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Dave DuVal • Aug. 23, 2018

When it comes to the abatement of interest that incurs on a delinquent tax liability or penalty, most tax practitioners' gut reaction is to tell the taxpayer there is nothing that can be done but to pay the interest. This is because IRC §6601(g) states that the payment of underpayment interest is statutory. It is not customary for the IRS to negotiate a reduction of interest due on a tax deficiency. Furthermore, in a "heads I win, tails you lose" scenario, the running of interest is not suspended or stopped if it takes the IRS an extraordinary amount of time to contact the taxpayer and request payment (unless the delay is due to a ministerial or managerial act made by the IRS).

Unlike certain penalties, such as the Failure to File or Failure to Pay penalties, which can be abated due to reasonable cause, interest cannot be reduced or abated for reasonable cause. The abatement of interest is never permitted merely due to reasonable cause. (If the underlying penalty or liability that is causing the interest is abated due to reasonable cause, then the corresponding interest will automatically be lifted.) However, as with many rules and regulations, there are certain exceptions.

The IRS has the authority to abate the interest on underpayments associated with income, estate, gift, generation-skipping and various excise taxes. There are a handful of rare occasions when interest on an underpayment may be abated; however, these instances are few and far between and are done at the discretion of the IRS. The most common instances in which the IRS has the authority to abate all or part of underpayment interest are:

- A mathematical error made by the IRS.
- A ministerial or managerial act made by an IRS employee that causes an unreasonable error or delay (The IRS has no authorization to abate the accrual of

interest associated with unpaid employment taxes that are *due to an unreasonable*

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advice causes an incurrence of tax.

- When the interest is considered excessive.
- When the interest or underlying tax generating the interest is determined illegally or erroneously by the IRS.
- Assessed after the statute of limitations has expired.

The IRS has the discretionary authority to abate all or part of the interest that incurred and/or accrued due to a ministerial or managerial act. Nevertheless, if an IRS ministerial or managerial act stems from an error or delay caused by the taxpayer, the IRS may not abate any of the interest.

The precedence as to what constitutes an IRS ministerial act has been largely determined by Tax Court. Examples of what *is* considered a ministerial act are:

- Providing a taxpayer with the wrong payoff amount.
- Providing a taxpayer with the incorrect amount of an installment payment.
- The delay in transferring an audit to another district.
- The delay of issuing a Notice of Deficiency.

Some examples of what *is* considered a managerial act are:

- The temporary or permanent loss of taxpayer records. (For example, an IRS clerical employee misplacing an audit file is considered a managerial not a ministerial act.)
- The transfer of IRS personnel.
- Extended illness of an IRS representative that is directly delaying or causing error on a case.
- Extended personnel training (For example, a revenue agent is sent for extended training lasting several months, and the agent's supervisor does not reassign the cases the revenue agent was working on.)

- Extended leave of an IRS representative, where the leave is directly delaying or

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abatement by letter, the letter must be signed under penalty of perjury. Even though the situations to abate interest are sparse, it is an important tool to keep in mind when representing a taxpayer.

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