

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 6601, 6611, 6621; 301.6601-1, 301.6611-1, 301.6621-1.)

Rev. Proc. 99-43

SECTION 1. PURPOSE

.01 In general. This revenue procedure provides guidance regarding the application of § 6621(d) of the Internal Revenue Code with respect to interest accruing before October 1, 1998, and modifies and supersedes Rev. Proc. 99-19, 1999-13 I.R.B. 10. Section 6621(d) was enacted by § 3301 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 741, and was amended by § 4002(d) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681. Section 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998). However, the net interest rate of zero in § 6621(d) also applies to interest for periods beginning before July 22, 1998 (i.e., interest accruing before October 1, 1998), provided certain conditions (described in section 4.01 of this revenue procedure) are met. Among these conditions is a requirement that a taxpayer request the application of § 6621(d) by December 31, 1999. This revenue procedure provides guidance on, and

discusses how to comply with, those conditions.

.02 Comments received in response to Rev. Proc. 99-19. In Rev. Proc. 99-19, the Service asked for comments regarding what taxpayers should be required to submit to the Service by December 31, 1999, when taxpayers cannot provide a final computation on the application of the net rate of zero by that date. Commentators made recommendations regarding the amount of information that would be sufficient to make a request by December 31, 1999, that would reasonably identify and establish overlapping periods. Commentators also suggested that taxpayers should not be required to take any action by December 31, 1999, if taxpayers could not reasonably identify and establish overlapping periods by that date. In response to these comments, this revenue procedure provides that:

(1) taxpayers must file a claim requesting application of the net rate of zero by December 31, 1999, only if both applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) will be closed on or before December 31, 1999 (section 4.03(1)); and

(2) taxpayers need not take any action by December 31, 1999, if at least one of the applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) will be open after December 31, 1999; such taxpayers must file a claim requesting application of the net rate of zero on or before the date on which the last applicable period of limitation closes (section 4.03(2)).

.03 Modification to Rev. Proc. 99-19 regarding application procedures. Claims

requesting the application of the net rate of zero:

(1) should be sent to a specific address (section 5.02);

(2) should be specifically labeled (section 5.03); and

(3) should generally be made using a computation that reduces underpayment interest, except as otherwise expressly provided (section 5.04(5)(f)).

SECTION 2. BACKGROUND

.01 Interest computations in general.

(1) Section 6601(a) provides, in general, that if any amount of tax imposed by the Code is not paid on or before the last date prescribed for payment, interest on such amount must be paid for the period from such last date to the date paid at the underpayment rate established under § 6621.

(2) Section 6611(a) provides that interest must be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621. Section 6611(b)(1) provides that, in the case of a credit, interest must be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken. Section 6611(b)(2) provides that, in the case of a refund, interest must be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days.

.02 Interest rates in general.

(1) For interest accruing before January 1, 1999, § 6621(a)(1) provides that the overpayment rate is the federal short-term rate (determined under § 6621(b)) plus 2

percentage points. To the extent that an overpayment of tax by a corporation exceeds \$10,000, the overpayment rate is the federal short-term rate plus 0.5 percent.

(2) Section 6621(a)(2) provides that the underpayment rate is the federal short-term rate (determined under § 6621(b)) plus 3 percentage points. Special rules in § 6621(c) increase the underpayment rate on large corporate underpayments by an additional 2 percentage points.

.03 Interest for overlapping periods.

(1) Section 6621(d), as enacted by the RRA on July 22, 1998, provides that, to the extent that for any period interest is payable under subchapter A (§§ 6601 and 6602) and allowable under subchapter B (§ 6611) on equivalent underpayments and overpayments by the same taxpayer of tax imposed by the Code, the net rate of interest under § 6621 on such amounts is zero for such period.

(2) The Conference Report, H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998), accompanying the RRA provides that the net interest rate of zero is applied without regard to whether the overpayment or underpayment is currently outstanding. Further, each overpayment or underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment overlap for a particular period. That report also provides that the net interest rate of zero applies even when special rules increase the rate of interest for large corporate underpayments under § 6621(c), or decrease the rate of interest for large corporate overpayments under § 6621(a).

