TAXPAYERS ASSISTANCE CORPORATION

JOURNAL OF TAX CONTROVERSY

Pro Bono = Tax Justice

The Meter Is Running

How to Stop, Suspend, and Abate IRS Interest

INTEREST, PENALTIES, AND PROCEDURE

FRANK AGOSTINO[1]
Counsel, *Kostelanetz LLP* | President, Taxpayers Assistance Corporation

MICHAEL WALLACE
Enrolled Agent, *Kostelanetz LLP*

Corrected edition, November 3, 2026. Authorities current through November 3, 2026.

A client walks in with a notice. The tax she owes is forty thousand dollars. The accuracy-related penalty and the interest come to forty-five thousand more. She wants to know how the government can charge her more in penalties and interest than it charges her in tax, and she wants to know whether anyone can do anything about it.

The honest answer to the first question is daily compounding over eleven and a half years. The honest answer to the second question is yes, more often than most practitioners believe. The oldest myth in tax controversy is that interest is a

[1] © 2026 Taxpayers Assistance Corporation. All rights reserved. Frank Agostino is Counsel, Kostelanetz LLP, and President of the Taxpayers Assistance Corporation. Michael Wallace, EA, is an Enrolled Agent at Kostelanetz LLP. The article is published for education; it is not legal advice and does not create an attorney-client or practitioner-client relationship. The taxpayers in the examples are composites with invented names and figures. Lawyer responsible for this publication: Frank Agostino, Kostelanetz LLP, 7 World Trade Center, 250 Greenwich Street, 34th Floor, New York, NY 10007, (212) 808-8100.

fixed charge that neither the Internal Revenue Service nor the Tax Court can touch. The Code says otherwise. Section 6404 authorizes abatement. Section 6404(g) and section 6601(c) require suspension when the government is slow. Section 6603 lets the taxpayer stop the clock herself. Section 6621(d) wipes out the rate differential when the taxpayer both owes and is owed. And in 2025 the Court of Federal Claims, in a decision now on appeal, held a refund suit timely under former section 7508A(d) because the COVID-19 disaster period, which ran for more than three years, kept the filing period open; some practitioners are now testing that reading in the interest computation for affected taxpayers.[2]

Do not assume any of this relief was applied, even where the statute makes it mandatory. The IRS computers apply some suspensions automatically and miss others. Appeals Officers rarely raise interest abatement on their own. The Tax Court will not hear an interest claim the taxpayer never pleaded. The practitioner who knows where to look, and who follows the procedure to the letter, can often cut the bill. This article shows how. It walks through the accrual rules, the suspension rules, the abatement rules, netting, and the procedure that decides whether any of it matters, with the forms a practitioner needs in the appendix.

I. Interest Is Part of the Tax, and It Starts Earlier Than Clients Expect.

A challenge to an interest assessment begins with a correct understanding of when interest starts and how it grows. The rules are mechanical, and the IRS applies them mechanically. The practitioner who cannot reconstruct the computation cannot find the error in it.

A. The clock starts on the last date prescribed for payment, and an extension to file is not an extension to pay.

Section 6601(a) imposes interest on any tax not paid on or before the last date prescribed for payment, from that date to the date paid.[3] For income tax that date is the original due date of the return, and the Code says so without ambiguity: an extension of time to file is not an extension of time to pay, and even an extension of time to pay does not move the date from which interest runs.[4] A taxpayer who files on October 15 under an automatic extension and pays the

[2]I.R.C. §§ 6404, 6601(c), 6603, 6621(d), 7508A. Unless otherwise stated, section references are to the Internal Revenue Code of 1986, as amended (the Code or I.R.C.), and to the Treasury Regulations promulgated thereunder. On the 2025 decision, see *infra* Part III.D.

[3]I.R.C. § 6601(a) ("If any amount of tax imposed by this title . . . is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.").

[4]I.R.C. § 6151(a) (the tax is to be paid at the time and place fixed for filing the return, determined without regard to any extension of time for filing); I.R.C. § 6601(b)(1) ("The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under section 6159.").

balance with the return has been accruing interest since April 15. Clients misunderstand this point often. The extension bought time to file the paperwork. It bought nothing on the money.

