

Internal Revenue Code Section 6404(a)

Abatements



(a) General rule.

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which-

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes.

No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

(c) Small tax balances.

The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

(d) Assessments attributable to certain mathematical errors by Internal Revenue Service.

In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service.

(1) In general.

In the case of any assessment of interest on -

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or

employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) Interest abated with respect to erroneous refund check.

The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless-

(A) the taxpayer (or a related party) has in any way caused such erroneous refund, or

(B) such erroneous refund exceeds \$50,000.

(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service.

(1) In general.

The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) Limitations.

Paragraph (1) shall apply only if-

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

(3) Repealed.

(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer.

(1) Suspension.

(A) In general. In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of-

(i) the date on which the return is filed; or

(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(B) Separate application. This paragraph shall be applied separately with respect to each item or adjustment.

If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.

(2) Exceptions.

Paragraph (1) shall not apply to-

(A) any penalty imposed by section 6651;

(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;

(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return;

(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;

(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(3)(A) is not met and any listed transaction (as defined in 6707A(c)); or

(F) any criminal penalty.

(3) Suspension period.

For purposes of this subsection , the term "suspension period" means the period-

(A) beginning on the day after the close of the 36-month period under paragraph (1) ; and

(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

(h) Judicial review of request for abatement of interest.

(1) In general.

The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought-

(A) at any time after the earlier of-

(i) the date of the mailing of the Secretary's final determination not to abate such interest, or

(ii) the date which is 180 days after the date of the filing with the Secretary (in such form as the Secretary may prescribe) of a claim for abatement under this section, and

(B) not later than the date which is 180 days after the date described in subparagraph (A)(i).

(2) Special rules.

(A) Date of mailing. Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief. Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) Review. An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(i) Cross reference.

For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.