



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR NATIONAL TAXPAYER ADVOCATE

Attn: Vicki O'Hara

FROM:

Mary Ann Waters *Mary Ann Waters*
Attorney
Office of Counsel to the National Taxpayer Advocate

SUBJECT:

Abatement of Interest

There are several different reasons the Service can abate interest. However, based on the discussion I had with you this morning, it is my understanding that the taxpayer you are dealing with is claiming that the interest should be abated because the interest is attributable to an unreasonable error or delay of an officer or employee of the Service in performing a ministerial or managerial act. Accordingly, I will confine this memorandum to a discussion of abatement of interest provision dealing with interest attributable to unreasonable errors or delays of officers or employees of the Service in performing ministerial or managerial acts.

Under I.R.C. § 6404(e)(1), the Service has discretionary authority to abate the assessment of all or any part of the interest on any deficiency or payment attributable in whole or in part to any unreasonable error or delay by Service employees in performing a ministerial or managerial act. **For tax years beginning before July 31, 1996, only errors or delays attributable to ministerial acts may be abated.**

Specifically, the Service has discretionary authority to abate the assessment of all or any part of interest: (1) on any deficiency relating to income, estate, gift, generation-skipping, and certain excise taxes attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Service acting in his official capacity in performing a ministerial or managerial act; and (2) on any payment of any tax relating to income, estate, gift, generation-skipping, and certain excise taxes to the extent that any unreasonable delay in the payment is attributable to an officer or employee being erroneous or dilatory in performing a ministerial or managerial act.

An error or delay in performing a ministerial or managerial act will only be taken into account if **no significant aspect of the error or delay can be**

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attributed to the taxpayer involved or to a person related to the taxpayer. Additionally, an error or delay in performing a ministerial or managerial act will be taken into account only if it occurs after the Service has contacted the taxpayer in writing with respect to a deficiency or payment. Therefore, the Service is not permitted to abate interest for the period of time between the date the taxpayer files a return and the date the Service contacts the taxpayer about an audit. Similarly, if a taxpayer files a return but does not pay the taxes due, the Service is not permitted to abate the interest regardless of how long it takes to contact the taxpayer and request payment.

A "ministerial act" means 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 of the act, such as conferences and reviews by supervisors, have taken place. However, a decision concerning the proper application of federal tax law or other federal or state law is not a ministerial act.

The Service's authority to abate interest has been expanded to include situations in which Service "managerial acts" result in unreasonable error or delay. Managerial acts that fall under this provision include delays resulting from the loss of records by the Service, transfers of Service personnel, extended illness, extended personnel training, or extended leave.

A request for abatement of interest should be made on Form 843 (attached), Claim for Refund and Request for Abatement. The taxpayer should file the claim with the Internal Revenue Service - Service Center where the taxpayer filed the tax return that was affected by the error or delay. If the taxpayer does not remember the Service Center where he/she filed that tax return, the taxpayer should send his/her claim to the Service Center where the taxpayer filed his/her last tax return. If the taxpayer has already paid the interest and would like a credit or refund of interest paid, the taxpayer must file Form 843 within 3 years from the date he/she filed the taxpayer's original return or 2 years from the date that the taxpayer paid the interest, whichever is later. If the taxpayer has not paid any of the interest, these time limitations for filing Form 843 do not apply.

Generally, the taxpayer should file a separate Form 843 for each tax period and each type of tax. However, they should complete only one form 843 if the interest is from a single Internal Revenue Service error or delay that affects the taxpayer's tax for more than one tax period or for more than one type of tax (for example, when the delay occurred during the examination of two or more tax years). The taxpayer does not have to figure the dollar amounts of interest that the taxpayer wants lowered. If the taxpayer's request for abatement of interest is denied, the taxpayer can appeal the decision to the Internal Revenue Service Appeals Office (See attached Publication 556).

Also, the Tax Court can review the Internal Revenue Service's refusal to abate interest when all of the following requirements are met:

- 1.) The taxpayer has filed a request for abatement of interest (Form 843) with the Internal Revenue Service.
- 2.) The Internal Revenue Service has not denied the taxpayer's request for abatement before July 31, 1996.
- 3.) The Internal Revenue Service has mailed the taxpayer a notice of final determination or a notice of disallowance.
- 4.) The taxpayer has filed a petition for review of the failure to abate interest with the Tax Court within 180 days of the mailing of the notice of final determination or the notice of disallowance.

The taxpayer must **also** meet the following requirements in order for the Tax Court to review the decision:

- 1.) For individual and estate taxpayers - the taxpayer's net worth must not exceed \$2 million as of the filing date of the taxpayer's petition for review.
- 2.) For charities and certain cooperative - the taxpayer must not have more than 500 employees as of the filing date of the taxpayer's petition for review.
- 3.) For all other taxpayers - the taxpayer's net worth must not exceed \$7 million, and the taxpayer must not have more than 500 employees as of the filing date of the taxpayer's petition for review.

I hope this information assists you. Please let me know if you need more information.

Enclosures:
I.R.C. § 6404
Publication 556
Form 843