The same rule governs deficiencies. When the IRS examines a 2023 return in 2026 and determines a deficiency, meaning the amount by which the correct tax exceeds the tax shown on the return, the interest on that deficiency runs from April 15, 2024, not from the date of the examination report. The deficiency was legally due with the return. The Code treats the late discovery as the taxpayer's delay, not the government's.

B. Penalties have their own starting points, and the IRS computer sometimes picks the wrong one.

PRACTICE POINTER

Practice Pointer: Read the Transcript Before You Argue the Law

Before you compute anything, order the account transcript for every period at issue. The best version is the full module history, which the IRS calls an IMFOLT for individuals and a BMFOLT for businesses; at a minimum, get the account transcript or Record of Account from the Transcript Delivery System. Find transaction code (TC) 150 (return filed), the TC 290 or TC 300 (additional assessment), the TC 240 or TC 320 (penalty), and the TC 340 or TC 196 (interest). Compare the interest start date the IRS used against sections 6601(a), 6601(b)(1), and 6601(e)(2). Then look for a TC 971 with action code 064 (the section 6404(g) notice date), the 870-DATE field (the section 6601(c) waiver date), and any TC 500 or disaster indicator. If the codes that should be there are missing, the suspension probably never ran, but confirm it: ask for the interest computation itself (the IRS can produce it on request, and interest software can replicate it) before you claim, because a manual correction does not always leave a code behind.[5]

Interest on penalties does not follow a single rule. Section 6601(e)(2) splits penalties into two groups. For most assessable penalties, additions to tax, and additional amounts, interest runs only if the penalty is not paid within twenty-one calendar days after notice and demand (ten business days if the amount demanded is $100,000 or more), and then only from the date of the notice and demand.[6] The trust fund recovery penalty under section 6672 falls in this group, which creates a timing mismatch: the employer's underlying employment tax accrues interest from

[5]See IRM 20.2.7.8.5.3 (Dec. 20, 2023) (TC 971 AC 064 records the section 6404(g) notice date and starts the systemic suspension routine); IRM 20.2.7.9(6) (Dec. 20, 2023) (870-DATE field displays the section 6601(c) waiver date).

[6]I.R.C. § 6601(e)(2)(A) (interest on an assessable penalty, additional amount, or addition to tax other than those named in subparagraph (B) is imposed "only if such assessable penalty, additional amount, or addition to the tax is not paid within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment").

the return due date, but the responsible person's penalty accrues interest only from the date the IRS gives that person notice and demand.[7]

The second group is different. For the failure-to-file addition under section 6651(a)(1), the accuracy-related penalty under section 6662, and the fraud penalty under section 6663, interest runs from the date the return was required to be filed, including extensions, to the date of payment.[8] That phrase, including extensions, matters. A taxpayer on extension who is later assessed an accuracy-related penalty should see interest on the penalty start on October 15, not April 15. Pull the account transcript and check the date the computer used. A six-month error at eight percent on a large penalty is worth the ten minutes.

IRS ACCOUNT TRANSCRIPT (composite built from invented data; identifiers redacted)

ACCOUNT TRANSCRIPT — REQUEST DATE: 10-29-2026
FORM NUMBER: 1040 TAX PERIOD: Dec. 31, 2014 TAXPAYER ID: XXX-XX-4321
SANTOS, MARIA R — 870-DATE: 01-17-2019

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20151505	04-15-2015	$18,406.00
806	W-2 or 1099 withholding		04-15-2015	-$18,406.00
420	Examination of tax return		03-02-2016	$0.00
971	Notice issued (AC 064 IRC 6404(g))		09-26-2018	$0.00
300	Additional tax assessed by examination	20190705	02-20-2019	$40,000.00
240	Miscellaneous penalty IRC 6662(a)	20190705	02-20-2019	$8,000.00
340	Restricted interest assessment	20190705	02-20-2019	$8,035.95
670	Payment		11-14-2025	-$20,000.00
670	Payment		10-06-2026	-$65,346.11
196	Interest charged for late payment		10-06-2026	$29,310.16

TC 971 AC 064 is dated 09-26-2018, forty-one months after the TC 150. Section 6404(g) suspends interest on the tax and on the penalty from 04-15-2018 through 10-17-2018. The restricted interest (TC 340) shows the suspension was never run.