SECTION 3. SCOPE

.01 Applicability. This revenue procedure applies to the application of the net interest rate of zero in § 6621(d) to interest for periods beginning before July 22, 1998 (i.e., interest accruing before October 1, 1998), provided:

(1) both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998;

(2) the periods of tax overpayments and underpayments for which the net interest rate of zero applies are reasonably identified and established (as described in section 5 of this revenue procedure); and

(3) the request is made not later than as described in section 4.03 of this revenue procedure.

.02 Inapplicability. This revenue procedure does not apply to:

(1) the application of the net interest rate of zero in § 6621(d) to interest for periods beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998). The Service intends to provide further guidance for those periods;

(2) an overpayment or underpayment for any period during which interest on the overpayment or underpayment was not allowable or payable by law (e.g., the 45-day interest disallowance rule under § 6611(e)); or

(3) to the extent of an offset made pursuant to §§ 6402(a) and 6601(f), regarding the crediting of an outstanding overpayment against an outstanding underpayment.

SECTION 4. SPECIAL EFFECTIVE DATE RULE

.01 Special Rule. Section 6621(d) generally applies to interest for periods (calendar quarters) beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998). See H. R. Rep. No. 364 (Part 1), 105th Cong., 1st Sess. 64 (1998); S. Rep. No. 174, 105th Cong., 2d Sess. 62 (1998); H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998). However, § 3301(c)(2) of the RRA provides that § 6621(d) applies to interest for periods beginning before July 22, 1998 (i.e., interest accruing before October 1, 1998), provided certain conditions are met. First, both periods of limitation applicable to the tax underpayment and to the tax overpayment (as described in section 4.02 of this revenue procedure) must have been open on July 22, 1998. Second, the taxpayer must:

(a) reasonably identify and establish periods of tax overpayments and underpayments for which the net interest rate of zero applies, and

(b) not later than December 31, 1999, request the Secretary of the Treasury to apply § 6621(d) to such periods.

.02 Applicable periods of limitation. The applicable periods of limitation are as follows:

(1) Underpayment interest. A claim for credit or refund of interest paid on an underpayment pursuant to § 6601 or 6602 generally must be filed within 3 years from the time the tax return was filed or 2 years from the time the interest was paid, whichever period expires later, pursuant to § 6511.

(2) Overpayment interest. A claim for payment of additional interest allowable on an overpayment pursuant to § 6611 must be filed within the 6-year period in which a suit

must be filed pursuant to 28 U.S.C. §§ 2401 and 2501. See Rev. Rul. 56-506, 1956-2 C.B. 959.

(3) Claims filed on or before December 31, 1999. If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, and both close on or before December 31, 1999, a claim requesting the application of the net interest rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) will be considered timely if filed on or before December 31, 1999.

.03 Requirement to make a request by December 31, 1999. A taxpayer will satisfy the requirement in the special rule to make a request for the application of the net rate of zero not later than December 31, 1999, as follows:

(1) If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, but both will be closed on or before December 31, 1999, the taxpayer must file a claim requesting the application of the net rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) on or before December 31, 1999.

(2) If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, and at least one of the applicable periods of limitation will be open after December 31, 1999, the taxpayer need not take any action on or before December 31, 1999. In order to obtain the net rate of zero, the taxpayer must file a claim requesting application of the net rate of zero (as

described in sections 5.01 through 5.04 of this revenue procedure) or make a written request (as described in section 5.06 of this revenue procedure) on or before the date on which the last applicable period of limitation closes.

.04 Net Rate of Zero. In general, the Service will apply the net rate of zero as follows:

(1) If the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is open at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer.

(2) Except as provided in 4.04(3) of this revenue procedure, if the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is closed at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, but the period for paying additional overpayment interest (as described in section 4.02(2) of this revenue procedure) is open, the Service will apply the net rate of zero by increasing overpayment interest owed to the taxpayer.

