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**From:**

**Sent:** Tuesday, September 16, 2008 2:10:38 PM

**To:**

**Cc:**

**Subject:** Transferee Interest;

In the context of imposing transferee liability for interest in respect of an intermediary tax shelter, you asked us to state the periods in which a transferee may be liable for interest, the type of interest, and factors affecting that liability.

A transferee may be liable for interest in three periods. The first period involves section 6601 interest on the transferor's tax liability and runs from the due date of the transferor's tax return to the date of transfer (where the transfer is after the due date). The second period may involve interest under either section 6601 or state law: if under section 6601, it runs from the later of the due date of the transferor's return or the date of transfer to the date interest begins to run on the demanded liability of the transferee; if under state law, it runs from the date of transfer, or the date of exhaustion of the value of the transferred assets, to the date interest begins to run on the demanded liability of the transferee. The third period involves section 6601 interest running from the date the transferee liability is demanded to the date of payment.

Additional factors that may affect a transferee's liability for interest are:

· Where the total value of the transferred assets exceeds the transferor's total liability on the date of transfer, 6601 interest may be imposed for the second period until the value of the assets is exhausted. Where the value of the transferred assets is less than the transferor's total liability, or where the excess in value of assets transferred has been exhausted, state law may impose interest for the second period or remainder of the second period.

1 Where there are multiple transferees.

2 Where the transferee is a successor-in-interest liable for interest on the federal tax debt of the predecessor, interest may be imposed from the due date of the predecessor's return until the debt (including interest, additions and penalties) is paid. See, Bos Lines Inc. v. CIR, 354 F.2d 830, 837 (8<sup>th</sup> Cir. 1965) (on primary holding of successor liability through assumption by contract, liability was not limited by the value of the assets received).

3 When the value of the assets received is less than the transferor's liability, state law may provide for interest from the date of transfer to the date of the notice of liability, under rules relating to creditors. State law may, for example, impose interest if the transferee participated in the transfer, or knew of the transferor's liability before assets were transferred. See Stansbury v. CIR, 102 F.3d 1088 (10<sup>th</sup> Cir. 1996) (transferees were liable for interest from the date of transfer, even though the value of transferred assets was less than the transferor's liability, where the transferees caused the transfer); GCM 34474, 1971 WL 28963 (where the transferee knows of the transferor's purpose to hinder or defraud creditors, the transferee may be held liable under state law to

pay interest on the value of the assets received from the date of transfer). See also Borg v. CIR, T.C. Memo. 1987-596 (state law provided for pre-judgment interest).