

## Section 6404(g).—Suspension of Interest and Certain Penalties Where Secretary Fails to Contact Taxpayer

**Interest suspension; time sensitive penalties.** Section 6404(g) of the Code suspends interest and time sensitive penalties, additions to tax and additional amounts with respect to an increased tax liability reported on an individual's

amended income tax return filed more than 18 months after the date that is the later of (1) the original due date of the return (without regard to extensions) or (2) the date on which the taxpayer timely filed the return.

### Rev. Rul. 2005-4

#### ISSUES

Does section 6404(g) suspend interest and time sensitive penalties, additions to tax and additional amounts with respect to an increased tax liability reported on an individual's amended income tax return (or other written notice to the Service of additional liability not listed on the original return) that is filed after the individual files a timely return? If so, when does the accrual of interest and time sensitive penalties, additions to tax and additional amounts begin and end with respect to the additional amount?

#### FACTS

Situation 1. TP, an individual taxpayer, files an income tax return for the 2002 taxable year on the due date of April 15, 2003. On October 4, 2004, within 18 months after the due date of TP's return, TP files an amended income tax return that reports additional tax due for 2002. TP files the amended return before the Service notifies TP of the amount or the basis for the additional tax reported on the amended return. TP does not pay the additional tax due with the amended return.

Situation 2. The facts are the same as in Situation 1, except that TP files the amended return on November 26, 2004, more than 18 months after the due date of TP's return, and TP remits payment with the amended return.

Situation 3. The facts are the same as Situation 2, except that TP does not remit payment with the amended return.

#### LAW AND ANALYSIS

Section 6601 requires the payment of interest on any amount of tax imposed by Title 26 that is not paid on or before the last date prescribed for payment of the tax. Interest is computed using the underpayment rate established under section 6621. Section 6151 provides that the date for payment of tax is the date a taxpayer must

file the return reporting the tax due (determined without regard to any extension for filing the return). Section 6072(a) provides that individuals shall file income tax returns made on a calendar year basis on or before April 15<sup>th</sup> of the year following the calendar year for which the tax is due. Accordingly, interest is imposed on individual calendar year taxpayers under section 6601 on any underpayment that is not paid on or before April 15<sup>th</sup> of the year following the calendar year for which the tax is due for the period from April 15<sup>th</sup> until the date on which the tax is paid.

Section 6404(g) requires the Secretary to suspend the accrual of interest and time sensitive penalties if the Secretary does not provide a notice specifically stating the amount and basis for the taxpayer's liability within 18 months following the date that is the later of (1) the original due date of the return (without regard to extensions) or (2) the date on which the taxpayer timely filed the return (the "notification period"). The suspension of the accrual of interest and penalties begins upon the expiration of the notification period and ends 21 days after the date on which the Service provides the notice to the taxpayer (the "suspension period"). Section 6404(g)(3). The legislative history to section 6404(g) states that section 6404(g) was enacted to limit the period during which interest and penalties accrue because the IRS should promptly inform taxpayers of their obligations with respect to tax deficiencies and additional amounts due. S. Rep. No. 174, 105<sup>th</sup> Cong., 2d Sess., at 64-65, 1998-3 C.B. 537, 600-01.

Section 6404(g)(1) provides that the suspension of the accrual of interest and penalties under section 6404(g) only applies to taxpayers who file an income tax return "on or before the due date for *the return* (including extensions)." (Emphasis added.) Section 6404(g)(2)(C) provides that "any tax liability shown on *the return*" is excluded from the suspension provisions of section 6404(g)(1). (Emphasis added.) Because section 6404(g)(2) provides exceptions to 6404(g)(1), "the return" referred to in section 6404(g)(2)(C) is the timely filed return described in section 6404(g)(1), *i.e.*, the original return.

An amended return (or other written notice to the Service of additional liability not listed on the original return) filed after the due date (including extensions) is not "the

return” described in sections 6404(g)(1) and 6404(g)(2)(C). Accordingly, interest and time sensitive penalties are suspended under section 6404(g) with respect to any tax shown on an amended return (or other written notice to the Service of additional liability not listed on the original return) if the Service does not provide to the taxpayer the notice described under section 6404(g)(1) within the notification period.

When a taxpayer files an amended return (or other written notice to the Service of additional liability not listed on the original return), the taxpayer knows the amount and the basis for the additional tax reported on the amended return. The filing of the amended return (or other written notice to the Service of additional liability not listed on the original return), therefore, renders unnecessary notice to the taxpayer under section 6404(g)(1).

In Situation 1, TP filed an amended return on October 4, 2004, within 18 months of filing the income tax return. TP’s amended return renders unnecessary notice of the amount and the basis for the additional tax reported on the amended return prior to the termination of the notification period. Section 6404(g)(1) will not suspend interest and time sensitive penalties with respect to the additional tax liability reported on the amended return. Interest and time sensitive penalties will accrue on the additional tax liability from the due date of the original return.

In Situation 2, TP filed an amended return on November 26, 2004, more than 18

months after the filing of an income tax return. The Service did not provide TP with the notice required to be provided under section 6404(g) prior to October 14, 2004, the date on which the notification period expired. Section 6404(g) suspends the imposition of interest and time sensitive penalties beginning on October 15, 2004, until November 26, 2004, the date on which TP filed the amended return and paid the additional tax due.

In Situation 3, TP filed an amended return on November 26, 2004, more than 18 months after the filing of an income tax return, but did not pay the additional tax due. The Service did not provide TP with the notice required to be provided under section 6404(g) before October 14, 2004, the date on which the notification period expired. Section 6404(g) suspends the imposition of interest and time sensitive penalties beginning on October 15, 2004, and ending on December 17, 2004, the date that is 21 days after November 26, 2004, the date that TP filed an amended return.

#### HOLDINGS

Section 6404(g) suspends interest and time sensitive penalties, additions to tax and additional amounts with respect to an increased tax liability reported on an individual’s amended income tax return filed more than 18 months after the date that is the later of (1) the original due date of the return (without regard to extensions) or (2) the date on which the taxpayer timely filed

the return. The suspension of the accrual of interest and time sensitive penalties, additions to tax and additional amounts begins 18 months and one day after the date that is the later of (1) the original due date of the return (without regard to extensions) or (2) the date on which the individual timely filed the return. The suspension of the accrual of interest and time sensitive penalties, additions to tax and additional amounts ends (1) on the date on which the individual files an amended return if the individual pays the additional tax due with the amended return or (2) on the date that is 21 days after the date on which the individual files the amended return if the individual does not pay the additional tax due with the amended return.

#### EFFECTIVE DATE

This revenue ruling is effective for tax years ending after July 22, 1998, for which the period of limitations on filing a claim for refund has not expired.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Julie A. Jebe of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Julie A. Jebe at (202) 622-7950 (not a toll-free call).