870-DATE 01-17-2019 is the waiver date. Notice and demand issued with the TC 300 on 02-20-2019, thirty-four days later. Section 6601(c) suspends interest for days 31 through 34. Check the 23C date on the first bill against the 870-DATE every time.

The 11-14-2025 TC 670 stopped interest on $20,000. It was undesignated, so it paid tax first; the interest was paid by the 10-06-2026 TC 670, and the section 6511(a) refund period runs from then. A section 6603 deposit was no longer available.

Figure 1. A simulated, annotated account transcript for the opening client. The TC 971 AC 064 notice date and the 870-DATE waiver field decide whether interest was suspended, and the TC 670 that paid the interest starts the two-year refund clock. Each is easy to miss.

[7] I.R.C. §§ 6601(e)(2)(A), 6672. The FBAR penalty, which is not a Code penalty, carries no interest before assessment and none if paid within thirty days after the notice of the amount due. 31 U.S.C. § 3717(b), (d).

[8] I.R.C. § 6601(e)(2)(B) (interest on an addition to tax under section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68, which includes sections 6662 and 6663, runs for the period that "begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and . . . ends on the date of payment of such addition to tax").

C. Daily compounding and quarterly rate changes turn a small debt into a large one.

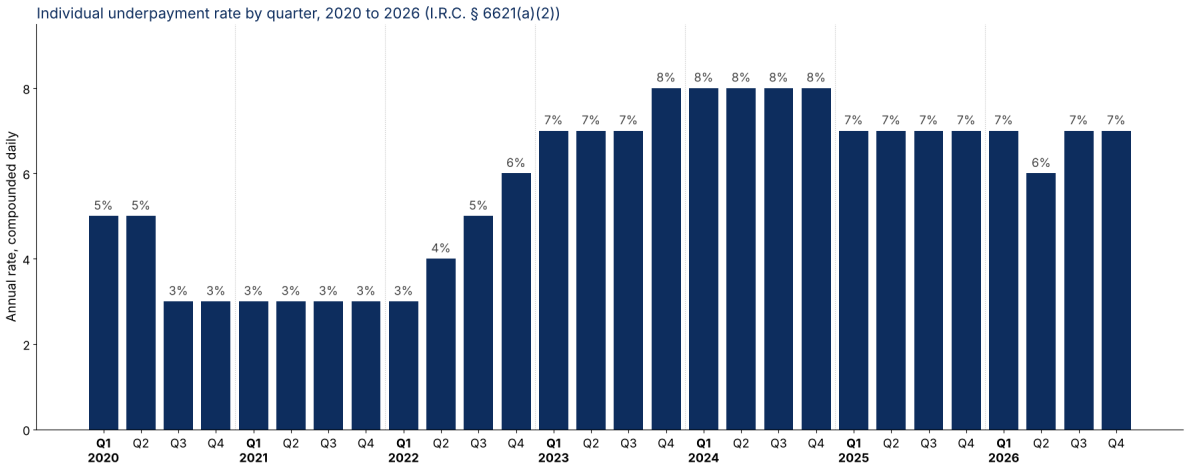


Figure 2. Individual underpayment rate by calendar quarter, 2020 through the fourth quarter of 2026 (I.R.C. § 6621(a)(2); quarterly revenue rulings).

Section 6622 compounds interest daily.[9] Each day the IRS computes interest on the tax plus every dollar of interest that accrued before that day. Over a decade the curve is exponential, which is why the client in the opening paragraph owes nearly as much interest as tax.

The rate is reset every quarter. For taxpayers other than corporations, the underpayment rate is the federal short-term rate plus three percentage points.[10] Large corporate underpayments pay two points more, five over the short-term rate, on any underpayment exceeding $100,000 for periods after the thirtieth day following the earlier of a thirty-day letter or a notice of deficiency.[11] Practitioners call the two extra points hot interest. For the fourth quarter of 2026 the individual underpayment rate is seven percent, the large corporate rate is nine percent, and the rate paid on a returned section 6603 deposit is four percent.[12]

---

[9]I.R.C. § 6622(a) (interest "shall be compounded daily").

