



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

20.2.11

MAY 23, 2023

EFFECTIVE DATE

(05-23-2023)

PURPOSE

- (1) This transmits a partial revision of IRM 20.2.11, *Interest, Miscellaneous Interest Provisions*.

MATERIAL CHANGES

- (1) Significant changes to this IRM section are listed in the following table:

Reference	Description of Change
IRM 20.2.11.1	Added Note: Renegotiation of Government Contracts IRC 1481, was repealed on November 5, 1990 by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). Refer to Archived version of IRM 20.2.11, dated 11-13-2018.
IRM 20.2.11.1(5)	Added new paragraph (5), Program Goals. To ensure interest is assessed as accurately as possible per the law, and maintain fair and consistent treatment of all taxpayers.
IRM 20.2.11.1(6)	Added new paragraph (6) to direct readers to the Servicewide Electronic Research Program (SERP) version of IRM 20.2.11, as it is the authoritative reference with the most current procedures and guidance.
IRM 20.2.11.1.1(1)	Background statement updated to show what Office of Servicewide Interest provides. Deleted IRC citation.
IRM 20.2.11.1.2(1)	Updated Authority statement to include additional interest Internal Revenue Codes. Added citation to IRM 20.2.5.6.1, Reasons to Manually Compute Interest.
IRM 20.2.11.1.3.(1)	Added title, Miscellaneous Interest Provisions , to IRM citation.
IRM 20.2.11.1.6	New subsection Related Resources .
IRM 20.2.11.2.1(1)	Added citation 4.10.13.10, Personal Holding Company Deficiency Dividends.

Reference	Description of Change
IRM 20.2.11.2.2(2)	Clarified the first criterion in the bullet list for claiming a deficiency dividend deduction, specifying that the taxpayer's return must be filed by its due date or extended due date.
IRM 20.2.11.2.5(1)	Clarified sentence to include interest is generally compute from the normal (unextended) due date.
IRM 20.2.11.2.5(3)	Clarified sentence to include interest is generally computed from the normal (unextended) due date.
IRM 20.2.11.2.6(1)(a) and (b)	Clarified sentence to include normal (unextended) due date.
IRM 20.2.11.2.6(2)	Clarified sentence to include normal (unextended) due date.
IRM 20.2.11.2.6(3)(b)	Clarified sentence to include normal (unextended) due date.
IRM 20.2.11.3.1(1) and (2)	Clarified sentence to include normal (unextended) due date.
IRM 20.2.11.4	Removed subsection 4, Renegotiation of Government Contract, and added as a Note under IRM 20.2.11.1.
IRM 20.2.11.4 through IRM 20.2.11.4.6	New subsections to explain interest procedures for audited partnership returns under the rules of the Bipartisan Budget Act (BBA) of 2015 (P.L. 114.74).
IRM 20.2.11.4.1	New subsection added 20.2.11.4.1, Interest and Penalty Calculation of an Audit BBA Partnership After Assessment of an Imputed Underpayment.
IRM 20.2.11.4.2	New subsection added, 20.2.11.4.2, Interest and Penalty Calculation of Pass-Through Partners of an Audited Partnership.
IRM 20.2.11.4.3	New subsection added, 20.2.11.4.3, Direct Proportional Assessment of Partners IRC 6232(f).
IRM 20.2.11.4.4	New subsection added 20.2.11.4.4, Interest and Penalty Calculation on BBA Partnership that File an AAR.

Reference	Description of Change
IRM 20.2.11.4.5	New subsection added, 20.2.11.4.5, Interest and Penalty Calculation on Pass-Through Partners of a BBA Partnership that Files an AAR.
IRM 20.2.11.4.6	New subsection added, 20.2.11.4.6, Direct Proportional Assessment of BBA AAR Partners IRC 6232(f).
IRM 20.2.11.5(2)	Update IRM citation to 21.2.6.6.2.10. Clarified sentence to include normal (unextended) due date. Added example to (2).
IRM 20.2.11.6.1(1)	Updated the Knowledge Base citation.
IRM 20.2.11.6.1.3(6)	Updated IRM citation and added title Post-Petition Interest for Unsecured Pre-Petition Taxes Non-Individual.
IRM 20.2.11.6.1.4(2)	Updated IRM citation to 5.9.8.17.1.
IRM 20.2.11.6.1.5(3)	Updated bullet to say non-individual.
IRM 20.2.11.6.2(1)(a)(b)(c)	Clarified the term used to describe a module where interest cannot be systematically calculated. Updated example. Added citation IRM 20.2.5.6.3, Non-Restricting Transaction Code (TC) 340.
IRM 20.2.11.7.3(1)	Updated If and Then chart to include IRC 6611(b)(2). Added citation IRM 20.2.4.7.1.1, Systemic Refund Dates for IMF and BMF.
IRM 20.2.11.8.1(2)	Updated IRC citation to IRC 6601(b)(4).
IRM 20.2.11.8.1(5)	Updated IRM citation to 5.17.14.3.3.2.1.
IRM 20.2.11.8.2(3)	Added normal (unextended) due date. Updated IRC citation to 6601(b)(4).
IRM 20.2.11.8.4(2)(a) and (b)	Updated example.
IRM 20.2.11.8.4(3)	Updated IRM citation to 4.11.52.5.3.
IRM 20.2.11.8.4(7)(a) and (b)	Clarified underpayment interest is generally computed to statement.
IRM 20.2.11.10(1)	Clarified use of Form 8752 to obtain refund of net prior year payments.
IRM 20.2.11.10.1(1)	Added citation IRM 20.1.10.19.1, Penalty Computation.
IRM 20.2.11.10.2(2)	Updated example.

Reference	Description of Change
IRM 20.2.11.10.3(2)	Updated example.
IRM 20.2.11.10.3(3)	Removed otherwise statement.
IRM 20.2.11.11(3)	Clarified taxpayer needs to remain in compliance.
IRM 20.2.11.12.3(2)	Updated example.
IRM 20.2.11.12.3(4)(a)	Added citation IRC 6611(b)(2) and citation IRM 20.2.4.7.1.1. Clarified sentence to include normal (unextended) due date.
IRM 20.2.11.12.3(4)(c)	Added title to IRM citation “45-day Rule and Amended Returns and Claims, OBRA 1993”.
IRM 20.2.11.13(1) and (2)	Clarified the means by which the IRS can assess and collect the amount of restitution ordered in a court case.
IRM 20.2.11.13.2(2)	Updated IRM citation to 3.8.45.3.
IRM 20.2.11.13.2(3)	Updated example.
IRM 20.2.11.14(1)	Updated IRM citation to 3.11.6.9.2.6.
IRM 20.2.11.14(5)	Added new paragraph (5) to describe how ACA claims filed in response to the Supreme Court’s ruling California Et Al v. Texas Et Al are to be handled.
IRM 20.2.11.15(1)	Updated IRM citation to 3.17.46.6.1.
IRM 20.2.11.18(4)	Clarified sentence to include time frame for installment agreement.
IRM 20.2.11.19(1)	Removed word Which .
IRM 20.2.11.19(3)	Added citation IRM 20.2.5.6.3, Non-Restricting Transaction Code (TC) 340. Clarified sentence to add normal (unextended) return due date.
IRM 20.2.11.19(4)	Added citation to IRM 21.8.1.22.1, Claims for FIRPTA.
IRM 20.2.11.20(1)	Added citation IRM 20.2.5.6.3, Non-Restricting Transaction Code (TC) 340.
IRM 20.2.11.20.1(6)	Added citation IRM 20.2.5.6.3, Non-Restricting Transaction Code (TC) 340.
IRM 20.2.11.20.1(8)	Updated IRM citation to 21.5.11.14.

Reference	Description of Change
IRM 20.2.11.20.2(3)	Added citation IRM 20.2.5.6.3, Non-Restricting Transaction (TC) 340 and added citation IRM 20.2.5.2.2, Assessment of Interest Accruals.
IRM 20.2.11.21(3)	Added new paragraph (3) to cite IRM 21.2.4.3.29, Transcripts with Offshore Voluntary Disclosure Program (OVDP) Payments.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 20.2.11, dated November 15, 2018.

AUDIENCE

All servicewide employees who work with interest.

Kristy Craig
Acting Director, Business Support Office
Small Business/Self-Employed

20.2.11

Miscellaneous Interest Provisions

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20.2.11.1
(05-23-2023)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides policy guidance for computing underpayment interest on the following types of taxes, and if not covered here, refer to other sections of IRM 20.2, *Interest*:

- Personal Holding Company Tax
- Cooperatives and Patrons
- Claim of Right - Adjustments to Income
- Insolvent (Bankruptcy) Cases
- Seized Property
- Collection Costs
- Stamp Taxes
- Transferee Assessments
- Jeopardy and Termination Assessments
- IRC 7519, Payment Requirements
- Offers In Compromise
- Look-Back Interest
- Restitution Based Assessments
- Affordable Care Act
- Assessments Against Treasury Department Embezzlers
- Rev. Proc. 2002-18, Change in Accounting Methods
- IRC 409A, Compensation under Nonqualified Deferred Compensation Plans
- Extension of Time for Payment of Tax Attributable to Recovery of Foreign Expropriation Losses
- Foreign Investment in Real Property Tax Act (FIRPTA)
- Employee Benefit Plans
- Offshore Voluntary Disclosure Program/Initiative
- Individual Retirement Account (IRA), MFT 29

Note: The windfall profit tax (WPT) on domestic crude oil was repealed for oil removed (or treated as removed) from the producing premises on or after August 23, 1988. See Announcement 88-112. WPT was an excise tax on the production of domestic crude oil for periods after February 29, 1980. Refer to the archived version of IRM 20.2.11, dated July 31, 2001, if instructions for computing interest on WPT are needed.

Note: Renegotiation of Government Contracts IRC 1481, was repealed on November 5, 1990 by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). Refer to archived version of IRM 20.2.11, dated 11-13-2018.

- (2) **Audience:** This information is for all employees and managers who work with interest, including employees and managers in:

- Small Business Self-Employed (SB/SE) Division,
- Large Business and International (LB&I) Division,
- Tax Exempt and Government Entities (TE/GE) Division,
- Wage and Investment (W&I) Division,
- Appeals,
- Taxpayer Advocate Service (TAS), and
- Other IRS functions.

- (3) **Policy Owner:** Responsibility for overseeing interest resides with SB/SE, Operations Support (OS), Business Support Office (BSO).

- (4) **Program Owner:** The Office of Servicewide Interest (OSI) is responsible for interest policy and IRM 20.2, *Interest*. OSI's role is to ensure the accuracy of interest and its fair and consistent application. OSI has overall responsibility for coordinating and approving any update to IRM 20.2, *Interest*, including IRM 20.2.11, *Miscellaneous Interest*.
- (5) **Program Goals:** To ensure interest is assessed as accurately as possible per the law, and maintain fair and consistent treatment of all taxpayers.
- (6) Servicewide Electronic Research Program (SERP) posted 20.2.11 is considered the authoritative reference for the most current procedures and guidance.

20.2.11.1.1
(05-23-2023)
Background

- (1) The Office of Servicewide Interest provides policy, training materials, interest tools, and manual interest procedures when applicable for overpayment and underpayment interest purposes. It is essential that managers, senior management officials, personnel, and examiners working with estate, excise, employment, and foreign tax issues correctly understand and follow technical guidance and information for interest rates and methods of computation.

20.2.11.1.2
(05-23-2023)
Authority

- (1) These procedures are covered under the following authority:
 - IRC 6601, Interest on Underpayment, Nonpayment, or Extension of Time to Payment of Tax.
 - IRC 6611, Interest on Overpayments.
 - IRC 6621, Determination of Date of Interest.
 - IRC 6622, Interest Compounded Daily.
 - Rev. Rul. 99-40.

Additional authorities can be found in the table located in IRM 20.2.5.6.1, *Reasons to Manually compute Interest*.

