution portion of the court's Judgment and Commitment Order may provide for payment of additional Title 18 fines and interest (which are not assessable or collected by the IRS), or may waive Title 18 interest but it will generally not state if the amount of restitution includes Title 26 interest and/or penalties.

(4) Appeals should have any additional Title 26 interest and/or penalty additions on the RBA abated if the total amount of restitution ordered did not include Title 26 interest and penalties.

(5) Follow the step chart below:

Step No.	Who	Action
1	**ATE**	Identifies a CDP or EH case including RBA liabilities. See IRM 8.7.1.11.3, *Identifying Restitution-Based Assessments on IDRS,* for assistance in identifying an RBA liability.
2	**ATE**	Submits a secure E-mail inquiry to *SBSE TECH SVS Criminal Restitution, asking if the Title 26 interest and/or penalties were included in the amount of restitution ordered by a judge. The ATE should also request a copy of Form 14104, *Notification of Court Ordered Criminal Restitution Payable to IRS and Judgment & Commitment Order*, if available, and any other documentation associated with the interest and penalties.

3	**SBSE**	Determines whether any Title 26 interest and/or penalties were included in the amount of restitution ordered, and: • If it **was** included in the amount of restitution ordered, SBSE will send the ATE a copy of the Form 14104 and any other pertinent documentation within approximately 15 business days of receipt of the request from the ATE. In this case, the amount of Title 26 interest and/or penalties that were included in the amount of restitution ordered and were assessed as part of the RBA will **not** be abated. • If any RBA amounts were **not** included in the amount ordered by a judge, SBSE will send the ATE notification of this information, along with a copy of the Form 3870, within 15 business days of the receipt of the request from the ATE. SBSE is responsible for any abatements, which may take up to 30 days to post. Note: Unpostable transactions may be reported to Tech Services via secure E-mail at *SBSE TECH SVS Criminal Restitution.
4	**ATE**	Includes a specific statement in the Form 12257 narrative, Notice of Determination or Decision Letter, that includes the following language: • Any additional Title 26 interest and/or penalty additions on the restitution-based assessment is being abated if the total amount of restitution ordered did not include Title 26 interest and penalties. Further Title 26 interest and/or penalties will not accrue on the restitution-based assessment. To facilitate closure of the case prior to the actual posting of the abatement transaction, the ATE may close the case after verifying on IDRS that the abatement transaction was input, as seen by a pending transaction on IDRS.

IRM 8.22.8.4 (MM-DD-YYYY)
Issues Precluded from CDP under 6330(c)(4)

Precluded	- The taxpayer requested innocent spouse relief and meaningfully participated in a prior Appeals hearing for the same tax and periods. - The taxpayer participated in a judicial proceeding that resulted in District Court reducing the tax and periods on a CDP notice to judgement. - The taxpayer did not object to the IRS proof of claim for unpaid taxes in his chapter 11 or 13 bankruptcy. - The taxpayer was the subject of a criminal tax case, resulting in a restitution order. The amount of the court- ordered restitution can't be challenged in CDP.* ***Exception: Interest and penalty additions under 6201(a)(4) may be challenged in CDP, depending on circumstances. See IRM 8.22.6.9.1.**
Not Precluded	- The taxpayer requested interest abatement but the request was lost without Appeals considering it. - Taxpayer received a preliminary determination letter from CCISO but did not request an Appeals review of the denial of innocent spouse relief.

IRM 8.20.7.20.10 (MM-DD-YYYY)
CDP Docketed Cases with Restitution-Based Assessment (RBA) MFT 31 Adjustment Components

(1) When APS receives a Docketed CDP Case for final closure and the decision document includes language to abate 6201(a)(4) interest and/or penalty, APS will follow the process steps below:

1) Convert the Tax Court Decision Document into a pdf (if needed)
2) Attach the pdf to the ACDS record
3) Close ACDS following current CDP closing instructions
4) Use secure E-mail to transmit the Tax Court Decision Document to *SBSE TECH SVS Criminal Restitution
5) Place the case in PEAS Suspense (Suspense Reason Code = S03 - *Waiting on Compliance for information/response*)

(2) Within 15 business days, the RBA Team will respond to the originator via secure E-mail that the RBA adjustment document has been prepared and submitted for the RBA adjustments. A copy of Form 3870 should be attached. APS will follow the process steps below to close the case:

1) Verify the MFT 31 RBA account adjustment(s) is either AP or PN (may take up to 30 days to post).
2) Convert the E-mail to a pdf
3) Attach the pdf and Form 3870 to the ACDS record
4) Close ACDS following current CDP closing instructions:

✓ Input TC 521, and any other application IDRS actions
✓ Monitor actions until posted
✓ Close IDRS Control Base
✓ Input PEAS closing code
✓ Prepare the CDP case file for transmission to the appropriate location using current CDP and Form 3210/E3210 procedures
✓ for field CDP cases, input the Action FROMDATE upon receipt of the "Acknowledged" Form 3210/E3210

Note: Report unpostable transactions via secure E-mail to *SBSE TECH SVS Criminal Restitution.