

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

CC-2010-006

March 26, 2010

New Procedures for Handling  
Overpayment or Underpayment  
Interest and the Revocation of Chief  
Counsel Notice 2004-035 Pursuant  
to the Fifth Circuit's Ruling in Estate  
of Algerine Smith

Upon incorporation

**Subject:**

**Cancel Date:** into the CCDM

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## PURPOSE:

This Notice revokes Chief Counsel Notice 2004-035, "Inclusion of Interest in Overpayment Decision Documents," and announces new procedures regarding the handling of overpayment or underpayment interest in decision documents, stipulations and Rule 155 computations.

## DISCUSSION:

In response to the Tax Court's holding in Estate of Smith v. Commissioner, 123 T.C. 15 (July 13, 2004), that the amount reflected as an overpayment on the decision document contemplates underpayment interest, this Office issued CC-Notice 2004-035 directing Counsel attorneys to take into account both assessed and unassessed underpayment interest when computing the amount of an overpayment to set forth in decision documents, stipulations and Rule 155 Computations. The Fifth Circuit, in Estate of Smith v. Commissioner, 429 F.3d 533 (5<sup>th</sup> Cir. 2005), overruled the Tax Court's holding regarding the inclusion of underpayment interest in computing the amount of an overpayment. Accordingly, it is now inappropriate to include assessed or unassessed interest computations in decision documents, stipulations and Rule 155 computations. Any issues related to overpayment or underpayment interest can be raised in a subsequent proceeding; for example, taxpayers may petition for a redetermination of interest under Tax Court Rules 260 and 261 and section 7481(c).

Decision documents, stipulations and Rule 155 computations reflecting an overpayment before underpayment interest has been calculated should not specify assessed or unassessed underpayment interest or attempt to calculate every permutation of interest in the future. Instead, the documents should use the language "interest will be assessed and will accrue as provided by law."

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