20.2.11.1.3
(05-23-2023)
Responsibilities

- (1) IRM 20.2.11, *Miscellaneous Interest Provisions*, provides Servicewide policy for the administration of interest on the “not so common” types of returns.
- (2) All reference materials involving interest must be consistent with the procedures in the IRM and must receive approval from the Office of Servicewide Interest (OSI) prior to distribution.
- (3) Overall responsibility for the interest program resides with OSI. OSI coordinates policy and procedures concerning the administration of the interest programs.
- (4) All actions, including actions by examiners, are to be done in accordance with the Taxpayer Bill of Rights as listed in IRC 7803(a)(3).

20.2.11.1.4
(11-13-2018)
Program Management and Review

- (1) Nearly every function in the IRS has a role in proper interest administration. It is essential that each function conduct its operations with an emphasis on mitigating risk of inaccurate interest computations. Appropriate reviews should be conducted to ensure interest is computed accurately, consistently, and fairly.
- (2) To promote the goals of accuracy, consistency, and fairness in the interest program, the Complex Interest Quality Measurement System (CIQMS) Staff, a section within OSI, conducts reviews of interest computations, forwarding their

findings to program partners/stakeholders. OSI also prepares reports of significant interest issues, such as corrections to computer programming that affect taxpayers.

20.2.11.1.5
(11-13-2018)
**Terms/Definitions/
Acronyms**

- (1) Refer to Exhibit IRM 20.2.1-2, *Definitions of Terms* for interest related terms.

20.2.11.1.6
(05-23-2023)
Related Resources

- (1) For additional information, such as the latest interest news, job aids, interest tools, alerts, training materials, list of OSI analysts, etc., see the <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB022> Interest Knowledge Base on OSI's Virtual Library.

20.2.11.2
(11-13-2018)
**Personal Holding
Company Tax Overview**

- (1) A personal holding company (PHC) is a closely-held company whose income is derived from passive income and/or from payments received for personal services performed by a shareholder. If a liability for PHC tax is established for any taxable year under IRC 541, taxpayers are allowed a deduction for the amount of deficiency dividends in order to determine PHC tax. Refer to IRC 547(a) for the general rule for deductions for deficiency dividends.

20.2.11.2.1
(05-23-2023)
**Determination of
Personal Holding
Company (PHC) Tax**

- (1) Determination of liability for PHC tax may be established by IRC 547(c).
- A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction which has become final;
 - A closing agreement under IRC 7121 (Form 866, *Agreement as to Final Determination of Tax Liability*); or
 - An agreement entered into by the Secretary with the taxpayer, relating to the PHC tax (Form 2198, *Determination of Liability for Personal Holding Company Tax*).

Note: See IRM 4.10.13.10, *Personal Holding Company Deficiency Dividends*.

- (2) If a deficiency is determined, IRS furnishes Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*, to the taxpayer.

20.2.11.2.2
(05-23-2023)
**Criteria to Claim a
Deficiency Dividend
Deduction**

- (1) Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company (RIC), or Real Estate Investment Trust (REIT)*, is used to claim the deficiency dividend deduction.
- (2) To qualify for the deduction the taxpayer must have:
- Filed a timely return (i.e., return received by its due date or extended due date, including consideration of the 7-day grace period),
 - Committed no fraud,
 - Distributed the dividend within 90 days after the determination, and
 - Filed the claim (Form 976) after such distribution and within 120 days after the determination date.

20.2.11.2.3
(05-23-2023)

**Period for Making
Assessment or
Collection**

- (1) When filed, Form 976 suspends the running of the statute of limitations on assessment and collection for a period of two years after the date of the determination.
- (2) See IRC 547(f) and IRC 860(h), which state if a claim is filed within 120 days after the determination the running of the statute of limitations provided in IRC 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

20.2.11.2.4
(11-13-2018)

Decreases in PHC Tax

- (1) Overpayment interest is **not** allowed if:
 - The deficiency dividend deduction results in an overpayment, and
 - The original tax is assessed and paid prior to the determination of an overpayment.
- (2) If either of the above conditions are met, prevent the systemic calculation of allowable interest by inputting a TC 770 for zero. See IRC 547(b)(2) and section 7 of Rev. Proc. 60-17.

20.2.11.2.5
(05-23-2023)

**Underpayment (Debit)
Interest on PHC Tax
Adjustments**

- (1) The taxpayer is liable for the interest due on the PHC tax that was eliminated by the dividend deduction. Interest is charged from the normal (unextended) due date of the Form 1120, *U.S. Corporation Income Tax Return*, until the received date of the Form 976. The interest must be manually computed and input with a TC 340. Use a non-restricting TC 340 if conditions permit. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340*.
- (2) The taxpayer may also be liable for interest on any underpayment that exceeds the dividend deduction, including the following:
 - Tax underpayment in excess of the deduction;
 - Penalties assessed; or
 - Interest on tax, penalties, and/or interest.
- (3) When the established deficiency exceeds the amount attributable to the dividend deduction, the difference is assessed. Interest on excessive tax amount is generally computed from the normal (unextended) due date of the Form 1120 until the earlier of the full payment date, a filed waiver date plus 30 days [IRC 6601(c)], or the notice and demand date (23C date), whichever is applicable. Interest on the tax amount eliminated by the dividend deduction is computed under the rules of IRM 20.2.11.2.5 (1) above. Input Transaction Code (TC) 971 with Action Code (AC) 697 with the amount of the dividend deduction to identify the TC 340 as a RIC/REIT interest adjustment.

Note: When more than one computation of interest is required under the above rules, the total interest due is combined and assessed with TC 340.

20.2.11.2.6
(05-23-2023)

**Tax Court and
Underpayment (Debit)
Interest on PHC Tax
Adjustments**

- (1) The following procedures apply to a claim filed on or before the 55th day after a final Tax Court decision or judgement establishes the liability:

- a. If the PHC deficiency is identical to the tax on the approved deficiency dividend deduction, assess and collect underpayment interest only, computed on the full deficiency from the normal (unextended) due date of the tax to the date the deficiency is satisfied by a credit/payment, whichever is earlier.
 - b. If the PHC deficiency exceeds the tax on the approved deficiency dividend deduction, assess and collect the excess of the PHC tax, along with interest computed from the normal (unextended) due date of the tax or the date of the overpayment if satisfied by a credit/payment.
- (2) If the claim is not filed before the 55th day after the court decision became final, assess the full amount of the deficiency along with underpayment interest from the normal (unextended) due date of the tax to the date of assessment or the date the deficiency is satisfied by a credit payment, whichever is earlier.
 - (3) If a claim is filed between the 55th and 60th day after the decision became final, abate that part of the assessment that equals the tax on the approved PHC deficiency dividend deduction.
 - a. Collect any excess tax along with the proportionate interest previously assessed.
 - b. Compute and collect interest only on that part of the tax equal to the amount attributed to the approved deficiency dividend deduction, from the normal (unextended) due date of the tax to the date of assessment or the date the deficiency is satisfied by a credit payment, whichever is earlier.

20.2.11.3
(01-09-2017)
Cooperatives and Patrons

- (1) Farmers' cooperative organizations exempt from tax under IRC 521 or corporations operating on a cooperative basis are subject to IRC 1381 through IRC 1388 (subchapter T), except those which:
 - Are exempt from tax under Chapter 1, and
 - Are subject to provisions relating to mutual savings banks or insurance companies, or
 - Furnish electric energy or telephone service to rural areas.

20.2.11.3.1
(05-23-2023)
Special Rules for Overpayment (Credit) Interest

- (1) If the tax decrease determined under IRC 1383 for the prior taxable year is more than the tax for the current taxable year, the excess:
 - Is considered a payment of tax on the prescribed date for making payment (generally, the normal unextended due date) for the current taxable year, and
 - Will be refunded or credited as if it were an overpayment for the current taxable year.
- (2) Overpayment interest is allowed on the overpayment from the prescribed date for making payment (generally, the normal unextended due date) for the current taxable year, rather than from the actual date of overpayment in the prior year.
- (3) The amount of overpayment is shown on line 9, Column (b) of Form 2285, *Concurrent Determinations of Deficiencies*.

20.2.11.4
(05-23-2023)

**Interest on Partnership
Adjustments per the
Bipartisan Budget Act
(BBA)**

- (1) The Centralized Partnership Audit Regime was enacted as part of the Bipartisan Budget Act of 2015 (BBA) on November 2, 2015.
- (2) Under BBA, adjustments to partnership-related items, tax attributable to such adjustments, and the applicability of any penalty, addition to tax, or additional amount which relates to those adjustments, will generally be determined, assessed and collected at the partnership level unless BBA provides otherwise. Effective for tax years beginning on or after January 1, 2018.
- (3) IRC 6221(b) provides that certain partnerships who are required to issue 100 or less Schedule K-1s and are comprised of eligible partners can elect out of BBA, meaning the provision of that subchapter will not apply to the partnership or its partners. See IRM 4.31.5.2.2.1, *BBA Elect Out (BEO) Partnerships* and IRM 4.31.5.7.1, *Elect Out of BBA Code*.
- (4) Per IRC 6226, if the partnership properly elects to push-out the partnership adjustments to the partners, the partnership will not be liable for the imputed underpayment resulting from those adjustments, and the partners will take the adjustments into account in accordance with IRC 6226. See IRM 4.31.9, *Centralized Partnership Audit Regime (BBA) Field Examination*.
- (5) See IRM 21.7.4.4.11.11.3, *Deficiency Dividends Procedure (OAMC Complex Interest Team Only)*.
- (6) The following table lists commonly used terms:

BBA Terms and Definitions

Term	Definition
BBA regime	Examination subject to the Bipartisan Budget Act of 2015 (BBA) This term is used interchangeably with “centralized partnership audit regime”.
Reviewed year	Partnership tax year under exam or to which a partnership adjustment relates.
Adjustment year	Partnership tax year in which: <ul style="list-style-type: none"> • The decision of a court becomes final in a proceeding brought under IRC 6234. • An Administrative Adjustment Request is filed under IRC 6227: or • In any other case, a notice of final partnership adjustment is mailed under IRC 6231, or a waiver is executed to waive the restrictions under IRC 6232(b).
Reporting year	The year the adjustments will be reported by the reviewed year partners. The tax year that includes the date they are furnished Form 8986, <i>Partner's share of Adjustment(s) to Partnership-Related Item(s)</i> .

Term	Definition
Partnership	Any partnership required to file a return under IRC 6031(a) or any entity that files a Form 1065, <i>Return of Partnership Income</i> .
Partnership adjustment	Any adjustment to a partnership-related item as defined in IRC 6241.
Pass-through partner	Any pass-through entity that holds an interest in a partnership.
Push out	An election made by the partnership under IRC 6226 and IRC 6227 to have partners take adjustments into account instead of the partnership being liable for an imputed underpayment.
Administrative Adjustment Request (AAR)	An action under IRC 6227 where the partnership makes adjustments to partnership-related items.
Form 8985	Partnership Adjustment Tracking Report required under IRC 6226 and IRC 6227 to be filed by the partnership with IRS when adjustments are pushed out to partners.
Form 8986	Partners Share of Adjustment(s) to Partnership-Related Item(s) required under IRC 6226 and IRC 6227 containing the final partnership adjustments. The forms required from the partnership to its partners.
Form 8988	Election for Alternative to Payment of the Imputed Underpayment. The form submitted to the IRS by a partnership to make an election under IRC 6226 to push out partnership adjustments.
Imputed Underpayment (IU)	The liability imposed on the partnership under IRC 6225 and IRC 6227 resulting from an adjustment to partnership-related items.
Final Determination Date	The date partnership adjustment(s) become finally determined.

20.2.11.4.1
(05-23-2023)
**Interest and Penalty
Calculation of an
Audited BBA
Partnership After
Assessment of an
Imputed Underpayment**

- (1) Interest on the imputed underpayment is initially calculated from the day after the normal (unextended) due date of the partnership return for the reviewed year, determined without including any extensions, to the earliest of the following dates using the standard underpayment rate (short term quarterly federal rate plus 3%, IRC 6233):
- The date prescribed for payment in the first notice and demand for payment issued to the partnership;
 - The due date of the partnership return (without regard to extension) for the adjustment year; or
 - The date the imputed underpayment is fully paid.

