

ID: CCA_2015042112454061

UILC: 6404.00-00, 6201.00-00

Number: **201526008**

Release Date: 6/26/2015

From: [REDACTED]

Sent: Tuesday, April 21, 2015 12:45:40 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: FW: Application of Payment Case - TAS Inquire and F843 filed

Section 6404(e) states that the Service can abate interest resulting from “unreasonable error or delay by an officer or employee of the Internal Revenue Service. . . in performing ministerial or managerial act” . . . if no significant aspect of such error or delay can be attributed to the taxpayer involved . . .”. A managerial act is an “administrative act that occurs during the processing of a taxpayer’s case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel.” Treas. Reg. § 301.6404-2(b)(1). A ministerial act is “a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer’s case after all prerequisites to the act, such as conferences and review of supervisors, have taken place. Treas. Reg. § 301.6404-2(b)(2). In order to be able to grant an abatement of interest, the taxpayer would need to “(1) identify an error or delay by the IRS in performing a ministerial or managerial act; 2) establish a correlation between the error or delay by the IRS and a specific period for which interest should be abated; and 3) show the taxpayer would have paid his or her tax liability earlier but for such error or delay.” Hancock v. Commissioner, T.C. Memo 2012-31, at 3.

Based on what we understand of the facts in this case, there was no error or delay on the part of any Service’s employee, instead the delay was caused by the Clerk of Court who did not transfer the funds to the Service until several months after the taxpayer made restitution payments to the Clerk of Court. The Clerk of Court for a Federal District Court is not an officer or employee of the IRS, and any delay in transferring the funds to the Service from the Clerk of Court was due to the procedures of that particular Federal District Court. Because the delay was not caused by unreasonable error or delay on the part of the Service’s employee, interest that accumulated and was collected by the Service after the taxpayer made a payment to the Clerk of Court to the day the funds were transferred to the Service cannot be abated.

Additionally, the closing agreement is of no benefit to the taxpayer with respect to the restitution-based assessment or the section 6601 interest accruing on that assessment. I.R.C. § 6201(a)(4)(A) requires the Service to assess the amount of restitution as if such amount were a tax. As explained in Q&A 12 of CC Notice 2011-018, I.R.C. § 6601(a) requires interest to accrue on unpaid tax assessments and the date that interest starts running on a restitution-based assessment is the due date for the tax period to which

the restitution relates. The closing agreement you provided us does not refer to either the assessment of restitution or the interest accruing on that restitution based assessment. Accordingly, it does not prevent the Service from assessing the amount of restitution nor does it prevent the Service from assessing interest under section 6601 accruing on the assessment of the amount of restitution.

Regarding the date of payment, the Service's policy is to consider any remittances made to the Service as made when actually received by the Service. I.R.M. 3.8.45.2(9) provides that "[a]ll remittances will be credited to taxpayer accounts for the earliest IRS Received Date," which is "the date the remittance is received by the IRS or Department of Treasury." The IRM does not give rationale for such policy, but such method is consistent with the general principle of debtor-creditor law, that a creditor will only treat a payment made when it acquires control over the funds a debtor uses to make the payment.

If you have any further questions please do not hesitate to contact me.