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**From:**

**Sent:** Tuesday, August 19, 2008 3:48:25 PM

**To:**

**Cc:**

**Subject:** FW: Transferee Interest

FYI –

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**From:**

**Sent:** Friday, April 25, 2008 12:30 PM

**To:**

**Subject:** Transferee Interest

At long last I have an answer for you.

I had some trouble understanding your question along the way, so let me state the situation and your question here. When a transferor's tax liability exceeds the value of assets transferred, the transferee's liability is limited to the value of the assets transferred. However, if the state law under which a transferee is held liable for the tax debt of the transferor also provides for the payment of interest on the debt, the Service will be entitled to interest at the rate, and from the date, specified under state law. If the Service seeks to recover the transferee liability through procedures under section 6901, the case law recognizes that section 6601 will impose interest on the transferee at the last date prescribed for the transferee to pay the tax. Your question is: What is that date that interest will begin to accrue against the transferee under section 6601 in the foregoing situation?

Although Estate of Stein v. Commissioner, 37 T.C. 945, 959-961 (1962), supp. opin., 40 T.C. 275 (1963), the leading case in on the subject of interest owed by transferees, contains a statement that "upon sending the notice of deficiency to the transferee, [the Service] is entitled to interest thereon just as he is entitled on any deficiency," and cites section 6601 as authority, section 6601 does not actually impose interest on the transferee until the Service makes notice and demand for payment. Section 6601 provides that, if tax imposed by the Code is not paid on or before the last date prescribed for payment, interest runs on the tax until the date it is paid. While section 6901 states that transferee liability shall "be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred," it does not prescribe a last date

for a transferee to pay tax. (Fn. It's true that the Code may prescribe a due date for the tax on which the transferee liability is based, but that date cannot be the date that interest runs against the transferee directly. Otherwise, there could be no rule that state law governs the amount of interest owed by the transferee beginning on the date of transfer when the transfer is less than the total tax liability (including interest liability) of the transferor until the date that section 6601 imposes interest on the transferee directly. And the cases are clear that state law does govern interest in those situations. Estate of Stein v. Commissioner, 37 T.C. 945, 959-961 (1962); Lowy v. Commissioner, 35 T.C. 393, 397 (1960))

Section 6601(b)(5) states that when "the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary)." Arguably, a transferee's liability for the tax arises upon the date of the transfer, but when the amount of the transfer is less than the transferor's liability, the case law is clear that the transferee's liability arises under state law and interest is controlled by state law. Once the tax is assessed pursuant to the provisions of the Internal Revenue Code, however, it is subject to payment and collection under the Code, including the Code's provisions for interest, and section 6601 imposes liability for interest on the transferee as of the date of notice and demand for payment of the assessed transferee liability.

In fact, this rule is consistent with the opinion on which Estate of Stein relies. The Estate of Stein opinion characterizes Patterson v. Sims, 281 F.2d 577 (5th Cir. 1960), as holding that State law determines the existence and extent of the interest liability of transferee from the time of transfer to the date notice of deficiency is sent to the transferee. Estate of Stein, 37 T.C. at 959-960. The opinion in Patterson actually says, however, that state law is "not a determinant of transferee liability subsequent to the notice of the transferee assessment..." Patterson, 281 F.2d at 580. Thus, the actual rule in Patterson that Estate of Stein cited approvingly, was that interest under the Code arises upon notice and demand for payment of an assessed transferee liability. Moreover, the subsequent proceedings concerning the decision document in Estate of Stein, the Tax Court appears to have applied the rule actually stated in Patterson. The decision documents in Estate of Stein set forth the amount of interest at the rate of 6 percent, as determined by the Tax Court under New York state law, running from the dates of various transfers. Estate of Stein, 40 T.C. at 280. The decision documents did not identify any change in the interest rate as of the date of the notice of deficiency sent to the transferees.

Please let me know if this email meets your needs. If you have follow-up questions or would like a formal memo, please let me know.