- (2) Interest on any penalties determined to apply at the partnership level such as the accuracy related penalty is calculated from the reviewed year normal (unextended) due date to the notice and demand date using the standard underpayment rate per IRC 6233. If not paid on the filing date it continues to accumulate.
- (3) No failure to pay penalty will be assessed at the time of the first notice and demand letter (FTP is a future event that can only occur after the first notice and demand letter).
- (4) Applicable grace period = 21 calendar days if the amount due is less than \$100,000 or 10 business days if equal to or greater than \$100,000. Per IRC 6601(e)(3), interest on the amount of the notice that is paid within 21 calendar (or 10 business) days stops the notice and demand date, (IRC 6601(e)(2)).
- (5) If the partnership pays the imputed underpayment and all related penalties and interest included in the balance due shown in the notice and demand letter within the applicable grace period, no additional charges will apply. This concept applies to the first notice and demand letter and all subsequent notices as well, if paid within the grace period, no additional charges should be assessed.
- (6) If the audited partnership fails to pay within the applicable grace period under IRC 6601(e) after the first notice, additional interest on the balance due will continue to run at the standard underpayment rate for the first 10 calendar days after the notice and demand date. If an amount is still not paid 10 days after notice and demand interest on the balance due should be calculated using "5 percentage points" for "3 percentage points" when applying IRC 6621(a)(2)(B) (i.e. at an extra 2% rate) until it is paid in full.

Example: The date stated for payment in a notice and demand issued to the partnership is 08-03-2020. If the balance due is \$100,000 or greater, the partnership has 10 business days until 08-13-2020, or if less than \$100,000, it has 21 calendar days and must pay by 08-24-2020 to avoid additional interest. If the amount due is \$100,000 or greater and it is not fully paid by 08-13-2020, the applicable interest rate under IRC 6621(a)(2)(B) will be increased (from 3 percent points to 5 percentage points) on any unpaid amount on 08-13-2020. If the amount due is less than \$100,000 and not full paid by 08-24-2020, the applicable interest rate under IRC 6621(a)(2)(B) will be increased (from 3 percent points to 5 percentage points) on 08-24-2020.

- (7) If the audited partnership has not paid the balance due within the applicable grace period after the first notice, the failure to pay penalty can be assessed and billed in a second notice and demand letter. The failure to pay penalty is only calculated on the imputed underpayment, not the penalties determined at the exam level such as the accuracy related penalties.

20.2.11.4.2
(05-23-2023)
**Interest and Penalty
Calculation of
Pass-Through Partners
of an Audited
Partnership**

- (1) Under IRC 6226, a partnership may elect to have its partners take adjustments into account in lieu of being liable for an imputed underpayment itself. Under Treas. Reg. 301.6226-3(e), a pass-through partner of the partnership may be liable of an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments, where it fails to provide statements required under that section.

- (2) For purpose of IRC 6226, Pass-Through Partners are: a partnership required to file a return under IRC 6031(a) (Form 1065), an S corporation (Form 1120-S), as well as a trust (other than a wholly-owned trust disregarded as separate from its owner for Federal income tax purposes), and a decedent's estate (Form 1041). For purposes of IRC 6226, a pass-through entity is not a wholly-owned entity disregarded as separate from its owner for federal income tax purposes.
- (3) Interest on the Pass-Through Partners imputed underpayment is calculated from the normal (unextended) due date (without extensions) of the pass-through partners first affected year return to the date all amounts due are paid in full using the standard underpayment interest rate under IRC 6621(a)(2) plus 2% (i.e. substituting 5 percentage points for 3 percentage points under IRC 6621(a)(2)(B)). IRC 6226(c)(2). Treas. Reg. 301.6226-3.(c).
- (4) Interest on any penalties determined at the partnership level such as the accuracy related penalty is calculated from the normal (unextended) due date of the pass-through partners first affected year return, until the date all amounts are paid in full using the standard underpayment interest rate under IRC 6621(a)(2) plus 2% (i.e. substituting 5 percentage points for 3 percentage points under IRC 6621(a)(2)(B)). Treas. Reg. 301.6226-3(c)(2).
- (5) If a pass-through partner is assessed an imputed underpayment and related interest, it has 10 business days if the amount due is at least \$100,000, or 21 calendar days if it is less, to pay the amount stated in the notice and demand made to the pass-through partner without incurring additional interest from the date of notice and demand.
- (6) Pass-through partners that are assessed an imputed underpayment can also be assessed a failure to pay penalty if the imputed underpayment is not paid by the extended due date of the adjustment year return of the audited partnership. The failure to pay penalty is only calculated on the imputed underpayment and not on the penalties determined at the audited partnership level.
- (7) If a pass-through partner fails to timely file the partnership adjustment tracking report under IRC 6226(b)(4)(A)(i), then the pass-through partner can be assessed a failure to file penalty under IRC 6698.
- (8) Interest on failure to pay penalties should be calculated at the standard underpayment rate.
- (9) Interest on failure to file penalties under IRC 6698 should be calculated at the standard underpayment rate.

20.2.11.4.3
(05-23-2023)
**Direct Proportional
Assessment of Partners
IRC 6232(f)**

- (1) If an audited partnership or pass-through partner fails to pay an imputed underpayment within 10 days of the notice and demand, IRC 6232(f) applies. If IRC 6232(f), applies, partners may be assessed their proportional share of the balance due from the partnership or pass-through partner.
- (2) "Balance due" for the purposes of the IRC 6232(f) assessments on the partners is defined here as the unpaid balance due from the notice and demand letter.
- (3) The proportional share is determined by using the year-end percentages shown on the adjustment year K-1's, or if the entity ceased to exist after a final

determination was made, the K-1's of the former partners (which former partners is an issue subject to regulatory or other guidance).

- (4) After partners are assessed their share of the balance due, they will have an applicable grace period under IRC 6601(e) (10 days if the amount due is at least \$100,000, or 21 calendar days if it is less) to pay their share of the balance without incurring additional interest charges.
- (5) If a partner does not pay within the applicable grace period, interest should be calculated at the short-term federal rate plus 5% from the notice and demand date until paid in full.
- (6) Partners that receive a direct proportional assessment under IRC 6232(f) should not be charged an additional failure to pay penalty going forward if they fail to pay the assessment.
- (7) Partners who have been assessed will receive credit for their share of any amounts subsequently paid by the partnership to the extent of the partners outstanding liability, and a partnership's outstanding liability will be reduced by any amounts paid by the partners. In this way, a duplicate collection of interest should be avoided.

Example: How the linkage process and parallel interest calculations should work: Assume ABC LLC owes an imputed underpayment, receives a notice and demand letter and does not pay within the grace period under IRC 6601(e). Partners A and B had a 50 percent proportionate share in the partnership as of the end of the partnership's adjustment year. Applying IRC 6232(f), partners A and B are assessed the proportionate share of the balance due from the partnership which neither immediately pays. Interest continues to accrue on ABC account at the quarterly short-term rate plus 5%. Assume \$10,000 in interest accrues and ABC account shows a balance due of \$110,000. At this point Partner A and Partner B have accumulated \$5,000 in interest in their accounts at the same rate and show a balance due of \$55,000. At this time ABC paid the \$110,000 due. This should zero out the accounts of ABC and both partners. Alternatively, assume no payment from ABC, but Partner A pays \$55,000 and Partner B pays zero. This should zero out Partner A account and reduce ABC balance due to \$55,000 with interest still accruing. Partner B should still have a balance due of \$55,000 with interest accruing.

20.2.11.4.4
(05-23-2023)
**Interest and Penalty
Calculation on BBA
Partnership that Files an
AAR**

- (1) Interest on the imputed underpayment resulting from an AAR is calculated from the reviewed year normal (unextended) due date return, determined without including extensions, to the date the imputed underpayment is paid using the underpayment rate under IRC 6601(a)(2) (short term quarterly federal rate plus 3%), IRC 6233.
- (2) Where penalties are determined to apply as a result of adjustments in an AAR, interest on such penalties is calculated from the reviewed year normal (unextended) due date, including extensions, to the date they are paid using the standard underpayment rate under IRC 6601(a)(2). See IRC 6233.
- (3) If an AAR results in an imputed underpayment for which the partnership is liable, and payment is not made at the time of the AAR filing, the imputed underpayment may be assessed and a notice and demand letter sent.

- (4) A failure to pay penalty under IRC 6651(a)(2) may be asserted with respect to the imputed underpayment and included in the first notice and demand letter as the imputed underpayment was required to be paid at the time the AAR was filed. See IRM 4.31.9.9.3.3(5), *Form 886-A: Interest and Penalties* for more information.
- (5) Pursuant to IRC 6601(e)(3), if the amount specified from the notice and demand is paid within 21 calendar days (or 10 business days where amount equal or exceeds \$100,000), no interest should be imposed for the period after the date notice and demand was made.
- (6) If the AAR partnership fails to pay within the period under IRC 6601(e)(3), additional interest on the balance due will continue to run at the standard underpayment rate under IRC 6621(a)(2) for the first 10 calendar days after the notice and demand date. After the 10th calendar day from notice and demand, interest on the balance due will be applied at an extra 2% rate (the rate under IRC 6621(a)(2), applying 5 percentage points instead of 3 percentage points for IRC 6621(a)(2)(B)) until it is paid in full. See IRC 6232(f)(1)(A).

Example: Assume the notice and demand date is 08-03-2020. If balance due is \$100,000 or greater, the partnership has 10 business days until 08-13-2020, or if less than \$100,000, it has 21 calendar days and must pay by 08-24-2020 to avoid additional interest. If the amount due is \$100,000 or greater and it is not paid by 08-13-2020, we will start the 2% interest rate increase on 08-13-2020. If the amount is less than \$100,000, and not full paid by 08-24-2020, we will start the 2% increase on 08-13-2020.

20.2.11.4.5
(05-23-2023)
**Interest and Penalty
Calculation on
Pass-Through Partners
of a BBA Partnership
that Files an AAR**

- (1) Under IRC 6227, a partnership may file a BBA AAR within 3 years after the later (1) the date of the filing the partnership return, or (2) the due date of the return without regard to extensions. Only partnerships may file a BBA AAR. A partner may file BBA AAR on behalf of the partnership if they are in acting capacity of a Partnership Representative (PR). A BBA AAR cannot be filed in a year where a notice of administrative proceeding has been mailed to the partnership for that year.
- (2) Interest on the imputed underpayment is calculated from the normal (unextended) due date (without extensions) of the pass-through partners first affected year to the date all amounts due are paid in full using the standard underpayment rate under IRC 6221(a)(2). The extra 2% under IRC 6226(c)(2)(C) does not apply. See IRC 6227(b)(2) (stating do not make substitution under IRC 6226(c)(2)).
- (3) Interest on any penalties determined at the partnership AAR level such as the accuracy related penalty is calculated from the normal (unextended) due date of the pass-through partners first affected year return, until the date all amounts are paid in full using the standard underpayment interest rate under IRC 6621(a)(2).
- (4) If a pass-through partner is assessed an imputed underpayment and related interest, it has 10 business days if the amount due is at least \$100,000, or 21 calendar days if it is less, to pay without incurring additional charges.
- (5) Pass-through partners that are assessed an imputed underpayment can also be assessed a failure to pay penalty under IRC 6651 if the imputed underpay-

ment is not paid by the extended due date of the adjustment year return of the AAR partnership (the payment due date). The failure to pay penalty is only calculated on the imputed underpayment and not the penalties determined at the AAR level such as the accuracy related penalties.

- (6) If a pass-through partner fails to timely file the partnership adjustment tracking report under IRC 6226(b)(4)(A)(i), then the pass-through partner can be assessed a failure to file penalty under IRC 6698. See IRM 4.31.9.9.3.3(6), *Form 886-A: Interest and Penalties*.
- (7) Interest on the failure to pay and failure to file penalties should be calculated at the standard underpayment rate.

