

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: Overpayment Interest on Non-Liable Spouse's Remittance

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Husband	=
Wife 1	=
Wife 2	=
Year 1	=
Year 2	=
Year 5	=
Year 7	=
Year 9	=
Year 11	=
Year 12	=
Year 13	=
Year 14	=
Date A	=
Date B	=
Date C	=

Date D	=
Date E	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=
State	=

ISSUE

Whether interest is allowable on the refund of a remittance made by a non-liable spouse that the Service incorrectly applied to the liable spouse's tax liability?

CONCLUSION

Yes. Interest is allowable on the overpayment from the date the remittance was received and applied by the Service (Date C, Year 13). Pursuant to section 6611(b)(1) and (2), the date the interest stops depends on whether the overpayment is credited or refunded.

FACTS

Husband and Wife 1 accrued a joint tax liability for the tax years Year 2 through Year 5.¹ Husband and Wife 1 divorced in Year 7. Husband married Wife 2 in Year 9. In Year 9, Husband and Wife 1's joint tax liabilities remained outstanding. In Year 11, Wife 2 and Husband purchased real property in State (the State property). The Service properly filed a Notice of Federal Tax Lien with respect to Husband's joint tax liability with Wife 1.

Pursuant to section 6325(b)(2)(A), Wife 2 and Husband requested a certificate of discharge to remove the lien from the State property in exchange for payment equal to the value of the government's interest in the property. On Date A, Year 13, Wife 2 and Husband sold the State property for Amount 1. On Date B, Year 13, the Service issued a Letter 403, Conditional Commitment to Discharge Certain Property from Federal Tax Lien to Husband and Wife 1, which incorrectly stated that the government's interest in the State property was equal to nearly the full amount of the sale proceeds. The incorrect Letter 403 also stated that this was the amount required to be remitted to the Service in order to receive a certificate of discharge.² Based on the information in the

¹ The Form 911 provides that a tax liability accrued for tax years Year 2-Year 5, although the Service ultimately applied the remittance to tax years Year 1 and Year 2.

² The difference between the amount provided in the Letter 403 and the actual amount of sale proceeds from the sale of the State property is Amount 3.

Letter 403, the title collection company remitted a check for the full amount of the sale proceeds (Amount 1) to the Service.

On Date C, Year 13, consistent with the erroneous information in the Letter 403, the Service applied the full amount of the remittance to Husband and Wife 1's Year 1 and Year 2 joint tax accounts. At some point, Wife 2 realized that the information in the Letter 403 was incorrect and that at least a portion of her share of the sale proceeds had been applied to Husband's separate tax liability. On Date D, Year 13, Wife 2 filed a Form 843, Claim for Refund and Request for Abatement, which requested a refund in the amount of Amount 4 (one-half of the proceeds from the sale of the State property). Also on Date D, Year 13, Wife 2 and Husband filed a Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), which requested assistance to recover Wife 2's requested refund.

The Service initially concluded that Wife 2 was entitled to the refund in the amount of Amount 4. On Date E, Year 14, before the Service issued the refund, it learned that Wife 2 and Husband had unpaid joint tax liabilities for tax years Year 12 and Year 13.

The Service credited portions of Wife 2's overpayment against her joint tax liabilities for Years 12 and 13.

LAW AND ANALYSIS

It is well settled that the government may only pay interest if specifically allowed by a statutory provision. Fors v. United States, 14 Cl. Ct. 709 (Ct. Cl. 1988), citing Library of Congress v. Shaw, 478 U.S. at 317-18, 106 S. Ct. at 2963; United States v. Thayer-West Point Hotel, 329 U.S. 585, 588, 91 L. Ed. 521, 67 S. Ct. 398 (1947); United States ex rel. Angarica v. Bayard, 127 U.S. 251, 260, 32 L. Ed. 159, 8 S. Ct. 1156 (1888).

Section 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621. The Code and regulations do not define an overpayment. The Supreme Court stated, "[W]e read the word 'overpayment' in its usual sense, as meaning any payment in excess of that which is properly due. . . ." Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947). See also United States v. Dalm, 494 U.S. 596, 609 n.6 ("The common sense interpretation is that a tax is overpaid when a taxpayer pays more than is owed for whatever reason or no reason at all.").

Section 6611(b) provides the period for which interest shall be allowed and paid on an overpayment of tax. Pursuant to section 6611(b)(1), in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which credit is taken. Section 6611(b)(2) provides that in the case of a refund, overpayment interest shall be allowed and paid from the date of the

overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days.

Here, the remittance of Wife 2's Amount 4, which was made in response to the incorrect instructions in the Service's Letter 403 regarding tax years Years 1 and 2, created an overpayment of tax when the Service applied it to Years 1 and 2 because Wife 2 had no tax liability for Years 1 and 2.

Pursuant to section 6611(a), overpayment interest is allowable from Date C, Year 13, the date the remittance created the overpayment. As provided above, the date that overpayment interest stops running depends on whether the Service credits or refunds the overpayment. Here, the Service credited portions of Wife 2's overpayment against her unpaid tax liabilities for Years 12 and 13 in the amounts of Amount 2 and Amount 5, respectively.

With respect to the portion of the overpayment credited to Wife 2's joint Year 12 liability, interest stops on the due date of Wife 2's Year 12 joint return. Because the Amount 4 overpayment arose after the due date of Wife 2's Year 12 joint tax return, no interest is allowable on the portion of the overpayment credited to Year 12.

With respect the portion of the overpayment credited to Wife 2's joint Year 13 liability, interest stops on the due date of Wife 2's Year 13 joint tax return. See section 6611(b)(1).

Pursuant to section 6611(b)(2), if the remaining amount of the overpayment is refunded, interest is allowable to a date preceding the date of the refund check by not more than 30 days. If it is credited to another liability, interest is allowable to the due date of the amount against which credit is taken.

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