[10]I.R.C. § 6621(a)(2) ("The underpayment rate established under this section shall be the sum of (A) the Federal short-term rate determined under subsection (b), plus (B) 3 percentage points."); § 6621(b)(1), (2)(A) (the federal short-term rate determined for the first month of each calendar quarter applies during the next calendar quarter).

[11]I.R.C. § 6621(c)(1) (for a large corporate underpayment after the applicable date, subsection (a)(2) is applied "by substituting '5 percentage points' for '3 percentage points'"); § 6621(c)(2)(A) (the applicable date is "the 30th day after the earlier of" the first letter of proposed deficiency allowing Appeals review or the notice of deficiency); § 6621(c)(3)(A) (a large corporate underpayment is "any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000"). The threshold is measured by tax alone, Treas. Reg. § 301.6621-3(b)(2)(ii); a letter or notice is disregarded if the taxpayer pays it in full within thirty days or if it proposes $100,000 or less, I.R.C. § 6621(c)(2)(B)(ii), (iii). See IRM 20.2.5, Interest on Underpayments.

[12]Rev. Rul. 2026-15, 2026-36 I.R.B. 216; IR-2026-98 (Aug. 21, 2026) ("For individuals, the rate for overpayments and underpayments will be 7% per year, compounded daily"; the rate for large corporate underpayments is 9 percent and the rate on the portion of a corporate overpayment

A liability that has been open since the start of 2020 has passed through twenty-eight quarterly rate periods, at rates from three to eight percent. Figure 2 shows the individual underpayment rate by quarter from 2020 through the end of 2026. The low rates of 2020 and 2021 and the high rates of 2023 and 2024 explain why a computation that assumes a flat rate will not reliably match the IRS figure, and why a practitioner verifying the IRS computation must use interest software that carries the quarterly table.[13]

EXAMPLE

Example: Why Penalty and Interest Exceeded the Tax

A taxpayer's 2014 return was examined in 2016, and she signed a Form 872 extending the period for assessment. The IRS assessed a $40,000 deficiency and an $8,000 accuracy-related penalty in February 2019. The taxpayer paid $20,000 on November 14, 2025, and the balance on October 6, 2026. Interest ran on both from April 15, 2015, compounded daily, at rates that moved from three percent to eight percent and back to seven. Over eleven and a half years the interest alone came to about $37,300, and the penalty and interest together exceeded $45,000.[14] The arithmetic is right; the inputs may not be. The only questions are whether any period should have been suspended and whether any period of IRS delay can be abated. Parts III, IV, and VII answer them.

II. The Taxpayer Can Stop the Meter Herself.

The cheapest interest is interest that never accrues. Three tools let the taxpayer stop or avoid accrual without conceding the underlying dispute.

A. A section 6603 deposit stops interest without surrendering the Tax Court.

Section 6603 lets a taxpayer deposit cash to stop underpayment interest on a disputed income, estate, gift, generation-skipping, or chapter 41–44 tax.[15] The

exceeding $10,000 is 4.5 percent; the rates "are computed from the federal short-term rate determined during July 2026").

[13]Historical quarterly rates are published at IRS, Quarterly Interest Rates, https://www.irs.gov/payments/quarterly-interest-rates (last visited Oct. 30, 2026), with the governing revenue ruling for each quarter.

[14]Computed at the published individual underpayment rate for each quarter from the second quarter of 2015 through the fourth quarter of 2026, compounded daily under section 6622(a) on an actual 365- or 366-day basis, on $48,000 from April 15, 2015, the due date (interest computed from the day after the due date), with $20,000 treated as paid on November 14, 2025, and the balance paid on October 6, 2026. The figure is rounded; the IRS computation on an actual account will differ by the exact posting dates.