20.2.11.4.6
(05-23-2023)
**Direct Proportional
Assessment of BBA
AAR Partners IRC
6232(f)**

- (1) If a BBA partnership that files an AAR, or pass-through partner of a BBA partnership that files an AAR, fails to pay an imputed underpayment (or any associated interest or penalties, if applicable) within 10 days of the notice and demand, IRC 6232(f) applies, partners may be assessed their proportional share of the balance due from the partnership or pass-through partner.
- (2) "Balance due" for the purpose of the IRC 6232(f) assessments on the partners is defined here as the unpaid balance due from the notice and demand letter.
- (3) The proportional share is determined by using the year-end percentages shown on the adjustment year K-1's, or if the entity ceased to exist after a final determination was made, the K-1's of the former partners (which former partners is an issue subject to regulatory or other guidance).
- (4) After partners are assessed their share of the balance due, they will have the applicable grace period under IRC 6601(e) (10 days if the amount due is at least \$100,000, or 21 calendar days if it is less) to pay their share of the balance without incurring additional interest.
- (5) If a partner does not pay within the applicable grace period, interest should be calculated at the short-term federal rate plus 5% from the notice and demand date until paid in full.
- (6) Partners that receive a direct proportional assessment under IRC 6232(f) should not be charged the failure to pay penalty if they fail to pay the partner level assessment.
- (7) Partners who have been assessed will receive credit for their share of any amounts subsequently paid by the partnership to the extent of the partners outstanding liability, and a partnership's outstanding liability will be reduced by any amounts paid by the partners. In this way a duplicate collection of interest should be avoided.

Example: How the linkage process and parallel interest calculations should work: Assume ABC LLC, which owes an imputed underpayment related to an AAR filing, receives a notice and demand letter and does not pay within the grace period under IRC 6601(e). Partners A and B each had a 50 percent proportionate share in the partnership as of the end of the partnership's adjustment year. Applying IRC 6232(f) are assessed the proportionate share of the balance due from the partnership which neither immediately pays. Interest continues to accrue on ABC's account at the quarterly short-term rate plus 5%. Assume \$10,000 in interest accrues and ABC's account shows a balance due of \$110,000. At this

point Partner A and B each have accumulated \$5,000 in interest, in their accounts at the same rate and show a balance due of \$55,000. At this point, ABC paid the \$110,000 due. This should zero out the accounts of ABC and both partners. Alternatively, assume no payment from ABC, but Partner A pays \$55,000 and Partner B pays zero. This should zero out Partner A account and reduce ABC's balance due to \$55,000 with interest still accruing. Partner B should still have a balance due of \$55,000 with interest accruing.

20.2.11.5
(05-23-2023)
Claim of Right - IRC 1341

- (1) IRC 1341 provides a special tax computation designed to prevent the inequity which arises if income held under a "claim of right" is restored in a later year and the benefit from the deduction in the year of restoration differs from the increase in taxes attributable to the original inclusion of the restored item.
- (2) An overpayment exists for the year only if the decrease in tax for the prior year of inclusion (after excluding the item) exceeds the tax computed for the year (without the deduction). See IRC 1341(b). No interest is allowed on any refund or credit on this type of overpayment, before the normal (unextended) due date of the year of the restoration return. See IRM 21.6.6.2.10, *Claim of Right - IRC Section 1341 - Repayment of Income Previously Reported*.

Example: Tax decrease of \$3,500 for year 1 exceeds tax of \$3,000 determined for year 2 (computed without the deduction). The excess of \$500 is deemed an overpayment for year 2 and is refunded without interest.

20.2.11.6
(04-27-2016)
Insolvent Taxpayers, Seized Property, and Collection Costs

- (1) Generally, the Collection areas compute interest for these types of cases. Listed in the sections below is how to compute interest for these types of adjustments.

20.2.11.6.1
(05-23-2023)
Insolvent Taxpayers, also known as Bankruptcy Code Cases

- (1) If unable to determine the petition, discharge, or dismissal dates needed to compute the interest, see the Insolvency Knowledge Base Homepage <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx> for the office where the bankruptcy was filed.

20.2.11.6.1.1
(11-18-2008)
Interest to Date Petition Filed

- (1) Pursuant to section 502(b)(2) of the Bankruptcy Code [11 USC § 502(b)(2)], claims for **unmatured interest** (interest accrued after the petition is filed) are generally not allowed against the debtor's bankruptcy estate for unsecured, pre-petition tax debts. Accordingly, when IRS files unsecured, pre-petition tax claims in bankruptcy cases, the interest shown on the IRS proof of claim should only reflect the interest accrued as of the date the petition was filed. This pre-petition interest should be reflected on the IRS proof of claim, whether or not the tax or the interest has been assessed prior to the petition date.

20.2.11.6.1.2
(04-08-2013)
Post-Petition Interest for Secured Tax Liabilities

- (1) Pursuant to 11 USC section 506(b) of the Bankruptcy Code, holders of oversecured pre-petition claims are allowed post-petition interest payments from the debtor's bankruptcy estate.
 - a. A federal tax claim is oversecured if a notice of federal tax lien (NFTL) was filed before the debtor's bankruptcy petition and the value of the col-

lateral securing the claim is more than the amount of the claim. A federal tax claim may also be oversecured if the Government is holding a refund that could be credited (offset) against the liability on the claim and amount of the refund exceeds the amount of the liability.

- b. Pursuant to 11 USC section 511 of the Bankruptcy Code, applicable to bankruptcy cases filed on or after October 17, 2005, the applicable post-petition interest rate for such post-petition interest is the rate prescribed by IRC 6621. The interest rate paid pursuant to a confirmed plan is set as of the calendar month in which the plan is confirmed.

20.2.11.6.1.3
(05-23-2023)

**Post-Petition Interest for
Unsecured Pre-petition
Taxes of Individuals**

- (1) Non-dischargeable Taxes: 11 USC sections 523(a)(1) and 523(a)(7) of the Bankruptcy Code describe the pre-petition taxes (including pre-petition interest) and tax penalties, respectively, that are excepted from discharge if an individual debtor receives a discharge in a Chapter 7, 11, or 12 bankruptcy case, or if an individual debtor receives a “hardship” discharge in a Chapter 13 case under 11 USC section 1328(b) of the Bankruptcy Code. The extent to which these exceptions apply in the case of a Chapter 13 debtor receiving a “super-discharge” under 11 USC section 1328(a) of the Bankruptcy Code will vary depending on whether the Chapter 13 case was filed before or after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) took effect on October 17, 2005.

Note: Only individuals may file a Chapter 13 bankruptcy case.

- (2) For Chapter 13 cases filed before October 17, 2005, there is no exception to the superdischarge for taxes and penalties.
- (3) For Chapter 13 cases filed on or after October 17, 2005, the superdischarge no longer includes:
 - Trust fund taxes (including the trust fund recovery penalty),
 - Taxes for which a return was not filed or was late filed after two years before the bankruptcy case,
 - Taxes for which the debtor filed a fraudulent return or attempted to evade or defeat the tax, or
 - Any claim of any creditor that did not receive notice of the bankruptcy case in time to file a timely claim (unless the creditor had actual knowledge of the case).
- (4) For unsecured pre-petition taxes and tax penalties that are excepted from discharge, IRS is entitled to receive post-petition interest from the taxpayer outside of bankruptcy, even though the post-petition interest on these debts cannot be claimed from the debtor’s bankruptcy estate.
- (5) In a Chapter 7, 12 or 13 bankruptcy case, for unsecured pre-petition taxes and tax penalties that are **NOT** excepted from discharge, IRS is not usually entitled to receive any post-petition interest from either the debtor’s bankruptcy estate, or from the individual debtor outside of bankruptcy, unless the bankruptcy case is dismissed. A rare exception is a Chapter 7 case that has sufficient assets to pay post-petition interest on properly filed and allowed priority, and unsecured claims. See 11 USC section 726(a)(5). Also, in a Chapter 13 case started on or after October 17, 2005, a plan may provide for the payment of post-petition interest on non-dischargeable liabilities to the extent the debtor has disposable income after providing for full payment of allowed claims. See 11 USC section 1322(b)(10).

- (6) Interest is paid on priority claims 11 USC section 507(a)(8) of the Bankruptcy Code in Chapter 11 for individuals in the same manner as non-individuals. See IRM 20.2.11.6.1.4, *Post-Petition Interest for Unsecured Pre-Petition Taxes Non-Individual*.

20.2.11.6.1.4
(05-23-2023)

**Post-Petition Interest for
Unsecured Pre-petition
Taxes Non-Individual**

- (1) For non-individual debtors, including corporations and partnerships, the exception to discharge provisions of 11 USC section 523 of the Bankruptcy Code for taxes and tax penalties do not apply.
 - a. For non-individual debtors in a Chapter 7 bankruptcy case, IRS's unsecured claims for pre-petition taxes are not entitled to receive any post-petition interest unless the case is dismissed. A rare exception is a case that has sufficient assets to pay post-petition interest on property filed and allowed priority, and unsecured claims. See 11 USC section 726(a)(5).
 - b. For non-individual debtors in a Chapter 11 bankruptcy case, IRS's general unsecured claims for pre-petition taxes are not entitled to receive any post-petition interest from the petition date through the plan effective date, unless the case is dismissed or unless the confirmed plan or the parties, by agreement, provide otherwise.
- (2) Pursuant to 11 USC section 1129(a)(9)(C) of the Bankruptcy Code, for a Chapter 11 plan to be confirmed it must provide for the full payment of unsecured priority claims under 11 USC section 507(a)(8) including post-confirmation interest. Secured claims, per 11 USC section 1129(b)(2)(A) of the Bankruptcy Code, must also be paid in full with interest accruing from the effective date of the plan. If the value of the collateral exceeds the amount of the claim (IRS's secured claim is oversecured), the plan should provide for interest on the claim from the petition date. See 11 USC section 506(b) and IRM 5.9.8.17.1, *The Plan of Reorganization*.
 - a. This interest begins to accrue upon the effective date of the plan at the rate described in IRC 6621, unless the confirmed plan, the confirmation order, or an agreement of the parties provides another interest rate. For bankruptcy cases filed after October 17, 2005, the interest rate is determined as of the calendar month in which the plan is confirmed, per 11 USC section 511 of the Bankruptcy Code.
 - b. For unsecured pre-petition taxes NOT entitled to priority under 11 USC section 507(a)(8) of the Bankruptcy Code, IRS is not entitled to any payment of interest that would accrue after the effective date of the plan unless the confirmed plan or the parties, by agreement, provide otherwise.

20.2.11.6.1.5
(05-23-2023)

**Post-Petition Interest for
Post-Petition Taxes**

- (1) For post-petition taxes and tax penalties incurred by a debtor and/or by the debtor's bankruptcy estate, the restrictions of 11 USC section 502(b)(2) of the Bankruptcy Code on the accrual of post-petition interest do not apply.
 - a. Post-petition taxes incurred by an individual debtor in a Chapter 7 or 11 case do not represent a potential claim against the debtor's bankruptcy estate, but the post-petition taxes and post-petition interest thereon are collectible from the individual debtor outside of the bankruptcy.
 - b. Post-petition taxes incurred by an individual debtor's bankruptcy estate in a Chapter 7 or 11 bankruptcy case, which is a separate taxable entity under IRC 1398, are payable from the estate.

- (2) IRS may elect to file a claim for post-petition taxes incurred by an individual debtor during a Chapter 13 case pursuant to 11 USC section 1305(a)(1) of the Bankruptcy Code. If the IRS chooses to file such a claim, it may be limited to claiming the tax only, depending on local practice. For this reason, IRS usually does not claim post-petition interest or penalties on section 1305(a)(1) claims. In some jurisdictions, however, IRS may be allowed to file a section 1305(a)(1) claim that includes accruals of post-petition interest and penalties as of the claim filing date. See IRM 5.9.10.9.2, *11 USC Section 1305 Claims*.

Post-Petition Interest and IRC 1305 Claim

If	Then
IRS chooses to file a section 1305(a)(1) claim for post-petition taxes in a Chapter 13 case,	IRS usually will not claim post-petition interest unless such interest is allowed to be claimed based on local practice.
IRS does not elect to file a section 1305(a)(1) claim for the post-petition taxes incurred by an individual debtor during a Chapter 13 case,	the post petition taxes and all the post-petition interest thereon are collectible from the individual debtor outside of bankruptcy.

