

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

**Office of Chief Counsel
Internal Revenue Service**

**ACKNOWLEDGED 5/1/98
SCA 1998-010**

memorandum

CC:DOM:IT&A:1:DBAuclair
TL-N-4849-97

date: OCT 1 1997

to: District Counsel, Brooklyn
CC:NER:BRK

from: Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

subject: Significant Service Center Advice Regarding
Abatement of Interest

This responds to your memorandum requesting advice on the application of § 6404(e)(1) of the Internal Revenue Code in situations where the Service tells a taxpayer an incorrect amount of tax due to fully satisfy the taxpayer's liability.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraphs III.D.4 and IV.A.5 of Chief Counsel Notice N(35)000-143. This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

ISSUE

Under what circumstances may the Service abate interest if a Service employee tells the taxpayer an incorrect amount of tax due to fully satisfy the taxpayer's liability.

CONCLUSION

Whether the Service can abate interest if an employee tells the taxpayer an incorrect amount of tax due to fully satisfy the taxpayer's liability depends on the facts and circumstances of a

given situation. The Service can abate interest only if the incorrect liability is the result of an error or delay by a

Service employee in performing a ministerial act (or, for interest accruing with respect to deficiencies and payments for taxable years beginning after July 30, 1996, a managerial act). This is true regardless of whether the incorrect liability is given orally, in writing, or in person.

FACTS

The situation you describe involves a taxpayer calling a Service Center and asking how much tax is owed to fully satisfy the taxpayer's liability. The Service Center employee tells the taxpayer an incorrect liability. In your example, the liability is incorrect because the employee fails to add accrued interest that has not yet posted to the taxpayer's account. The taxpayer pays the amount stated by the employee and believes that the tax liability is fully satisfied. Later, the taxpayer receives a bill for an additional amount of tax due to satisfy the liability. The taxpayer requests abatement of interest accruing from the date the employee told the taxpayer the incorrect liability until the date the taxpayer receives the bill for the additional amount to satisfy the full liability. You have asked whether the answer is different if the incorrect liability is stated in writing or in person.

DISCUSSION

As enacted by the Tax Reform Act of 1986, section 6404(e)(1) provided that the IRS may abate interest attributable to any error or delay by an officer or employee of the IRS (acting in an official capacity) in performing a ministerial act. In Taxpayer Bill of Rights 2 (TBOR2), Congress amended section 6404(e)(1) to permit the IRS to abate interest attributable to any unreasonable error or delay in performing a managerial as well as a ministerial act. This amendment is effective for interest accruing with respect to deficiencies or payments for taxable years beginning after July 30, 1996.

Section 6404(e)(1) applies only to interest relating to a deficiency as defined in § 6211(a) (relating to income, estate, gift, generation-skipping, and certain excise taxes). Further, an error or delay in performing a ministerial or managerial act will be taken into account only if no significant aspect of the error or delay is attributable to the taxpayer involved, and if it occurs after the Service has contacted the taxpayer in writing with respect to the deficiency.

As defined in § 301.6404-2T of the Temporary Regulations, a ministerial act is 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 to the act, such as conferences and review by

