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From:

Sent: Thursday, October 16, 2008 10:38:31 AM

To:

Cc:

Subject: Section 6601(e)(2)(B)

You have asked for our interpretation of section 6601(e)(2)(B) as to when interest should begin to run on an accuracy-related penalty for returns filed under the following circumstances: A valid six-month extension of time to file is obtained pursuant to section 6081, extending the Form 1040 due date until October 15th, Year 0. Because October 15th falls on a Saturday in Year 0, a return is timely filed on Monday October 17th, pursuant to section 7503. An accuracy-related penalty is assessed on the substance of that return and the question is whether interest on the penalty would begin to run from October 15th or October 17th, Year 0. Section 6601(e)(2)(B)(i) states, in relevant part, that interest on certain additions to tax "begins on the date on which the return...is required to be filed (including any extensions)." We believe that interest should run from October 17th, the day the return was filed.

We have two reasons for this conclusion:

1) The return would be considered filed on October 17, Year 0. The ASERD would run from that date and as situation 3 of RR 2003-41 points out, the taxpayer could file a claim for refund at any time on or before October 17, Year 3. Thus, it would seem incongruous to have interest running on a penalty from a date two days prior to the date the return is considered filed.

2) Section 7503 as an "extension". As situation 3 of RR 2003-41 provides, section 7503 "extended" the due date to the following Monday when the taxpayer actually filed on that Monday. (We do not believe that section 7503 changes the due date. What situation 3 shows is a situation where the taxpayer actually takes advantage of the additional time provided by section 7503. The analysis of situation 3 does not state that section 7503 changes the due date for a return. Instead, it provides that section 7503 "extended the due date to Monday, April 17, 1995" as the taxpayer filed the return on that date. In fact the ruling states that the taxes were "deemed paid pursuant to section 6513(b)(1) on April 15, 1995. Thus, nothing about the due date changes.) Thus, when the refund claim was filed three years to the date from that Monday, the three-year plus any extensions lookback period of section 6511(b)(2)(A) picked up the two day "extension" provided by section 7503 so that the refund could include tax considered paid as of the return due date (which remained April 15th). Section 6601(e)(2)(B)(i) includes a parenthetical that includes any extensions into the determination of when the return is "required to be filed." Thus, a taxpayer that takes advantage of the additional time provided by section 7503 has an "extension" and thus the date a return is "required to be filed" for purposes of section 6601(e)(2)(B) would be the next day following the Saturday, Sunday, or legal holiday. If a taxpayer did not take advantage of the additional time provided by section 7503 (by either filing early or late) then section 7503 would not apply and the date the return is "required to be filed" for purposes of section 6601(e)(2)(B) would be the 15th (either original due date or extended due date under section 6081) even if the 15th fell on a weekend or a holiday.

Please contact me if you have any questions or comments.