- (3) Post-petition interest on post-petition taxes and tax penalties incurred by a non-individual debtor's bankruptcy estate, including a corporation or a partnership in a Chapter 7 or 11 bankruptcy case, is payable through the non-individual debtor's bankruptcy case as an administrative expense claim.
- In a Chapter 11 case, IRS may insist upon being paid the full amount of any post-petition taxes, penalties, and interest incurred by a non-individual debtor's bankruptcy estate by the plan effective date. For cases filed on or after October 17, 2005, the IRS is not required to file an administrative claim to be paid from the bankruptcy estate. See 11 USC section 503(b)(1)(D) of the Bankruptcy Code. However, in cases filed before October 17, 2005, if IRS fails to file its administrative period claims for post-petition tax, penalties, and interest by any applicable administrative claims bar date set in the Chapter 11 case of a non-individual debtor, the post-petition taxes incurred before the plan confirmation date may be discharged (11 USC. sections 1141(d)(1) and 1129(a)(9)(A) of the Bankruptcy Code). A non-individual debtor does not receive a discharge under Chapter 7 of the Bankruptcy Code.

20.2.11.6.1.6
(11-13-2018)

Post-Petition Interest if a Case is Dismissed

- (1) Pursuant to section 11 USC 349(b) of the Bankruptcy Code, the dismissal of a bankruptcy case generally reinstates liens (and debts) and reverts property back to the debtor as if the bankruptcy petition had not been filed.

Bankruptcy Case Discharged/Dismissed Actions

If	Then
the debtor is not granted a discharge in a Chapter 7 case,	IRS should assert a right to uninterrupted statutory interest on any tax debts.
a Chapter 13 case of an individual debtor is dismissed before the debtor receives a discharge pursuant to 11 USC section 1328 of the Bankruptcy Code,	IRS should assert a right to uninterrupted statutory interest on any tax debts.
a Chapter 11 case is dismissed after a plan has been confirmed,	IRS should review the terms of the plan and seek advice from Counsel.

20.2.11.6.1.7
(11-13-2018)

**Post-Petition Interest
owed by Non-debtors**

- (1) Pursuant to 11 USC section 524(e) of the Bankruptcy Code, the discharge of a tax debt of the debtor does not generally affect the liability of any other entity or person for such tax debt.

Non-Debtor Members

If	Then
the parent corporation or its subsidiaries are debtors in a bankruptcy case, but other members of the debtor's consolidated group for federal income tax purposes are not debtors in a bankruptcy case,	the several liability of the non-debtor members of the group for all statutory interest accruals upon the group's federal income tax debts continues and is unaffected by the bankruptcy cases of the debtor members of the group.

20.2.11.6.2
(05-23-2023)

**Seized Properties -
Levies**

- (1) When levy proceeds are returned, the delinquent tax is not forgiven. The taxpayer is still obligated to pay the amount owed, and IRS is obligated to collect it. However, the taxpayer will not be charged the failure to pay penalty and interest during the period that IRS held the money. The example below should only be followed if the account is already restricted from systemically calculating interest (e.g., -I freeze), or if for some other reason interest needs to be manually computed. Whenever possible, allow the IRS computer systems to systemically calculate interest, by not unnecessarily restricting a tax module. If the interest and penalties can be systemically computed, then this procedure is not necessary.

Example: The taxpayer owed \$10,000. On April 10, XXX1, \$2,500 was collected as levy proceeds. Two years later on May 4, XXX2 the \$2,500 was returned.

- a. Compute a running module balance on \$10,000 through April 10, XXX1.
- b. Suspend interest on \$2,500 for the period April 11, XXX1, through May 4, XXX2.

- c. Resume interest on the running module balance plus the \$2,500 on May 4, XXX2 computed to the 23C date. Input a TC 340 with the “COMP-INT-AMT” and “INT-TO-DT” fields completed. This will allow IDRS and Master File to systemically update interest after input of the non-restricting TC 340. The **COMP-INT-AMT** will be the balance owed as of the 23C date. Use the 23C date as the **INT-TO-DT**. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340*.

- (2) If property of an individual, other than the taxpayer, is wrongfully levied upon and the property or proceeds from the sale of the property is applied to satisfy a liability of the taxpayer, and later is returned to that individual, underpayment interest should be charged on the taxpayer’s liability during the period that the wrongful levy amount was applied. Interest does not need to be manually computed if the credit is reversed using the same date. Otherwise, interest must be manually computed when refunding or offsetting using a different date.

20.2.11.6.3
(11-13-2018)
Collection Costs

- (1) Collection procedures stipulate that monies derived from a sale or auction, designated payment code (DPC) 06, are to be applied first against expenses of levy and sale (TC 694), then against any unpaid tax specifically imposed against the seized property, and then against the tax liability for which the levy was made. Surplus proceeds, if any, are credited or refunded to the person(s) legally entitled to it. See IRC 6342.

20.2.11.7
(01-09-2017)
Stamp Taxes

- (1) The government levies and collects certain taxes by using stamps. See IRC 6801.
- (2) The Department of the Treasury is responsible for the preparation and distribution of all stamps denoting the several stamp taxes. See IRC 6801(b).

20.2.11.7.1
(01-09-2017)
**Underpayment (Debit)
Interest on Failure to
Pay Stamp Tax**

- (1) Per IRC 6653, any person who willfully fails to pay or willfully attempts to evade or defeat the stamp tax can be penalized 50% of the underpayment of the tax. Interest on this penalty starts from the due date or extended due date (whichever is later) of the stamp tax. See IRM 20.1.11.3, *IRC 6653 Failure to Pay Stamp Tax*, for more information.

20.2.11.7.2
(11-13-2018)
Time for Filing Claims

- (1) A claim for the redemption of, or allowance for, stamps must be filed within three years from the date of purchase of the stamps from the government. See IRC 6805(c) and Treas. Reg. 301.6805-1(c).

20.2.11.7.3
(05-23-2023)
**Overpayment (Credit)
Interest on
Overpayments of Stamp
Taxes**

- (1) Interest is allowed on overpayments of stamp taxes under IRC 6611, regardless of whether the tax was paid by purchase of stamps or due to an assessment. See section 15.03 of Rev. Proc. 60-17.

Overpayment Interest on Stamp Taxes

If	Then allow overpayment interest from
paid by purchase of stamps	FROM: the date the stamps were affixed and cancelled TO: refund schedule date, less the applicable back-off period of IRC 6611(b)(2) for computer-generated/systemic refunds. See IRM 20.2.4.7.1.1, Systemic Refund Dates for IMF and BMF.
paid due to an assessment	FROM: the date of payment TO: refund schedule date, less the applicable back-off period of IRC 6611(b)(2) for computer-generated/systemic refunds. See IRM 20.2.4.7.1.1, Systemic Refund Dates for IMF and BMF.

- (2) Do **NOT** allow interest on amounts paid in redemption of unused stamps.

20.2.11.8
(04-08-2013)
Transferee Interest and Assessments

- (1) The Tax Court has jurisdiction of interest in transferee cases and may sometimes require computations of interest.
- (2) Interest on a transferee liability is computed based on the state or federal law that governs the liability. State laws that may apply, for example, are wrongful transfer or fraudulent conveyance statutes. IRC 6901 is strictly procedural as to the assertion of a transferee liability. O'Sullivan v. Comr, T.C. Memo. 1994-17 summarizes some of the principles.

20.2.11.8.1
(05-23-2023)
Transferee's Liability Limited to the Value of the Assets Transferred

- (1) Generally, when transferee liability is imposed under state law, the transferee's liability for the transferor's debts is limited to the value of the assets transferred to the transferee. See *Estate of Stein v. Commissioner*, 37 T.C. 945, 961(1962). In these cases, the extent to which interest under IRC 6601 on the transferor's liability is recoverable from a transferee depends upon the relationship between the value of the assets transferred and the transferor's total liability for tax, penalties, and interest.
- (2) If the value of the assets transferred is less than the amount of the transferor's total liability at the time of the transfer, the transferee is liable for the transferor's tax, penalty, and interest only to the extent of the value of the assets transferred. The transferee's liability may include some of the transferor's interest accrued under IRC 6601, depending on the value of the assets. In these cases, interest may accrue on the transferee's liability under state law. The rate of interest and starting date are determined under the state law. Transferee interest under IRC 6601(b)(4) begins to accrue on the date of the statutory notice of liability and runs until the transferee liability is paid.
- (3) After the date of the notice of transferee liability, the interest on the transferee's liability runs pursuant to IRC 6601 (both the O'Sullivan and *Estate of Stein* court cases note this principle).

- (4) In summary, consider the state law where the assets were transferred, the date the assets were transferred, and the date of the IRS notice of transferee liability. These two dates must be determined if computing interest in a limited liability situation.
- (5) Seek Counsel advice as to the state interest rate (if applicable) and the effective dates of both state and federal rates. See IRM 4.10.13.3.5, *Liability of Transferee for Interest*, and IRM 5.17.14.3.3.2.1, *Fraudulent Transfers Under Federal and State Law*.

20.2.11.8.2
(05-23-2023)

Transferee's Liability Not Limited to the Value of the Assets Transferred

- (1) In some cases, the transferee's liability is not limited to the value of the assets transferred. For example, if the transferee has assumed all of the transferor's liabilities, such as in a corporate reorganization, or pursuant to a contract, then the transferee may be liable for the full amount of the tax, regardless of the value of the property transferred.
- (2) If the fair market value of the property exceeds the transferor's tax liability, then the transferee is liable for normal interest under IRC 6601 from the due date of the tax of the transferor. *Lowy v. Comr.*, 35 T.C. 393 (1960) discusses this principle. See IRM 4.10.13.3.5, *Liability of Transferee for Interest*, and Chief Counsel Directives Manual (CCDM) 35.8.4.7.2.1, *General Guidelines on Interest Issues*, for further information.
- (3) If the value of the assets transferred exceeds the transferor's total liability at the time of the transfer, the transferee's liability includes transferor interest under IRC 6601 on the transferor's underpayment and penalties. Generally, that means that the transferee will be liable for interest on the underpayment of tax beginning on the normal (unextended) due date of the transferor's return. See IRC 6601(a). The transferee will be liable for interest on penalties and additions to tax imposed against the transferor as provided by IRC 6601(e). The transferee's liability, including for IRC 6601 interest, is capped at the value of the assets transferred, except that state law interest may begin to run on the transferee's liability if and when the value of the transferred assets is absorbed by the imposition of transferor interest, until the date of the statutory notice of liability. Transferee interest under IRC 6601(b)(4) begins to accrue on the date of the statutory notice of liability and runs until the transferee liability is paid.

20.2.11.8.3
(11-13-2018)

Interest on Estate/Gift Tax Transferee Liability

- (1) State law has no bearing on transferee liabilities (limited or unlimited) resulting from a transferor's estate/gift tax liability.
- (2) IRC 6324(a) and IRC 6324(b) specifically govern the transferee's estate/gift tax liability and together with IRC 6901 provides that interest under IRC 6601 will apply from the due date of the tax of the transferor. See IRM 8.7.4, *Appeals Estate and Gift Tax Cases*, and IRM 4.25.11.6, *Transferee Liability Cases*, for more information on estate and gift cases.

20.2.11.8.4
(05-23-2023)

Making Transferee Assessments

- (1) Form 1296, *Assessment Against Transferee or Fiduciary*, is used to make Non-Master File (NMF) transferee assessments by allowing the user to specify the amount of tax and penalty to be assessed (if any), on cases involving an unpaid transferor liability assessed against a transferee(s).
- (2) Transferee liability assessments are made on Non-Master File (NMF) using the transferor's tax year.

