

Office of Chief Counsel
Internal Revenue Service

memorandum

SPR-12260-98
CC:DOM:IT&A:1
SPShepherd

date:

to: National Director, Office of Customer Service Compliance, Account & Quality
Attention: Marilyn Staggs

from: Assistant to the Chief, Branch 1 (Income Tax & Accounting)

subject: Section 6404(h) Abatement of Interest on Tax Not Shown on the Return

This responds to your inquiry regarding whether the Service is required under § 6404(h) of the Code to abate interest during the extension period on tax not shown on the taxpayer's return.

The following facts illustrate the issue. The President declares Area A to be a disaster area in March 2000, and the Service grants a 6-month extension for filing 1999 federal income tax returns and for paying federal income tax for taxpayers who are located in Area A. Taxpayer timely files his 1999 income tax return and pays the amount shown on the tax return within the 6-month extension period. Two years later, the Service later determines that Taxpayer's actual income tax liability for 1999 exceeds the amount paid. The issue presented is whether the interest on the subsequently determined deficiency should be abated during the extension period.

Section 6404(h), enacted by § 3309 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 745 (RRA 1998), provides that if the Service grants an extension of time for filing income tax returns under § 6081 and the time for paying federal income tax with respect to such returns under § 6161 due to the fact that the taxpayer is located in a presidentially declared disaster area, the Service will abate for the extension period the assessment of any interest prescribed under § 6601 on that income tax.

Section 6161(a) of the Code provides that the Service may extend the time for payment of the amount of the tax shown or required to be shown, on any return for a reasonable period not to exceed 6 months from the date fixed for payment.

The language of § 6404(h) does not expressly limit abatement of interest relief to only those taxpayers who timely file their income tax returns showing the correct amount of income tax liability and fully pay their income taxes by the extension due date. Rather,

§ 6404(h) provides abatement of interest relief for the period of the extension regardless of whether or not the taxpayer timely files and pays. Further, the extension of time to pay under § 6161 applies to taxes shown on the return or required to be shown on the return. This means that the extension relates to the amount of the tax liability and not merely to the amount of the tax shown on the return. Therefore, since abatement under § 6404(h) relates to the extension to pay, interest should be abated during the extension period on taxes shown or required to be shown on the return.

Based on the language of § 6404(h), the Service is required to abate interest on income tax during the extension period, even if the tax was not shown on the taxpayer's return. In the above example, interest on the deficiency should be abated during the extension period.

If you have any additional questions relating to this memorandum, please call Sara Shepherd at 622-4910.

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