[15]I.R.C. § 6603(a) ("A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit."); § 6603(b) ("To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax

deposit is not a payment. The deficiency still exists, so the taxpayer keeps the right to a notice of deficiency and a prepayment forum in the Tax Court. A full payment of the proposed tax before a notice of deficiency, by contrast, extinguishes the deficiency and pushes the taxpayer into a refund suit in a district court or the Court of Federal Claims. A payment made after the notice is mailed does not take away the Tax Court.[16] Interest stops on the deposited amount from the date the IRS receives the deposit.[17] The taxpayer may ask for the deposit back at any time before the IRS applies it, unless the IRS finds collection in jeopardy. A returned deposit gives up its protection: the deposit counts as payment only to the extent it is used to pay tax, so interest on a deficiency assessed later runs as if the deposit had never been made. A returned deposit earns interest at the federal short-term rate, but only on the portion attributable to disputable tax. Disputable tax is the taxpayer's reasonable estimate, stated when the deposit is made, of the most tax that could result from disputed items. An item is disputed if the taxpayer has a reasonable basis for its treatment and reasonably believes the IRS also has a reasonable basis for disallowing it.[18] Once the IRS has issued a thirty-day letter, the statute sets a floor: the taxpayer's estimate of disputable tax may be no less than the proposed deficiency in that letter. The thirty-day letter is therefore the most practical moment to deposit. A deposit of the full proposed deficiency is disputable tax by definition, and if the client wins and asks for the money back, the deposit earns interest at the federal short-term rate.[19]

The procedure is simple and unforgiving. The remittance must be designated as a deposit under section 6603 in a written statement that identifies the type of tax, the taxable period, and the amount and basis of the disputable tax. A remittance that is not designated in writing as a deposit is treated as a payment, with two narrow exceptions. An undesignated remittance made during an

---

shall be treated as paid when the deposit is made.").

[16]Rev. Proc. 2005-18, 2005-1 C.B. 798, § 4.03 (an undesignated remittance in the full amount of a proposed liability is a payment, and no notice of deficiency will be mailed); *id.* § 4.05(1) (an undesignated remittance made after the mailing of a notice of deficiency "will be considered a payment of tax, will be posted to the taxpayer's account as soon as possible, and will not deprive the Tax Court of jurisdiction over the deficiency").

[17]I.R.C. § 6603(b).

[18]I.R.C. § 6603(c) ("Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing."); § 6603(d)(1) (a returned deposit is treated as a payment for interest purposes "to the extent (and only to the extent) attributable to a disputable tax"); § 6603(d)(2) (disputable tax), (d)(3)(A) (disputable item); § 6603(d)(4) ("The rate of interest under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily."). Rev. Proc. 2005-18 explains how to designate a remittance as a deposit (§ 4.01), what written statement of disputable tax must accompany it (§ 7), and how to request its return (§ 6).

[19]I.R.C. § 6603(d)(2)(B) ("In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter."); § 6603(d)(3)(B) (a "30-day letter" is "the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Independent Office of Appeals").

examination, before the IRS proposes a liability in writing, is treated as a deposit if the taxpayer has no outstanding liabilities. And an undesignated remittance made after the Tax Court files its decision is a deposit to the extent it exceeds the deficiency the court determined plus accrued interest, again only if the taxpayer has no other outstanding liabilities. By contrast, an undesignated remittance in the full amount of the examiner's proposed liability is a payment that costs the taxpayer the Tax Court.[20] Appendix D supplies the designation letter.

PRACTICE POINTER

Practice Pointer: When to Deposit

Consider a section 6603 deposit at the moment the dispute becomes likely to last more than a year. The thirty-day letter is usually the best moment, because section 6603(d)(2)(B) treats the full proposed deficiency as disputable tax. Later moments also work: when the case goes to Appeals, or when the petition is filed. The decision is a trade between the client's cost of capital and the IRS rate. At seven percent compounded daily, with the IRS paying only the short-term rate on a returned deposit, most clients with cash should pay the undisputed portion and deposit the disputed one. A partial deposit stops interest only on the amount deposited, so designate the deposit against the periods and the issues with the highest expected liability first. If the client petitions the Tax Court and wants the remittance to stay a deposit during the case, ask in writing before the 90-day or 150-day period expires. Without that request the IRS applies the deposit as a payment of tax when the period ends.[21]