- a. For example, if the transferor is XYZ Corporation with a fiscal year ending 09/30/YYYY, and the transferee is Joe Smith with a tax year ending 12/31/YYYY, the assessment against Joe Smith would be made on Non-Master File using a taxable period of 09/30/YYYY. Therefore, the transferee notice of liability would show the tax year for Joe Smith as 09/30/YYYY.
 - b. In the reverse situation, if the transferor is John Doe for a tax year ending 12/31/YYYY, and the transferee is ZZZ Company with a fiscal year ending 08/31/YYYY, the transferee notice of liability for ZZZ Company would show the tax year as 12/31/YYYY.
- (3) The transferee assessment is made using a “dummy” taxpayer identification number (TIN) on NMF. The transferee’s account is set up on NMF using the transferee’s TIN with a “-D” (dummy) and “Transferee” after the name to indicate transferee status. See IRM 4.11.52.5(3), *Administration Procedures*, for further information.
- (4) If transferee’s liability is **not** limited to the value of the assets received:
- a. Prepare a separate Form 1296 for each taxable period and each kind of tax.
 - b. Use the tax period of the transferor as the tax period of the transferee.
- (5) If transferee’s liability is limited to the value of the assets received:
- a. If the value of assets received by the transferee is less than the unpaid liability of the transferor and more than one year is involved, do not allocate the transferee’s liability to the various years. Instead, show the liability as one amount on the Form 1296 of the earliest unpaid liability year of the transferor without identifying it with any particular year of the transferee.
 - b. Prepare a single Form 1296. Show the total transferee liability on the right-hand side of Form 1296.
 - c. Annotate the interest starting date and the interest rate on Form 1296 or the attachment to Form 1296.
 - d. Itemize the liability of the transferor for each taxable year on an attachment, or in the remarks section of Form 1296, or on a separate Form 1296, depending upon the preference of the processing office.
- (6) An example of a completed Form 1296 and the attachment are found in IRM Exhibit 8.7.5-3, *Sample Form 1296, Assessment Against Transferee or Fiduciary*. See IRM Exhibit 8.7.5-4, *Attachment to Form 1296 - Transferee with Limited Liability – Multiple Years*.
- (7) In all cases, disregard previously assessed interest. If the distribution to the transferee was on or before the original due date of the tax:
- a. Underpayment interest is generally computed (on the tax only) FROM the **earlier** of the due date of the assessment, or the 30th day after the filing of an agreement.
 - b. Compute interest TO the date of assessment or the date the deficiency is satisfied by a payment or credit, whichever is earlier.

20.2.11.9
(11-13-2018)
Overpayment Interest on Jeopardy and Termination Adjustments

- (1) On a terminated tax year, if the tax is paid and the assessment later abated, interest is not allowed on any resulting refund for the period before the normal return due date. The payment is considered received as of the normal return due date.
- (2) On a jeopardy assessment, if a portion of the assessment is later abated, normal overpayment interest rules apply to the overpayment.

20.2.11.10
(05-23-2023)
Form 8752, Required Payment or Refund Under IRC 7519

- (1) Form 8752, *Required Payment or Refund Under Section 7519*, is filed by partnerships and S corporations who made the IRC 444 election to file their income tax return using a fiscal ending year rather than the required taxable ending year (usually the calendar year). Form 8752 is used to obtain a refund of net prior year payments or remit the required payment, which is intended to represent the value of the tax deferral by the owners of those entities through the use of a taxable year other than the required ending year. The required payment is considered a deposit. See IRM 21.7.4.4.7, *Form 8752, Required Payment or Refund Under Section 7519*.
- (2) Deficiency procedures do **not** apply to assessments based on required payments.

20.2.11.10.1
(05-23-2023)
IRC 7519 Required Payment Period for Assessment

- (1) A required payment is required by a certain date, e.g., 5/15/YR1 to 5/15/YR2. Once the subsequent election year begins, a new "required payment" is computed and due. If a prior payment was not made, IRS does not attempt to collect it. Instead, interest and a penalty of 10% under IRC 7519(f)(4) is assessed. See IRM 20.1.10.19.1, **Penalty Computation**.

20.2.11.10.2
(05-23-2023)
Interest on Underpaid Required Payments

- (1) Interest on any underpaid required payment is due from 5/15/YR1 to 5/15/YR2 plus any accrued interest on the interest until fully paid. The interest rate is established by IRC 6621(a)(2).
- (2) Underpaid required payments are subject to a 10% penalty under IRC 7519(f)(4). Interest on the penalty is due from the date of notice and demand, which is usually the assessment date or the "23C" date until paid in full.

Note: Although the original tax is no longer due as of the beginning of a new election year, the taxpayer is still liable for all interest and penalties due on the tax module. For these types of cases, interest must be manually computed and assessed or the taxpayer may be overcharged interest. Use a non-restricting TC 340 whenever possible. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340*.

Example: The election year beginning is 9/1/YR0. The required payment of \$500,000 is due on 5/15/YR1 and no payment was received. In addition to the required payment, the taxpayer is liable for a penalty of 10 % or \$50,000. Interest is due on the penalty from the date of notice and demand (usually the 23C date) until it is paid in full, unless the taxpayer fully pays the penalty within 21 calendar days of the notice and demand (10 business days if the amount on the notice and demand equals or is more than \$100,000), in which case interest will not be charged. Interest will be charged from 5/15/YR1 to 5/15/YR2 at the current rate (i.e., 4%) for \$20,368.41. Interest on the interest is charged from 5/15/YR2 until

paid in full. The original required payment of \$500,000 that was due on 5/15/YR1 is no longer due after 5/15/YR2. However, the taxpayer is still liable for the penalty and interest.

20.2.11.10.3
(05-23-2023)
Form 8752 Interest on Refunds

- (1) A request to obtain a refund of an overpaid required payment under IRC 7519 is treated as a return of a deposit (IRC 6603 is not applicable). IRC 7519 requires a running deposit balance that is adjusted each year. An entity's required payment may increase, decrease, or stay the same from any one year to the next, depending on the entity's base year income and the applicable tax rates.
- (2) No interest will be paid with any refund of a required payment. See IRC 7519(f)(3).

Example: A taxpayer's required payment due on 5/15/YR1 is \$8,000 and is timely paid with the filing of the first Form 8752 election. The \$8,000 is rolled forward as Transaction Code (TC) 766 to the next year, 5/15/YR2. However, the taxpayer's required payment due on 5/15/YR2 is only \$5,000. The \$5,000 will be rolled forward as a TC 766 to the next year, 5/15/YR3, and the overpaid required payment of \$3,000 will be returned to the taxpayer without overpayment interest.

- (3) The refund of excess required payments shown on Form 8752 is considered a return of a deposit. Because the required payments are considered deposits, the IRS doesn't have the authority to apply any excess amount of a required payment to any other balance due account belonging to the taxpayer (i.e., IRS doesn't have a right of offset). Excess required payments that are the result of tax adjustments can be held and applied at the request of the taxpayer to another Form 8752 module to pay penalty and interest. The excess required payment must be manually moved.

20.2.11.11
(05-23-2023)
Offers in Compromise (OIC)

- (1) An offer in compromise (OIC) is an agreement between the taxpayer and the government that settles a tax liability (tax, penalties, and interest) for payment of less than the full amount owed.
- (2) An OIC is identified by the following module conditions:
 - a. TC 480 (pending) or TC 780 (accepted) in the module
 - b. -Y freeze on the module
 - c. Status Code 71

Note: While both TC 480 and TC 780 freeze the module from offsetting or refunding and suspends the assessment and collection statute of limitations, only the TC 780 prevents computer generation of interest and penalties.

- (3) Per Treas. Reg. 301.7122-1, an accepted OIC conclusively settles the liability. However, the taxpayer remains liable for the full amount of the tax liability plus all accrued penalties and interest until the taxpayer has met all of the terms and conditions of the offer. Once accepted by IRS, interest and penalties are suspended on that date (TC 780 posting date), provided the taxpayer follows the agreement made with IRS, such as paying the agreed amount and remaining in compliance.

- (4) TC 780 automatically prevents the module from posting any further systemic interest and penalties. So, if the OIC agreement includes accrued penalties and interest, then the accruals are computed to the TC 780 date of acceptance and input with TC 340 and TC 270. Command Code (CC) INTST can be used if the account is not restricted; otherwise, use either ACT/DMI or CC COMPA.
- (5) Any TC 340 and TC 270 required to be input in order to post the accruals must forward the interest computation (including CC INTST) to Files or input into the Account Management Services (AMS). This is so that if someone needs to verify how interest was computed, there is documentation.
- (6) Instructions for processing and monitoring accepted OIC cases are found in IRM 5.19.7.2, *Monitoring Offers in Compromise (MOIC)*

20.2.11.12
(11-13-2018)

Look-Back Interest

- (1) IRC 460(a) requires that the taxable income from any long-term contract be determined under the percentage-of-completion method (PCM) as modified in IRC 460(b). Under IRC 460(b), a taxpayer using PCM to account for income from long-term contracts is required to pay or is entitled to receive interest on the amount of tax liability deferred or accelerated as a result of overestimating or underestimating total contract price or contract costs. This interest is referred to as “look-back interest.”
- (2) Under IRC 460(b)(2) and Treas. Reg. 1.460-6(c), a taxpayer determines its look-back interest for a taxable year in three steps:
 - 1. The taxpayer reapplies the PCM to all long-term contracts completed or adjusted in the current taxable year (the “filing year”) using actual total contract price and actual total contract costs, and determines the taxable income that would have been reported for each prior taxable year “redetermination year.”
 - 2. The taxpayer compares the redetermined tax liability for each redetermination year with the reported tax liability for that year and determines the hypothetical underpayment or overpayment of tax for each redetermination year.
 - 3. The taxpayer applies the adjusted overpayment rate (i.e., overpayment rate in effect under IRC 6621 for the calendar quarter in which interest begins to accrue), compounded daily, to the hypothetical underpayment or overpayment of tax for each redetermination year.
- (3) Under Treas. Reg. 1.460-6(c)(4)(i), the interest accrual period begins on the return due date (not including extensions) for the redetermination year and ends on the earlier of the following:
 - a. The return due date (not including extensions) for the filing year, or
 - b. The date when the taxpayer both files its return for the filing year and has paid the tax for that year. A net amount of interest payable by (or to) the taxpayer is computed for each filing year.
- (4) Per IRC 6621(d), add-on interest is eligible for interest netting provided the taxpayer previously paid the base look-back interest amount. For general netting procedures, see IRM 20.2.14, *Netting of Overpayment and Underpayment Interest*.

20.2.11.12.1
(04-08-2013)
**Reporting Look-Back
Interest**

- (1) Taxpayers required to account for long-term contracts entered into after February 28, 1986, (under either the percentage of completion-capitalized cost or the percentage-of-completion methods), must use Form 8697, *Interest Computation Under the Look-Back Method for Completed Long-Term Contracts*, to compute and report the look-back interest due or to be refunded, as determined in IRC 460(b)(2). See Treas. Reg. 1.460-6(f)(1).

20.2.11.12.2
(11-13-2018)
**Look-Back Interest
Owed to the
Government**

- (1) If the **base** look-back interest amount is owed to the government, the taxpayer must file Form 8697 with the related return on or before the due date (including extensions) of that return. The amount of **base** look-back interest owed to the government is treated as an increase in income tax for the filing year. Full paid and balance due original Forms 8697 are filed as an attachment to the related income tax return.
- (2) If the **base** look-back interest amount owed to the government is not paid with Form 8697, compute underpayment interest from the Form 8697 received date to either the payment date or notice and demand date (23C date), whichever is earlier.
- (3) If the Form 8697 is attached with the timely filed return, then underpayment interest starts on the base look-back interest amount owed to the government from the received date of the Form 8697, which most of the time would be the return due date. However, when the form is timely received with an extended return, then a TC 298 for the look-back interest can be used with the INT-COMP-DT equal to the received date of the Form 8697. This way underpayment interest doesn't need to be restricted.
- (4) If the result of an examination adjustment includes a base look-back interest amount owed to the government, underpayment interest is computed from the return due date of the related return (determined without regard to any extension of time for filing that return.)
- (5) Normal underpayment interest rates apply to the base look-back interest owed to the government, including, when applicable, the large corporate underpayment (LCU) rate.
- (6) Look-back interest owed to the government is assessed and collected as tax. If there is an adjustment (increase or decrease) made to look-back interest owed to the government, it is just part of the tax adjustment and interest on that tax adjustment is computed accordingly. Look-back interest owed to the government is reported on the income tax return as part of the tax owed (TC 150). Look-back interest owed to the government can later be adjusted as part of the overall adjustment to tax. However, look-back interest owed to the taxpayer has nothing to do with an income tax adjustment. Look-back interest owed to the government is subject to the limitations on assessment and collection provided in IRC 6501 and IRC 6502.

