

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to:

(Small Business/Self-Employed)

from: Joseph W. Clark
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subject: Whether Internal Revenue Code Section 6404(g) applies to Last Chance Compliance Initiative cases for taxpayers who used Offshore Credit Cards and/or Offshore Financial Arrangements when the taxpayer provided to the Revenue Agent filled out and signed amended returns (Form 1040x) as required under the initiative?

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

YR 1 =

YR 6 =

YR 7 =

YR 8 =

YR 10 =

YR 11 =

XXXX =

Document A =

ISSUES

Whether the notification period for suspending the accrual of interest under Section 6404(g), formerly 18 months now 36 months, applies to Last Chance Compliance Initiative cases for taxpayers who used Offshore Credit Cards and/or Offshore Financial Arrangements when the taxpayer provided to the Revenue Agent filled out and signed amended returns (Form 1040x) as required under the initiative?

CONCLUSIONS

Suspending the accrual of interest under Section 6404(g) does not apply to cases under the Last Chance Compliance Initiative for Offshore Credit Cards and/or Offshore Financial Arrangements for numerous reasons stated below. When a taxpayer provides amended returns to a Revenue Agent, the filing date of the amended returns is substituted for the dates of the original returns. Additionally, there is no requirement for the Service to provide the taxpayer with notice of the additional amount reported on the amended return because the taxpayer's filing of the amended return is treated as an admission of the additional amount for which no notice is required.

FACTS

Taxpayer was identified as a result of John Doe summonses issued to VISA & MasterCard regarding individuals who had money and/or signature authority over a financial account in a tax haven country. The taxpayer had an account in an offshore bank during YR 1 through the end of YR 6 which are the years included in the Revenue Agent's report. The case came in under Project Code XXXX. The Revenue Agent sent the taxpayer an initial letter 3990 dated December 5, YR 7, which notified him that the Service had information that he maintained a financial account in a tax haven country with financial secrecy laws. Enclosed with that letter was Notice 1341, Terms of Last Chance Offer, which explained the requirements placed on taxpayers who wish to accept the Government's offer to settle their tax situation.

During the period from December of YR 7 through July of YR 8 the taxpayer prepared and mailed amended 1040X returns to the Revenue Agent for the six years (YR 1 – YR 6) involved. Taxpayer also provided copies of the foreign account statements for all years and otherwise complied with provisions of the settlement offer. The Revenue Agent has prepared examination reports that match the tax deficiencies shown on the amended returns, applied the civil fraud penalty on the highest year's deficiency, accuracy-related penalties on other years, and has recently been trying to determine whether or not the interest suspension rules of Section 6404(g) apply to this taxpayer.

LAW AND ANALYSIS

Interest suspension under Section 6404(g) does not apply to these facts for numerous reasons that are discussed below.

Generally, interest and penalties will accrue on tax liabilities during the period that the liability remains unpaid. Section 6404(g) requires the Service to suspend the accrual of certain interest and penalties starting 18 or 36 months (depending on the date of the notice provided by the Service) after the timely filing of the tax return if the Service has not provided the taxpayer with notice that specifically sets forth the liability and the basis for the liability within the 18 or 36 month notification period (the "notification period"). The suspension of the interest and penalties begins upon the expiration of the 18 or 36 month notification period and ends 21 days after the date that the Service provides the notice to the taxpayer (the "suspension period"). The suspension period does not apply where fraud is involved.

Prop. Treas. Reg. 301.6404-4(a)(2)(i) states that after December 21, 2005, if a Taxpayer provides to the Service an amended return or one or more other signed written documents showing an increase in tax liability, the date on which the amended return was filed will be the date on which the notification period ends and the interest suspension period under Section 6404(g) starts to run. Hence, when an amended return showing additional tax due is filed, the interest suspension period does not begin until 18 or 36 months after the amended return is filed. In addition, there is no requirement for the Service to provide the taxpayer with notice of the additional amount reported on the amended return because the taxpayer's filing of the amended return is treated as an admission of the additional amount for which no notice is required. See Rev. Rul. 2005-4. For example, suppose a taxpayer filed a federal income tax return for taxable year 2003 on April 15, 2004. If the taxpayer files an amended return for taxable year 2003 on April 17, 2006, reporting additional liability, the 18 or 36 month (see last paragraph of this advice for information regarding 18 vs. 36 months) period in IRC Section 6404(g)(1) begins on April 17, 2006, rather than the date on which the original return was filed.

This concept is set forth on page 11 of the Document A, under the heading "Post 12-21-2005 Amended Returns." Note that the language there also uses the phrase "provides to the IRS." Providing to the Service would be the taxpayer giving or returning (providing) the filled out and signed 1040x forms to a Revenue Agent. Therefore, the taxpayer's interest suspension period in Section 6404(g)(1) begins on the dates the recent amended returns were filed.

Since the taxpayer provided to the Revenue Agent amended 1040x returns from December YR 7 - July YR 8 for the six tax years involved, the interest suspension period under Section 6404(g) started running from the dates that the taxpayer provided those amended returns to the Revenue Agent (the Service). By providing the Revenue Agent the amended returns, the taxpayer has substituted the amended returns for the original returns and the dates on which the documents were provided to the Revenue Agent (the Service) is the substituted date for the original filing of the returns (the original Form 1040 returns). Therefore, the interest suspension period under 6404(g)(1) begins on the dates that the taxpayer provided the amended returns to the Revenue Agent – in this case various dates from December YR 7 - July YR 8. At the earliest,

interest suspension will not begin in this case until 36 months from December YR 7 - July YR 8 (December YR 10 – July YR 11). Since the taxpayer filed the amended returns in December YR 7 - July YR 8, discussing interest suspension in early 2008 is clearly premature. At this point in time, interest continues to accrue on the additional tax liability from the due date on the original return and the taxpayer is liable for all interest accruals.

The returns provided by the taxpayer to the Revenue Agent (the Service) should be treated as “filed” with the Service. As stated above, when the taxpayer provides amended returns to the Service, the filing date of the new returns replaces the original filing date for computation of interest under Section 6404(g). Taxpayers who participate under the LCCI should not feel that they were “tricked” into losing the interest suspension under Section 6404(g) by providing amended returns to a Revenue Agent. In most circumstances the taxpayer who had money in an offshore bank account and did not report this money would not qualify for Section 6404(g) interest suspension due to the fraud exception. Participation under the LCCI is a benefit to the taxpayer because the Service waives numerous penalties that would otherwise apply to these cases. Document A specifically states that the Service “agrees to waive certain penalties which otherwise would apply” “in exchange for [the taxpayer] filing correct returns [with] the Service.” Document A, Basic Concepts (page 1).

A recent amendment to Section 6404(g) changed the suspension period from 18 to 36 months and is effective for notices provided by the Service after November 25, 2007. Small Business and Work Opportunity Tax Act of 2007 (PL 110-28). Thus, if the Service provides the notice after November 25, 2007, the 36 month interest suspension applies. If notice was provided on or before November 25, 2007, the 18 month interest suspension period would apply.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call _____ if you have any further questions.