(3) If both applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) are open on July 22, 1998, and a claim requesting the application of the net interest rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) is filed on or before December 31, 1999, the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer.

SECTION 5. PROCEDURES FOR REQUESTING THE NET RATE OF ZERO

.01 Form to file. Except as provided in section 5.06 of this revenue procedure, requests for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998, should be made on Form 843, Claim for Refund and Request for Abatement.

.02 Where to file. A Form 843 requesting the net rate of zero should be sent to the following address:

Internal Revenue Service
Net Rate Interest Netting Claim
P.O. Box 9987
Mail Stop 6800
Ogden, UT 84409

or, if sent by other than U. S. mail, to the following address:

Internal Revenue Service
Net Rate Interest Netting Claim
1160 West 1200 South
Mail Stop 6800
Ogden, UT 84201

.03 Label. The taxpayer should label the top of the Form 843: "Request for Net Interest Rate of Zero Under Rev. Proc. 99-43."

.04 Filing requirements for Form 843.

- (1) Line 1 should be left blank.
- (2) The taxpayer may, but is not required to, place a dollar amount on Line 2.
- (3) Line 3 should indicate the type of tax and type of return covered by the request. More than one box may be checked if more than one type of tax or return is

covered by the request. In addition, any taxes imposed by the Code (or returns for those taxes) for which there is no box on Line 3 should be written in on that line.

(4) Line 4 should be left blank.

(5) Line 5 should:

(a) identify the taxable periods for which the taxpayer overpaid and underpaid its tax liability. A separate Form 843 is not required for each separate taxable period involved in the request;

(b) state when the taxpayer paid the tax if the underpayment is no longer outstanding;

(c) state when the taxpayer received a refund of tax if the overpayment is no longer outstanding;

(d) identify and establish the period(s) for which the taxpayer's overpayment and underpayment overlapped and the overlapping amount. For this purpose, the taxpayer should provide any background material (such as copies of examination reports, notices, or prior interest computations provided by the Service) relating to the overpayments and underpayments. The background material is needed to assist the Service in determining the period(s) for which the overpayment and underpayment overlap, and the amount of such overlap;

(e) state that, to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established under section 5.04(5)(d) of this revenue procedure, the period(s) has (have) been used only once in a request to obtain

the net interest rate of zero under § 6621(d); however, if the full amount of the overpayment or underpayment is not used in a netting calculation, the remaining portion may be used in another netting calculation; and

(f) provide a computation, to the extent possible, of the amount of interest to be credited, refunded, or abated to provide a net interest rate of zero for the period(s) of overlap. This computation generally should be made by applying § 6621(d) to reduce the taxpayer's underpayment interest payable to the Service. However, if the Form 843 is filed after December 31, 1999, and only the period of limitation for claiming additional overpayment interest is open on that filing date, the computation should be made by applying § 6621(d) to increase the taxpayer's overpayment interest payable by the Service.

.05 Verification. The amounts used in a computation provided under section 5.04(5)(f) of this revenue procedure are subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

.06 Special procedure. No Form 843 is required when a computation of interest using the net interest rate of zero under § 6621(d) for interest accruing before October 1, 1998, is requested by a taxpayer in connection with a return (or returns) of the taxpayer under consideration by any function of the Service (including Examination, Appeals, or a case before a federal court that requires a computation of interest by any function of the Service). Rather than filing a Form 843, the taxpayer must furnish a letter or written

statement to such function that:

(1) states that the taxpayer is requesting the net interest rate of zero under § 6621(d);

(2) indicates the type of tax and type of return that affects the interest computation for the taxable period under consideration;

(3) states when and for what period(s) the refund or payment (that affects the interest computation for the taxable period under consideration) was made; and

(4) states that, to the extent of equivalent amounts of overpayment or underpayment, the period(s) set forth under section 5.06(3) of this revenue procedure has (have) not previously been applied to obtain a net interest rate of zero under § 6621(d).

