

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

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date: February 14, 2018

to: Ramona B. Bailey
Program Manager
(Office of Servicewide Interest)

from: Pamela Fuller
Acting Branch Chief
(Procedure & Administration)

subject: [REDACTED] underpayment interest under section 6601(e)(2)(A) for certain failure-to-pay penalty situations under sections 6651(a)(2) & (a)(3)

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

[REDACTED]

Section 6601(a) provides that interest shall be payable on any amount of tax imposed by the Internal Revenue Code ("the Code") that is not paid on or before the last date prescribed for payment at the underpayment rate established under section 6621, for the period from such last date to the date paid. See Treas. Reg. § 301.6601-1(a). Section 6601(e)(1) provides that interest under this section shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Section 6601(e)(2)(A) provides that interest shall be payable with respect to any penalty¹ if the penalty is not paid within 21 calendar days from the date of notice and demand (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000), and interest shall run from the period from the date of the notice and demand to the date of payment. See Treas. Reg. § 301.6601-1(f)(3).

¹ For the purposes of this analysis, the word "penalty" refers to any addition to tax, additional amounts, and/or assessable penalties under Chapter 68 of the Code.

Section 6651(a)(2) provides an addition to tax for failure to pay the amount shown as tax on any return on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the addition to tax is 0.5 percent of the amount of unpaid tax if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, not exceeding 25 percent in the aggregate. Section 6651(b)(2) provides that for the purposes of section 6651(a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return. Section 6651(c)(2) provides that if the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsection (a)(2) and (b)(2) shall be applied by substituting such lower amount.

Section 6651(a)(3) provides an addition to tax for failure to pay any amount in respect of any tax required to be shown on a return which is not so shown, within 21 calendar days from the date of notice and demand for payment (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000). The addition to tax under section 6651(a)(3) shall be 0.5 percent of the amount of tax stated in such notice and demand if the failure to pay is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. Section 6651(b)(3) provides that for the purposes of section 6651(a)(3), the amount of tax stated in the notice and demand shall, for the purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

The FTP penalties should be computed based on the correct amount of unpaid tax owed by the taxpayer for a taxable period. If a subsequent event results in a decrease in the amount required to be shown as tax on a return, the FTP penalties should be computed using this lesser amount. See sections 6651(c)(2) & 6651(a)(3). In these situations, underpayment interest on the FTP penalties accrues on this lesser, correct FTP penalty amount from the date of notice and demand, if the unpaid amount is not paid within 21 days of the notice and demand (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000), to the date of payment. See section 6601(e)(2)(A).



[REDACTED]

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This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-6844 if you have any further questions.

² See "Taxpayer Bill of Rights", available at: <https://taxpayeradvocate.irs.gov/taxpayer-rights> (last accessed: February 12, 2018). See also "Publication 1, Your Rights as a Taxpayer" available at <https://www.irs.gov/pub/irs-pdf/p1.pdf> (last accessed: February 12, 2018).