

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

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July 7, 1998

Abatement of Interest

Subject: Coordination Procedures

Cancellation Date: January 3, 1999

This Notice provides attorneys with detailed guidance on the coordination and development of Tax Court abatement of interest cases. Taxpayer Bill of Rights 2 added new section 6404(g) to the Internal Revenue Code, pursuant to which the Tax Court has jurisdiction to determine whether the Commissioner's failure to abate interest was an abuse of discretion. The circumstances under which the Commissioner is permitted to abate interest are contained in I.R.C. § 6404(e). General information regarding abatement of interest actions has previously been published at CCDM (35)(25)10, et seq.

Abatement of interest cases are different from traditional Tax Court cases in a number of fundamental ways. Furthermore, although there are temporary and proposed regulations interpreting section 6404(e), the regulations are necessarily general. To date, there is no case law providing guidance on the interpretation of phrases such as "ministerial act," "managerial act," or "unreasonable errors or delays"--three critical terms in section 6404(e). There is also no experience regarding how the Tax Court will approach matters such as discovery in abatement actions, where, unlike traditional deficiency cases, the Commissioner is more likely than the taxpayer to have access to the relevant information. In other words, each abatement case, at this time, is a case of first impression.

It is crucial that the initial coordination of these cases be thorough to ensure that the abatement procedures and case law are developed in a consistent fashion. The coordination procedures will be modified as soon as abatement cases become more routine or as the Tax Court procedures and case law are established.

The procedures set forth below, which track significant events and time periods, are to be used for the coordination of the Abatement of Interest issues.

Filing Instructions: Binder Parts (35), (31), (34)

Master Sets: NO RO

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Abatement of Interest Coordination Procedures

- I. Within 30 days of service of the Petition
 - A. Submit the following to Field Service, Procedural Branch:
 - Petition & attachments.
 - Notice of Final Determination (Notice of Disallowance).
 - Form 843, or Request For Abatement of Interest.
 - B. Identify Jurisdictional Issues, e.g.,:
 - No Notice of Final Determination.
 - Abatement request denied prior to July 31, 1996.
 - Petition seeks abatement of tax or penalties.
 - No statement that petitioner meets requirements of I.R.C. § 7430(c)(4)(A)(ii).
 - C. Identify Summary Judgment issues, e.g.,:
 - Tax year beginning December 31, 1978 or earlier.
 - Petition seeks abatement of interest on employment taxes.
 - Interest is attributable to an error on delay in the performance of a managerial act and the tax year begins prior to July 31, 1996.
 - D. Submit all Motions and Answers to the Procedural Branch for review. The documents must be received by the Procedural Branch at least 5 working days before the filing deadline.

Documents may be submitted via fax. Documents may not be submitted via email without prior approval from Chief, Procedural Branch.
 - E. Ensure that the case has the "AI" CATS subtype.
- II. Trial Preparation (Prior to calendaring)
 - A. Call the Procedural Branch for Informal Field Service Advice and provide the facts of your case. Include the following information:
 - Identify whether the interest is on a deficiency or a payment.

- Identify whether the claim is based on an error, e.g. incorrect advice or information, or a delay.
- Identify the period(s) of error or delay.
- Identify the stage(s) during which the error or delay occurred, e.g., Exam, Appeals, Collection, District Counsel.
- Identify the causes(s) of the error or delay.
Indicate whether the causes fall within the definitions, managerial act, or general administrative decision. Specify the act(s).
- Indicate whether the delay occurred in connection with a tax shelter case or TEFRA partnership proceeding. Identify the shelter or partnership.
- Indicate whether there was truly a delay or whether the process merely took a long time.
- Indicate whether the error or delay was grossly unfair or unreasonable.
- Indicate the extent to which the petitioner and/or his representative have contributed to the error or delay.

- B. Submit a request for Field Service Advice to the Procedural Branch, if appropriate.

III. Trial Preparation (When case is calendared)

- A. Inform the Procedural Branch that the case has been calendared and provide the calendar date.
- B. Indicate whether any portion of the interest should be abated.
- C. Submit discovery requests to the Procedural Branch for review.
- D. Submit Stipulations of Fact to the Procedural Branch for review.
- E. Submit Trial Memorandum to the Procedural Branch for review.
- F. If the case will settle, contact the Procedural Branch regarding the proposed settlement. Any deviations from the format of the standard abatement Decision must be reviewed by the Procedural Branch.

All documents submitted for review must be received by the Procedural Branch at least 5 working days before the filing deadline.

Documents may be submitted via fax. Documents may not be submitted via email without prior approval from Chief, Procedural Branch.

IV. Pre-Brief/Briefing

- A. Submit pre-brief materials to the Procedural Branch in accordance with the CCDM timeframes.
- B. Submit Brief to the Procedural Branch in accordance with the CCDM timeframes.

For additional information about the subject of this Notice, please contact Pamela S. Wilson at (202) 622-7950.

/s/ Daniel J. Wiles

for JUDITH C. DUNN
Associate Chief Counsel
(Domestic)