ABATEMENT OF INTEREST CHECK LIST

Section 6404(e) provides that under certain circumstances, the Service can abate interest on deficiencies or other payments of tax. Where the Service decides not to abate interest, the taxpayer can seek Tax Court review pursuant to section 6404(i). Tax Court Rules 280 to 284 apply to abatement review cases.

When evaluating newly filed abatement of interest cases, you should carefully analyze all of the facts and circumstances surrounding the Service's handling of the case and should be aware that the case law applicable to these cases is developing rapidly.

I. Jurisdictional Prerequisites

1. Date Petition was filed: _____
   Date of Notice of Determination: _____
   The usual form for a Notice of Determination in an abatement of interest case is Letter 3180 (full denial). A Letter 3181 is used for a partial denial of abatement. If no notice of determination was issued, you should file a Motion to Dismiss for Lack of Jurisdiction.

2. Notice of Determination signed by: _____
   Title: _____
   The Notice of Determination must be signed by an Appeals Team Manager or higher. See Delegation Order No. 228 (Rev. 3) (2000) .

3. Signer has delegated authority to sign? __ Yes __ No
   If no, the Notice of Determination is invalid, and you should file a Motion to Dismiss for Lack of Jurisdiction.

4. Is Petition filed within 180 days of the date of the Notice of Determination? __ Yes ___ No
   If no, the Petition is untimely and you should file a Motion to Dismiss for Lack of Jurisdiction.

II. Sufficiency of Petition

1. Does the petition comply with T.C. Rule 281(b)?
   Is the name of petitioner set forth? __ Yes __ No
   Is the address of petitioner set forth? _ Yes _ No
   Is the TIN set forth? __ Yes __ No
   Is the date of the Notice of Determination, and the location of the IRS office which issued it, set forth? _ Yes _ No
   Are the taxable years in issue set forth? __ Yes __ No
   Years in issue are: _____

Does the petition contain clear, concise lettered statements of the facts on which petitioner relies to establish the failure to abate is an abuse of discretion? __ Yes __ No
Does the petition state whether the petitioner meets the net worth requirement of I.R.C. § 7430? __ Yes __ No
Does the petition set forth the name, address, telephone number, and Tax Court Bar number of petitioner's counsel? __ Yes __ No
Is a complete copy of the Notice of Final Determination attached to the petition? __ Yes __ No
If the petition does not set forth all the items required by the Rule, consider contacting petitioner to suggest an amendment to the petition. If the information is readily attainable, allege the missing item in the answer. If the net worth of petitioner is not stated, request that petitioner file an amendment addressing net worth. See generally T.C. Rule 281(b)(1) through (7).

2. Was a Designation of Place of Trial filed with the petition? __ Yes __ No
Place of Trial: _____

III. Other Potential Issues

1. On what date was the underlying tax or addition to tax assessed?
Date: _____

2. What is the basis for the assessment?
Assessment of tax shown on the return _____
Assessment of penalty based on tax shown on return _____
Deficiency assessment of tax or addition _____
Agreed assessment _____
Other _____ Source document: _____

3. Was the assessment made within the required time period?
__ Yes __ No Authority:_____
For the applicable period of limitations, see generally I.R.C. §§ 6501, 6503, and 6229.

4. What is the period for which interest accrued, or is still accruing?
Interest began to accrue on (date): _____
Interest ceased to accrue on (date): _____

5. For what period is petitioner seeking abatement?
Date period of requested abatement begins: _____
Date period of requested abatement ends: _____
Has interest been assessed for this entire period? __ Yes __ No

6. Are taxable years prior to 1997 at issue? __ Yes __ No

For taxable years prior to 1979 interest cannot be abated. For taxable years beginning on or before July 30, 1996, interest can be abated under section 6404(e) only if the Service's error or delay is in performing a "ministerial act." For taxable years beginning after July 30, 1996, interest can be abated if the Service made an unreasonable error~~s~~ or delay in performing a "ministerial or managerial act." Examples of ministerial and managerial acts are contained in Treas. Reg. § 301.6404-2~~T~~.

7. For tax years beginning on or before July 30, 1996:
   Was there an error or delay in performing a ministerial act? __Yes __ No
   Describe ministerial act: _____
   Period of delay due to act: _____
   Amount of interest to be abated due to ministerial act: _____
   Amount of interest remaining after abatement: _____

8. For tax years beginning after July 30, 1996:
   Was there an unreasonable error or delay in performing a ministerial or managerial act?
   __Yes __No
   Describe ministerial or managerial act:_____
   Period of delay due to act: _____
   Amount of interest to be abated due to ministerial or managerial act:_____
   Amount of interest remaining after abatement: _____

8. On what date did the Service first contact the petitioner in writing regarding the deficiency or payment at issue, within the meaning of section 6404(e)[flush language]?
   Date: _____
   Only interest that accrues after this date may be abated.

9. Is any part of the determined delay attributable to actions of petitioner? __ Yes __ No
   Interest attributable to actions of the petitioner should not be abated.

IV. <u>Amount of Interest</u>

1. What is the total amount of assessed interest?
   $_____
   How much of this is unpaid?
   $_____

2. What is the amount of the abatement sought by petitioner?
   $_____

3. After abatements due to ministerial or managerial delay, what is the amount of interest remaining at issue?
   $ _____

V. Trial Preparation

1. Will you need a witness to explain the interest computation to the court? __ Yes __ No

2. Have you requested a certified transcript? __ Yes __ No
   Date transcript requested: _____

3. Will Service personnel need to testify?
   Witnesses: _____
   Date testimony authorization sought: _____

Other sources of information on abatement of interest:

Notice CC-201-012 Change in Coordination Procedures for Abatement of Interest Cases (February 15, 2001)