Example: Taxpayer owes look-back interest to the government which is reported as part of the income tax liability (TC 150). If an examination later determines the taxpayer owes more look-back interest, it is assessed with TC 300 (or TC 290) and the interest is computed accordingly on that tax amount. If it's determined the taxpayer owed less look-back interest to the government, then this adjustment decreases the tax (TC 301 or TC 291) and the interest computed on that decreased tax amount.

20.2.11.12.3
(05-23-2023)

**Look-Back Interest
Owed to the Taxpayer**

- (7) Look-back interest owed to the government is part of the tax adjustment and interest on that amount is subject to netting. This is the case when look-back owed to the government is initially reported as part of the TC 150 or if it's adjusted as part of TC 29X or TC 30X.
- (1) Taxpayers that are owed look-back interest must file Form 8697 separately with the Philadelphia (IMF) or Cincinnati (BMF) campuses on or before their income tax return due dates for the filing year (including extensions). See the Form 8697 instructions. Effective January 1, 2005, Form 8697 is processed on Master File. Prior to that date, the form was processed on NMF. Research both IDRS and NMF when working these cases.
- (2) Look-back interest owed to the taxpayer is a standalone interest adjustment that does not relate to any overpayment of tax. Look-back interest owed to the taxpayer is not attributable to any amount previously paid by or collected from a taxpayer. Look-back interest owed to the taxpayer is a general, non-tax claim against the federal government.

Example: Taxpayer files Form 8697 for look-back interest that is owed to the taxpayer. This **base** look-back amount is allowed interest that we refer to as **add-on** interest. If there is an examination and it's determined that the taxpayer owes look-back interest (overstated the look-back interest in the filed Form 8697, then that overstated interest is assessed as tax with interest computed accordingly. If the examination determines look-back interest is **owed to the taxpayer** (Form 8697 was previously claimed), then that look-back interest is a separate adjustment (non-tax claim against the government) on which **add-on** interest is allowed.

- (3) Look-back interest owed to the taxpayer accrues add-on interest. The term **add-on** interest is used to describe the amount of interest allowable on the **base** look-back interest amount that is owed TO the taxpayer. Add-on interest is computed using the normal overpayment interest rules, including, when applicable, the reduced rate on a corporate overpayment exceeding \$10,000 (i.e., GATT). The base look-back interest amount is **not** taken into account when determining if the GATT threshold is met.

Example: A corporate taxpayer files Form 8697 for year X claiming look-back interest of \$15,000. Upon review and approval of the taxpayer's request, this base look-back interest amount is posted to the tax module as TC 766 with credit reference number (CRN) 251. Since there are no prior refunds or offsets on the tax module that would be considered in determining the GATT threshold, interest (i.e., add-on interest) on the first \$10,000 of the base look-back amount is computed at the normal corporate overpayment rate. Interest on the remaining \$5,000 is computed at the GATT rate.

Example: The facts are the same as above, except a prior refund of \$20,000 was issued from the tax module. Since the GATT threshold was met with the issuance of the prior refund, interest (i.e., add-on interest) on the entire base amount of \$15,000 is computed at the GATT rate.

- (4) The rules comparable to the overpayment interest rules set forth in IRC 6611 apply to add-on interest. Therefore,

- a. Add-on interest generally begins to accrue FROM the earlier of the normal (unextended) due date of the federal income tax return for the filing year and the date the return is filed with any tax paid TO the refund schedule date less the applicable back-off period of IRC 6611(b)(2) for computer-generated/systemic refunds. See IRM 20.2.4.7.1.1, *Systemic Refund Dates for IMF and BMF*.
 - b. If a taxpayer files a claim for look-back interest late, the accrual period will not begin prior to the date when the claim is actually filed.
 - c. If IRS pays look-back interest within 45 days after the claim is received and processible, no add-on interest will be paid from the claim received date until the date the refund is made. Interest is, however, allowed from the return due date to the received date of the claim. For more information on the 45-day rule on claims, see IRM 20.2.4.7.5.3 , *45-day Rule and Amended Returns and Claims, OBRA 1993*.
 - d. Add-on interest will **not** be allowed for any period prior to the time the taxpayer has filed a processible Form 8697.
- (5) Look-back interest owed to the taxpayer and add-on interest allowed on the base look-back amount **cannot** be netted. Therefore, the base look-back amount (owed to the taxpayer) and add-on interest should be removed to a sub-module, if ACT/DMI is used for the interest computation.

Note: Look-back interest owed to the taxpayer (plus any add-on interest) can be offset to outstanding liabilities.

- (6) A taxpayer's claim for look-back interest previously paid is a claim for credit or refund of an overpayment of tax subject to the limitations provided in IRC 6511.
- (7) The six-year periods of limitations under Title 28 USC section 2401 and Title 28 USC section 2501 of the United States Code begin to run on the day when the taxpayer's claim for look-back interest accrues (i.e., the earlier of the due date of the taxpayer's return for the filing year, or the date the return is filed with tax paid).
- (8) IRS may offset look-back interest owed to a taxpayer against the taxpayer's tax liability under common law right of offset principles. However, offsets against other tax year(s) or tax type(s) of the same taxpayer must be made within the applicable statute of limitations of the liability. Offsets against a liability for the same tax year, the same tax type, and the same taxpayer is generally not barred by the statute of limitations.

20.2.11.13
(05-23-2023)
**Restitution-Based
Assessments (RBA)**

- (1) In a criminal tax case, a court can require a defendant to pay the losses incurred by the government. The amount of the restitution ordered by the court is determined from evidence submitted at trial, or from information contained in the plea agreement, and is presented to the court at sentencing.
- (2) On August 16, 2010, Public Law No. 111-237 amended IRC 6201 to provide that IRS can assess and collect the amount of restitution ordered in a tax case for failure to pay taxes in the same way as if it were a tax. The law applies to restitution orders after August 16, 2010. See IRM 25.26.1, *Criminal Restitution and Restitution-Based Assessments*.
- (3) RBA assessments are made directly to the MFT 31 module for the culpable individual taxpayer. The culpable taxpayer is the person the court found guilty

and can be either spouse on a joint return. Transaction Code (TC) 971 Action Code (AC) 102, created after March 23, 2011, indicates the cross reference module with the restitution assessment.

- (4) For defendants other than individuals, such as a corporation, restitution is generally assessed on the MFT where the tax is assessed against that defendant. These are rare occurrences. See IRM 4.8.6, *Criminal Restitution and Restitution-Based Assessments*, for more information.
- (5) A restitution assessment can have a related duplicate civil tax assessment. It can also have a related duplicate restitution-based assessment when there are multiple defendants that are jointly and severally liable for payment of the same restitution. The related duplicate assessment can be an individual, corporation, partnership, etc. TC 971 AC 18X will cross-reference to the related return and show the amount of the duplicate assessment, if there is one. For a list of the action codes, see IRM 5.19.23.2.2, *Initial Case Creation*.

Example: Tax of \$500 with a fraud penalty of \$375 is assessed on MFT 02. The RBA of \$500 in tax is on MFT 31. The \$500 is a duplicate assessment and can only be collected once.

- (6) Reason codes 141 through 149 used with the RBA assessment identify the case type in which the underlying tax liability was based, e.g., IMF, BMF, or Return Preparer. TC 971 action codes identify the duplicate or non-duplicate assessment. See IRM 5.19.23.2, *Transcripts*.

20.2.11.13.1
(11-13-2018)
Interest Computation on RBAs

- (1) The IRS is authorized to assess only court ordered interest (and penalties) on MFT 31. Use a TC 340 to assess and restrict the interest amount specified on the court order only without any interest accrual.
- (2) For other unusual interest rules, such as TETR credit (CRN 253) on 2006 returns, see IRM 20.2.10, *Interest*.

20.2.11.13.2
(05-23-2023)
Payments to RBAs

- (1) Payments for RBA assessments are made to the federal court and then forwarded to Revenue Accounting Control System (RACS) in Kansas City. The payments are applied or transferred to the MFT 31 accounts after the modules are established. These payments can be identified with Designated Payment Code (DPC) 26 or, if made prior to January 2012, DPC 08. DPC 26 can only be input on the MFT 31 module. A TC 570 is input to hold the payments from refunding until the RBA is assessed.

Note: While duplicate RBA assessments can be made to various modules, the taxpayer is liable for paying only once.

- (2) Per IRM 3.8.45.3, *Deposit Procedures (General)*, a payment effective date is the date IRS receives the payment. RACS in Kansas City uses the earliest received date when posting the payments to the modules. If there is a posting date error, then contact RACS in Kansas City for it to be corrected. Delays by the court in sending the payments into IRS is **not** a managerial or a ministerial act per IRC 6404(e)(1).

- (3) Payments made to a duplicate assessed IMF or BMF module will be cross-referenced by Compliance Services Collection Operation (CSCO) with credit reference number (CRN) 337. Such payments will post on the transcript as TC 766 showing the payment date.

Caution: When using the import feature of ACT/DMI, make sure the correct effective date is shown. If TC 766 CRN 337 transactions show the return due date, then manually change the date to the 23C date.

Example: Return example

Tax modules (MFT 31 and MFT 30)

MFT 31 (Restitution Module)	MFT 30 (Related Civil Module)
TC 290 08-03-XXXX \$4,500.00	TC 300 06-13-XXXX \$4,500.00
TC 340 08-03-XXXX \$0.00	TC 336 06-13-XXXX \$712.48
TC 971 AC 185 MFT 30 MMA \$4,500.00	TC 971 AC 184 MFT 31 MMA \$4,500.00
TC 670 DPC 26 07-19-XXXX \$4,500.00	TC 766 CRN 337 07-19-XXXX \$4,500.00

- (4) When there are multiple assessments, undesignated payments should be applied in effective date order. An undesignated payment made to a module with a tax due date of 1/31 will be applied to that tax before it is applied to a tax with a 4/15 due date. Fraud and failure to file penalties are due on the later of the return due date or extended due date of the related tax period. Payments and credits should be applied first to the earliest due date of the related tax period. Generally, payments will be applied to the fraud and failure to file penalties before they are applied to a penalty with a later notice and demand effective date (usually the 23C date), such as the failure to pay penalty. See IRM 20.2.5.2.1, *Application of Payments*, and IRM 5.19.23, *Restitution-Based Assessments Processing*.

20.2.11.14
(05-23-2023)
**Affordable Care Act
(ACA)**

- (1) Beginning in 2014, the Affordable Care Act requires individuals to have qualifying health coverage (called minimum essential coverage), have a coverage exemption (meet one of the exceptions), or make a payment called the shared responsibility payment (SRP). The SRP will be assessed on MFT 35 (File Source 1, Tax Class 2). MFT 35 will post one cycle after the MFT 30 (Form 1040) posts. Interest on any unpaid SRPs will start on the notice and demand date (usually the 23C date). If the taxpayer fully pays the SRP within 21 calendar days, there won't be any interest charged. See IRM 20.2.7.10, *IRC 6601(e)(3), Notice and Demand Suspension*, regarding grace period for payments. See IRM 3.11.6.9.2.6, *Affordable Care Act (ACA) Overview*, for a synopsis of ACA.
- a. Payments or credits from Form 1040 are offset to MFT 35 with TC 896 to pay the SRP assessments. Even though the TC 896 date on MFT 30 is the 23C date, its effective date is the date the payment or credit became available (the later of the return due date or payment date). The TC 796

on MFT 35 shows the correct date. If importing on ACT/DMI, use the payment or credit effective date and not the TC 896 date.