.07 Special procedure verification. The refund or payment provided under section 5.06(3) of this revenue procedure is subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

SECTION 6. EXAMPLES

.01 Example 1. X is a calendar year corporation. The Service examined X's Form 1120, Corporation Income Tax Return, for the 1992 and 1994 taxable years. For the 1994 taxable year, the Service determined that X was entitled to a refund of \$30,000. This Service-initiated refund was made on September 21, 1997, with interest computed from March 15, 1995, to July 29, 1997. For the 1992 taxable year, the Service

determined that X underpaid its income tax by \$80,000. The Service sent X a notice and demand for payment dated May 3, 1998, which X paid on May 12, 1998, with interest computed from March 15, 1993, to May 3, 1998. On July 22, 1998, both the 6-year period of limitation for claiming additional overpayment interest on X's 1997 refund and the 2-year period of limitation for claiming a refund of underpayment interest paid in 1998 were open. On December 27, 1999, X files a Form 843 requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1995, to July 29, 1997. The Service will refund underpayment interest to X in an amount equal to the difference between the underpayment interest paid on \$30,000 for the period from March 15, 1995, to July 29, 1997, and the overpayment interest computed and paid on \$30,000 for that period.

.02 Example 2. The facts are the same as in Example 1, except that the Service sent X a notice and demand for payment dated May 3, 1996, which X paid on May 12, 1996, with interest computed from March 15, 1993, to May 3, 1996. On December 27, 1999, X files a Form 843 requesting the application of § 6621(d) for the overlap period from March 15, 1995, to May 3, 1996. On July 22, 1998, the 6-year period of limitation for claiming additional overpayment interest on X's 1997 refund was open, but the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 was not open. Therefore, the net interest rate of zero under § 6621(d) does not apply to the overlap period and no adjustment will be made.

.03 Example 3. Y is a calendar year corporation. The Service examined Y's Form

1120, Corporation Income Tax Return, for the 1990 and 1992 taxable years. For the 1990 taxable year, the Service determined that Y was entitled to a refund of \$40,000. The Service-initiated refund was made on November 21, 1993, with interest computed from March 15, 1991, to September 28, 1993. For the 1992 taxable year, the Service determined that Y underpaid its income tax by \$60,000. The Service sent Y a notice and demand for payment dated October 3, 1996, which Y paid on October 12, 1996, with interest computed from March 15, 1993, to October 3, 1996. On July 22, 1998, both the 6-year period of limitation for claiming additional overpayment interest on Y's 1993 refund and the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 were open. However, both of these periods of limitation will be closed before December 31, 1999. Y files a Form 843 after both these periods close and on or before December 31, 1999, requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1993, to September 28, 1993. The Service will refund underpayment interest to Y in an amount equal to the difference between the underpayment interest paid on \$40,000 for the period from March 15, 1993, to September 28, 1993, and the overpayment interest computed and paid on \$40,000 for that period.

.04 Example 4. The facts are the same as in Example 3 except that the Service-initiated refund was made on November 21, 1994, with interest computed from March 15, 1991, to September 28, 1994. On December 31, 1999, the 6-year period of limitation for claiming additional overpayment interest will be open, but the 2-year period

of limitation for claiming a refund of underpayment interest paid in 1996 will not be open. After December 31, 1999, but on or before the close of the 6-year period of limitation for claiming additional overpayment interest on Y's 1994 refund, Y files a Form 843 requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1993, to September 28, 1994. The Service will pay additional overpayment interest to Y in an amount equal to the difference between the underpayment interest paid on \$40,000 for the period from March 15, 1993, to September 28, 1994, and the overpayment interest computed and paid on \$40,000 for that period.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxpayer requests made for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 99-19 is modified and superseded; however, the procedures in Revenue Procedure 99-19 will remain effective for any taxpayer requests for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998, made prior to November 22, 1999.

DRAFTING INFORMATION

The principal author of this revenue procedure is John J. McGreevy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. McGreevy on (202) 622-4910 (not a toll-

fee call).