Department of the Treasury Internal Revenue Service Office of Chief Counsel

Notice

CC-2019-004

June 27, 2019

	Interest and Penalties on Restitution-			
Subject:	Based Assessments	Cancel Date:	Until further notice	

Purpose

This notice updates Chief Counsel Notice CC-2011-018 (August 26, 2011) regarding the accrual of interest on restitution assessed under I.R.C. § 6201(a)(4)(A). This notice also addresses whether a failure to pay penalty can accrue on an amount of restitution assessed under section 6201(a)(4)(A).

Discussion

A. Interest Accrual on Restitution-Based Assessments

Answer 12 in Chief Counsel Notice CC-2011-018 stated that underpayment interest under section 6601 would accrue on an amount of restitution assessed under section 6201(a)(4)(A). The U.S. Tax Court held in Klein v. Commissioner that the Service lacks the authority to assess and collect underpayment interest accruing under section 6601(a) on an amount of restitution assessed under section 6201(a)(4)(A). Klein v. Commissioner, 149 T.C. No. 15 (2017). The government did not appeal this decision. Consistent with Klein, if a taxpayer challenges in litigation the accrual of interest on an amount of restitution assessed under section 6201(a)(4)(A), or otherwise seeks the abatement of interest assessed on such an amount pursuant to section 6201(a)(4)(A), the interest should be abated. If, however, the total amount of the restitution ordered by a federal district court includes interest, Klein is inapplicable to the assessment of interest included in the restitution order, and the Service should not abate such interest. Chief Counsel attorneys should review any case in which interest is included in a module containing an amount of restitution assessed under section 6201(a)(4)(A) to determine whether the interest is improperly accruing on the amount of restitution assessed under section 6201(a)(4)(A) or was properly assessed as a component of the total amount of restitution ordered by the federal district court. Documents from the district court record that may indicate whether interest under section 6601 is a component of the total amount of restitution ordered by the federal district court include the court's judgment and commitment order, a transcript of the sentencing hearing, a plea agreement, and the government's sentencing memorandum. In addition, Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS, identifies the individual components of the total amount of restitution. Title 18 interest that accrues on the amount of restitution ordered (that is, interest accruing on the amount of restitution ordered under 18 U.S.C. § 3612(f)) continues not to be assessable by the Service consistent with answer 12 in Chief Counsel Notice CC-2011-18.

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	Electronic Reading Room
Filename:	CC-2019-004	File copy in: CC:FM:PFD

B. Failure to Pay Penalty Accrual on Restitution-Based Assessments

The U.S. Tax Court also held in <u>Klein v. Commissioner</u> that the Service lacks the authority to assess and collect the failure to pay penalty imposed under section 6651(a)(3) on an amount of restitution assessed under section 6201(a)(4)(A). The failure to pay penalty under section 6651(a)(3) applies in the case of a failure to pay any amount in respect of any tax required to be shown on a return specified in section 6651(a)(1) which is not so shown. An amount of restitution assessed under section 6201(a)(4)(A) is not a tax, nor does the amount accurately represent the amount of tax required to be shown on a return specified in section 6651(a)(4)(A) is not a tax, nor does the amount accurately represent the amount of tax required to be shown on a return specified in section 6651(a)(1). Accordingly, the failure to pay penalty does not apply to an amount of restitution assessed under section 6201(a)(4)(A).

If the failure to pay penalty is a component of the total amount of restitution ordered by the federal district court, however, the taxpayer is liable for the failure to pay penalty included in the order. The two most common situations in which this may arise are where (1) the taxpayer has agreed to be held liable for a failure to pay penalty in a plea agreement as part of the total amount of restitution, or (2) the restitution was based on an already-assessed tax liability that included an already-assessed failure to pay penalty. In these rare situations, the assessment and collection of the failure to pay penalty is appropriate to the extent it is a component of the total amount of restitution ordered.

Questions concerning this notice and how to proceed with the assessment or collection of interest and penalties in criminal restitution cases, including how to determine whether interest under section 6601 is included in the total amount of restitution ordered by the federal district court, should be directed to Branch 1 or 2 of Procedure and Administration at (202) 317-6845 or (202) 317-6844, respectively. Questions concerning how to proceed with the assessment or collection generally in criminal restitution cases should be directed to Branch 3 or 4 of Procedure and Administration at (202) 317-6842, respectively.

<u>/s/</u>

Kathryn A. Zuba Associate Chief Counsel (Procedure & Administration)