



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR DAVID A. BREEN
SENIOR ATTORNEY (SBSE) CC:SB:2:PHI:1

FROM: John J. McGreevy
Assistant to the Branch Chief CC:PA:APJP:1

SUBJECT: Form 8697 and Form 1099-INT

This Chief Counsel Advice responds to your memorandum for significant service center advice dated November 14, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

How should the Internal Revenue Service ("Service") issue Form 1099-INT when a taxpayer is entitled to look-back interest under § 460(b)(2) as shown on Form 8697 and overpayment interest under § 6611 of the Internal Revenue Code ("Code")?

CONCLUSION

The Service should issue a single Form 1099-INT reflecting the aggregate of look back interest under § 460(b)(2) and overpayment interest under § 6611 of the Code.

FACTS

Form 8697 is used to figure the interest due or to be refunded under the look-back method of § 460(b)(2) on certain long term contracts entered into after February 28, 1986, that are accounted for under either the percentage of completion method or the percentage of completion capitalized cost method.

In the case of a refund of interest reflected on Form 8697, the Philadelphia Customer Service Center issues Form 1099-INT for the amount of interest refunded to the taxpayer. In addition, under certain circumstances, the taxpayer is entitled to interest on any overpayment pursuant to § 6611.

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Personnel processing Forms 8697 have received conflicting instructions from other units at the service center. The Accounting Branch believes the Form 1099-INT issued by the service center should include only the additional interest due to the taxpayer as reflected on Form 8697. The Compliance Branch, however, believes the Form 1099-INT should include both the amount reflected on Form 8697 and any overpayment interest under § 6611. Line 9 of the instructions to Form 8697 suggests that the amount of interest claimed may differ from that actually paid by the Service. The instructions direct the taxpayer to report the amount on line 9 of Form 8697 or the amount refunded by the Service if different. If Form 1099-INT reflects only the amount of overpayment interest under § 6611, a taxpayer might under report the amount of interest income actually paid.

LAW AND ANALYSIS

Section 460(b)(2) provides that interest is computed under the look-back method by (A) first, allocating income under the contract among taxable years before the year in which the contract is completed on the basis of the actual contract price and costs instead of the estimated contract price and costs; (B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each taxable year referred to in subparagraph (A) which would result solely from the application of subparagraph (A); and then using the adjusted overpayment rate, compounded daily, on the overpayment or underpayment determined under subparagraph (B).

Section 460(b)(7) provides that the adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under § 6621 for the calendar quarter in which such interest accrual period begins.

Section 6611 of the Code provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621.

Both of the above sections concern the calculation of interest to be paid by the Service. Payments of interest are subject to the information reporting requirements of the Code.

According to § 6041(a), all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, shall render a true and accurate return setting forth the amount of such gains, profits, and income, and the name and address of the recipient. Section 6041(a) does not apply to payments of interest subject to reporting pursuant to § 6049(a) of the Code.

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Section 1.6041-1(a)(1)(i)(B) of the Income Tax Regulations (“regulations”) requires reporting of interest payments. Section 1.6041-1(a)(1)(ii) provides that payments of interest described in §1.6041-1(a)(1)(i)(B) shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of § 6049(a)(1) and (2) (relating to interest).

According to § 6049(a), every person who makes payments of interest (as defined in subsection (b)) aggregating \$10 or more to any other person during any calendar year, or who receives payments of interest (as so defined) as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the interest so received shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

Neither the look back interest computed under § 460(b)(2) nor the interest on the overpayment under § 6611 meets the definition of interest under § 6049(b)(1). In the case of interest on the overpayment, § 1.6049-5(b)(4) of the regulations provides that the term interest does not include interest that a governmental unit pays with respect to tax refunds.

Therefore, the Service is not subject to the reporting requirements of § 6049. As a result, the Service is subject to § 6041 of the Code for interest paid to taxpayers if the aggregate amount is \$600 or more.

Thus, when the Service makes payments to a taxpayer of interest under §§ 6611 and 460(b)(2) which aggregates to \$600 or more, the payments must be reported on Form 1099-INT.¹ The Form 1099-INT should reflect both overpayment interest under § 6611 and look-back interest under § 460(b)(2) from Form 8697.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.

¹The Service may issue Form 1099-INT if the aggregate is less than \$600.