- (2) Split spousal assessments for the shared responsibility payment (SRP) are input on MFT 65. See IRM 21.6.8, *Split Spousal Assessments (MFT 31 / MFT 65)*.
- (3) Large employers (generally, employers with at least 50 full-time employees, including full-time equivalents, in the prior calendar year) may be assessed an employer shared responsibility payment (ESRP) under IRC 4980H if they do not offer health insurance to full-time employees and at least one full-time employee obtains a premium tax credit under IRC 36B. IRC 4980H is effective January 1, 2015. However, ESRP will not be assessed for calendar year 2015 on employers with less than 100 full-time employees who meet other requirements for transition relief. ESRP will be assessed on MFT 43. Interest on any unpaid ESRP will start on the notice and demand date (usually the 23C date) instructing the employer on how to make the payment. Employers will not be required to include the employer shared responsibility payment on any tax return they file. If the taxpayer fully pays the ESRP within 21 calendar days, there won't be any interest charged. See IRM 20.2.7.10, *IRC 6601(e)(3), Notice and Demand Suspension*, regarding grace period for payments.
- (4) ACA 9008 imposes an annual fee on sales of certain branded prescription drugs and ACA 9010 imposes an annual fee on certain health insurance providers. Each fee is based on market share. Both ACA 9008 and 9010 fees must be paid by September 30th and are subject to the large corporate rate, if
 1. The taxpayer is a C corporation,
 2. The taxpayer has a threshold underpayment of the fee that is more than \$100,000 for the taxable period,
 3. The notice and demand is more than \$100,000 (not including any interest, penalties, and additions to tax), and
 4. The taxpayer does not fully pay the amount shown as due within 30 days of the notice and demand date.

Note: See IRM 20.2.5.8, *Large Corporate Underpayment (LCU)*, for more information.

- (5) As a result of the Supreme Court ruling in *California et al. v. Texas et al*, the IRS will not allow any protective claims for refund held in suspense. See IRM 21.5.3.4.7.3.2, *Affordable Care Act (ACA) protective claims filed for California et al. v. Texas et al.*

20.2.11.14.1
(01-09-2017)

**Grants Received Under
the Affordable Care Act**

- (1) Qualifying Therapeutic Discovery Program (QTDP) grants received under the Affordable Care Act (ACA) are not includible in gross income. See IRC 48D(f)(3). Likewise, any returns amended due to receiving these grants are **not** entitled to any special interest-free consideration for underpayments determined to be due.
- (2) Neither section 9023 of the ACA, IRC 48D, nor Notice 2010-45 allow for a restriction or abatement of the underpayment interest. To the extent the reduced expense deduction creates an underpayment in 2009 or 2010, or a deficiency if an amended return is not filed, underpayment interest will be charged under

IRC 6601. Interest is charged from when the tax was due (generally, the due date for filing the original 2009 or 2010 return, without regard to extensions) to the date paid.

- (3) Excess grant money received must be repaid. This can be done by either filing an amended Form 8942, *Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program*, within 15 days after the close of the applicant's tax year or reporting it as a recapture by filing Form 4255, *Recapture of Investment Credit*, when the following year return is filed. Interest is charged from when the tax was due until the date it is paid.

20.2.11.15
(05-23-2023)
**Assessments Against
Treasury Department
Embezzlers (NMF)**

- (1) IRC 7804(c) provides for assessments to be made against officers and employees of the Treasury Department who either embezzle or fail to properly handle and account for money received in connection with internal revenue laws. These assessments are handled under NMF procedures. See IRM 3.17.46.6.1, *Assessments Under IRC 7804(c)*, for procedures.
 - a. A notice and demand must first be issued for the amount owed before the assessment can be made.
 - b. If payment is not made within 30 days from issuance of notice and demand, an assessment can be processed.
- (2) Interest is charged at the underpayment rate from the date of embezzlement to the date of full payment.
 - The first notice includes interest computed from the date of embezzlement to the notice and demand date (23C date).
 - If the date of embezzlement is unknown, interest accrues from the date of the first notice.

20.2.11.16
(11-13-2018)
**Revenue Procedure
(Rev. Proc.) 2002-18,
Time-Value-of-Money
Resolution with
Subsequent Change in
Accounting Method**

- (1) IRS may resolve an accounting method issue on a time-value-of-money (TVM) basis under Rev. Proc. 2002-18, 6.02(4). If IRS changes the taxpayer's method of accounting (from cash to accrual or vice versa) and imposes an IRC 481(a) adjustment, the interest that is assessed for the year of change will be treated as paid to the extent necessary to prevent duplicate payment of the TVM benefit relating to the IRC 481(a) adjustment. Separate computations need to be made for each accounting method. Overpaid tax and interest are treated as a credit only for the purpose of computing underpayment interest. Often a NMF account has to be set up, so that the taxpayer doesn't overpay. A tax case involving a change in accounting methods may result in tax adjustments for all affected periods as well as carry-back adjustments, all of which are subject to applicable statutory interest law provisions. See Rev. Proc. 2002-18, 10.04(3) for an example of the interest computation.

20.2.11.17
(11-13-2018)
**IRC 409A, Inclusion in
Gross Income of
Deferred Compensation
under Nonqualified
Deferred Compensation
Plans.**

- (1) IRC 409A(a)(1)(B)(i) imposes additional income taxes that consist of two parts (included on Form 1040 *Other Taxes* as "NQDC" or "409A" amount):
 - a. Part one consists of 20% of the deferred compensation required to be included as income, plus
 - b. Part two, a premium interest tax consisting of an interest calculation based on the hypothetical underpayment that would have occurred had the deferred compensation been included in gross income for the tax year in which it was first deferred or, if later, the first tax year in which the

deferred compensation is not subject to a substantial risk of forfeiture. Interest is computed at the underpayment rate of the year the compensation was originally deferred, plus 1%. ACT/DMI can be modified to add 1% to the underpayment interest rate. See IRM 4.23.5.16.1.1, *Section 409A*.

20.2.11.18
(05-23-2023)

IRC 6167, Extension of Time for Payment of Tax Attributable to Recovery of Foreign Expropriation Losses

- (1) IRC 6167 allows for an extension of time to pay tax attributable to recovery of foreign expropriation losses. The payment of tax may be made in 10 equal installments.
- (2) This extension applies to corporations with an IRC 1351 recovery loss of a foreign expropriation.
- (3) If the time for payment of tax has been extended under this section, interest on the prorated tax is then paid yearly with the installment. If interest is not paid timely with the installment, then it becomes due when a notice is sent to the taxpayer.
- (4) Starting with returns filed in 2016, installments are currently due on the 15th of the fourth month after the ending tax year. Prior to 2016, installments were due on the 15th of the third month.

20.2.11.19
(05-23-2023)

Foreign Investment in Real Property Tax Act (FIRPTA)

- (1) The Deficit Reduction Act of 1984, P. L. 98-369, enacted IRC 1445, requires the deduction and withholding of tax by the transferee on amounts realized on dispositions of certain U.S. real property interests by a foreign seller.
- (2) The withholding agent (transferee) files Form 8288, *U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*, to report the withheld tax.
- (3) The return due date (RDD) is 20 days from the date of transfer or withholding certificate letter date, whichever is later. Since the computer is unable to calculate penalties and interest, the (TC 160, TC 270, TC 340) must be manually computed and assessed. Use a non-restricting TC 340 whenever possible. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340*. Interest is generally computed from the normal (unextended) return due date or 23C date (posting date when notice is sent out), whichever is earlier. If the return is timely filed and paid, then input TC 160, TC 270, and TC 340 for zero to prevent an erroneous assessment of penalties and interest.
- (4) For additional information, see IRM 21.8.2.11, *Form 8288, and Form 8288-A*, and IRM 3.22.261.1.1, *Background* and IRM 21.8.1.22.1, *Claims for FIRPTA Credits*.

20.2.11.20
(05-23-2023)

Employee Benefit Plans

- (1) All pension benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) must file an annual return/report. Employee benefit plans have unique return due dates and often require interest to be manually computed and assessed. Use a non-restricting TC 340 whenever possible. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340* and IRM 21.5.11, *Employee Plan Accounts*, for more information.

20.2.11.20.1
(05-23-2023)
Form 5330, MFT 76

- (1) Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, is used for reporting tax per IRC 4965, IRC 4971, IRC 4972, IRC 4973(a)(3), IRC 4975, IRC 4976, IRC 4977, IRC 4978, IRC 4979, IRC 4979A, IRC 4980, and IRC 4980F. Assessments are made on MFT 76.
- (2) The return due date varies depending on the code section. The various code sections will have different abstract numbers that will post with the tax.
- (3) If there is only one abstract, then a TC 290 with the return due date input as the Interest Computation Date (INT-COMP-DT) will be sufficient.
- (4) Multiple abstract assessments with different return due dates will require either interest to be manually computed or the assessments to be cycled with a post delay code. The due date for each abstract is entered in the INT-COMP-DT field (date interest starts).

Example: Abstract 159 – RDD = 07/31/XX INT-COMP-DT = 07/31/XX, Abstract 205 – RDD = 03/31/XX INT-COMP-DT = 03/31/XX.

- (5) To ensure only one notice is sent to the taxpayer, Hold Code 2 with a post delay code (PDC) is entered for all but the last assessment. The last assessment will use Hold Code 0.
- (6) For accounts with a TC 973 and a -I freeze, interest is restricted from systemically computing and must be manually computed and input with a TC 340. The debit interest to date will be the last 23C date for all the assessments made. If the account doesn't need to remain restricted, use a non-restricting TC 340 whenever possible. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340*.
- (7) Interest must be manually computed if an IRC 6601(c) waiver or agreement to a proposed deficiency is applicable.
- (8) See IRM 21.5.11.14, *General Form 5330 Processing*, for more information.

20.2.11.20.2
(05-23-2023)
Form 5500, MFT 74

- (1) Form 5500, *Annual Return/Report of Employee Benefit Plan*, or Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, is used for reporting tax per IRC 6058A.
- (2) The return is due on the last day of the seventh month after the end of the plan year. Unlike MFT 76 interest always starts on this date, so an interest computation date is not required when making adjustments to MFT 74.
- (3) TC 973 doesn't prohibit systemic interest from posting. If the module has been erroneously restricted, either a non-restrictive TC 340 or a TC 342 with PC 5 can be input to allow systemic interest to post. See IRM 20.2.5.6.3, *Non-Restricting Transaction Code (TC) 340* and IRM 20.2.5.2.2, *Assessment of Interest Accruals*.

20.2.11.21
(05-23-2023)
**Interest on Offshore
Voluntary Disclosure
Program/Initiative Cases**

- (1) Interest applies in all Offshore Voluntary Disclosure Program/Initiative (OVDP/OVDI) cases as provided for in Form 906, *Specific Matters Closing Agreements*. The template language for OVDP/OVDI Form 906 includes the following language concerning interest: "Interest is due as provided by law on taxpayer's underpayments of tax and penalties as determined under this agreement for tax years [period covered by the voluntary disclosure] and the

suspension of interest provisions of IRC 6404(g) of the Internal Revenue Code do not apply.” For interest abatement, see IRM 20.2.7.14, *Request of Interest Abatement*.

- (2) The following are OVDP/OVDI case identifiers:
- Project Codes 0996, 1008, 1036, 1095, 1123 or 1153 shown on CC AMDISA if an examination is open.
 - The executed Form 906 will include terms such as “voluntary disclosure” or “offshore financial arrangements.”
- (3) See IRM 21.2.4.3.29, *Transcripts with Offshore Voluntary Disclosure Program (OVDP) payments*.

20.2.11.22
(11-13-2018)
**Individual Retirement
Account, MFT 29**

- (1) The additional tax on an Individual Retirement Account (IRA) is reported on the Form 1040 and assessed on the MFT 30 tax module. However, if a Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, is required to be filed with a Form 1040 and one is received, a TC 971 action code (AC) 144 is input on to the MFT 30 module that will generate/create an MFT 29 tax module. The additional IRA tax is assessed on the MFT 29 module instead of the MFT 30 module. Interest on the IRA tax assessed on MFT 29 starts from the return due date of the Form 1040. See IRM 21.6.5.4.11.4, *Processing Form 5329 With TC 971 AC 144*.