

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

CC:PA:01:CAMcGreevy/EGChirich
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date: March 29, 2012

to: Thomas R. Thomas
Division Counsel
(Small Business/Self-Employed)
Attn: Kimberly A. Mattonen

from: Elizabeth Girafalco Chirich
Branch Chief
(Procedure & Administration)

subject: Interest suspensions and Form 906 closing agreements

This memorandum responds to your request for assistance concerning whether interest is suspended under section 6601(c) of the Internal Revenue Code when a Form 906, Closing Agreement on Final Determination Covering Specific Matters, is used in the context of a TEFRA settlement initiative. The short answer is: generally yes.

As a background, interest generally accrues on tax underpayments, including deficiencies, from the due date of the amount owed to the date paid. Interest, however, can be suspended in certain circumstances. For example, if a taxpayer files a waiver of restrictions on the assessment of the deficiency (see section 6213(d)), and the Service fails to send notice and demand for payment within 30 days after the filing of that waiver, interest is suspended on the deficiency for the period beginning immediately after the 30th day and ending with the date of notice and demand. See section 6601(c). Interest suspension is provided by statute and is intended to encourage the Service to provide notice and demand to taxpayers promptly, minimizing the overall amount of statutory interest that would have to be paid if the Service delays. There are no exceptions once section 6601(c) is triggered.

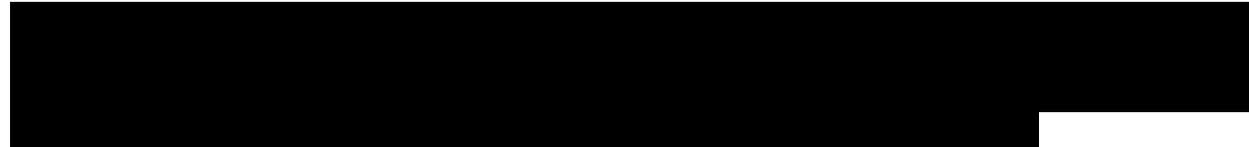
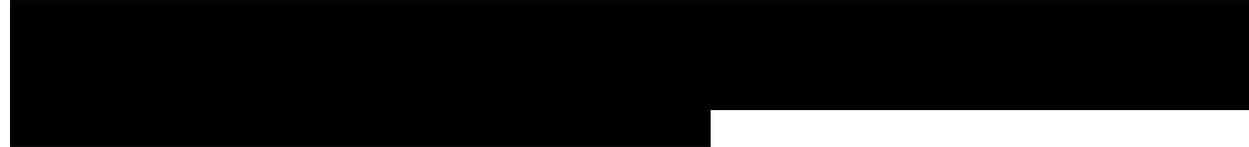
The issue for which you initially sought advice from our division concerned an apparent conflict between some TEFRA IRM provision and IRM 20.2.5.16, Types of Deficiencies that do not Receive an IRS 6601(c) Suspension of Interest. IRM 20.2.5.16 states that “cases closed in Exam with only a Form 906, and no Form 870 or 870-AD, do NOT receive interest suspension under section 6601(c).” Robin Roberts, SBSE National TEFRA Technical Advisor, contacted one of our TEFRA subject-matter experts to clarify whether TEFRA settlement initiative cases that are closed with a Form 906 should receive interest suspension. Our TEFRA subject-matter expert replied, via email, that

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under section 6601(c), a TEFRA settlement has the same effect as a section 6213(d) waiver, so both TEFRA partnership item Forms 906 closing agreement and TEFRA Forms 870-PT will generally be treated the same as a section 6213(d) waiver. Because we have jurisdiction over statutory interest under section 6601, you asked for our views. We have coordinated with Branch 7 and concur with the advice that, under section 6601(c), a TEFRA settlement has the same effect as a section 6213(d) waiver.

When the Service issues an FPAA, the FPAA uses a Form 870-PT¹ to determine the adjustments. The taxpayer has the option to petition from the FPAA or agree with the adjustments by signing the Form 870-PT and sending it in for the Service's signature. If the taxpayer signs the Form 870-PT, the computational adjustments are generally directly assessed. This makes the Form 870-PT equivalent to a waiver under section 6601(c), so interest is suspended under section 6601(c) if the Service does not send notice and demand within 30 days after the Service co-signs the Form 870-PT.

In the case of a settlement under section 6224(c)², where a partner signs a Form 906 rather than a Form 870-PT, the computational adjustments of the settled partnership items are also generally directly assessed. See I.R.C. § 6230(a)(2)(A)(ii) (deficiency procedures do not apply to the assessment of converted partnership adjustments). So, again, this is equivalent to a waiver under section 6213(d), and interest suspension would apply in the same manner as if the adjustment were a deficiency and the settlement were a waiver, and interest would be suspended if the Service fails to send notice and demand within 30 days after the Service co-signs the Form 906.

This advice may not be used or cited as precedent and 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 202-622-4910 if you have any further questions about this advice.

¹ Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts.

² Where partnership items are converted to nonpartnership items pursuant to section 6231(b)(1)(C).