B. Paying the notice within the grace period stops interest on the amount paid.

After notice and demand, section 6601(e)(3) gives the taxpayer a short window to pay without further interest: twenty-one calendar days, or ten business days if the notice demands $100,000 or more. A payment within the window stops

[20]Rev. Proc. 2005-18, § 4.01(2) ("a remittance that is not designated as a deposit (an 'undesignated remittance') will be treated as a payment and applied by the Service against any outstanding liability"); § 4.03 (an undesignated remittance "in the full amount of a proposed liability . . . will be treated as a payment of tax, a notice of deficiency will not be mailed and the taxpayer will not have the right to petition the Tax Court"); § 4.04(1) (an undesignated remittance made during an examination "but before a liability is proposed to the taxpayer in writing . . . will be treated by the Service as a deposit if the taxpayer has no outstanding liabilities"); § 4.05(3) (an undesignated remittance made after the Tax Court files its decision, in excess of the deficiency determined plus interest, "will be treated as a deposit, but only to the extent the amount of the remittance exceeds" that amount, if the taxpayer has no other outstanding liabilities); § 7 (statement of disputable tax). A deposit generally does not receive the notice-and-demand grace period that a payment receives unless it was processed incorrectly (for example, posted as a TC 640 when it should have posted as a TC 670). IRM 20.2.7.10(7) (Dec. 20, 2023).

[21]Rev. Proc. 2005-18, § 4.02(2) (the deposit is posted as a payment on expiration of the 90- or 150-day period "unless the taxpayer files a petition with the Tax Court and requests in writing before the expiration of that period that the deposit continue to be treated as a deposit during the applicable Tax Court proceeding").

interest on the amount paid as of the date of the notice.[22] Offsets of overpayments from other periods count as payments for this purpose. The grace period is small money on a small balance and real money on a large one, and the IRS computer applies it correctly only if the payment posts to the right module. Check.

C. Employers can correct employment tax underpayments interest-free.

Section 6205 lets an employer that underreported social security and Medicare tax (FICA), railroad retirement tax (RRTA), or income tax withholding correct the error without interest. The employer reports the adjustment on a corrected return filed by the due date of the return for the period in which it found the error, and pays the tax when it files. If it reports the adjustment but does not pay it when due, interest runs from that date. An employer that finds a first-quarter error in May reports it on Form 941-X by July 31. Income tax withholding can generally be corrected this way only if the error is found within the calendar year in which the wages were paid, and the relief ends once the employer receives a Notice of Determination of Worker Classification, among other limits.[23] An adjustment reported on time but paid late carries interest from the date the payment was due. An error not reported in time carries interest from the original due date of the return for the quarter.

III. The Code Suspends Interest When the IRS Is Slow, and the IRS Does Not Always Notice.

Suspension is different from abatement. Abatement under section 6404(e)(1) is discretionary and must be requested. Suspension is mandatory. When the statutory conditions are met the IRS has no choice, and the practitioner's job is to make sure the computation reflects it. The IRS computers apply some of these suspensions automatically. They apply others only when an employee inputs the right code, and employees do not always input it.

---

[22]I.R.C. § 6601(e)(3) ("If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."); IRM 20.2.7.10 (Dec. 20, 2023). Taxpayers with foreign addresses receive forty-five days. IRM 20.2.7.10(6).

[23]I.R.C. § 6205(a)(1); Treas. Reg. § 31.6205-1(a)(2) (ineligible corrections), (a)(6)(ii) (no interest-free adjustment after "[r]eceipt from the IRS of a Notice of Determination of Worker Classification"), (b)(2)(i) (if "the amount of the adjustment is not paid when due, interest accrues from that date"), (c)(2) (income tax withholding errors qualify only "if the error is ascertained within the same calendar year that the wages to the employee were paid," with exceptions). Section 6601(i) carves out only the quarterly interim FUTA deposits required under section 6157 ("[t]his section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157"); interest still runs on FUTA tax unpaid after the annual return due date.

A. Section 6404(g) suspends interest when the IRS waits more than thirty-six months to tell an individual what she owes and why.

Congress enacted section 6404(g) in 1998 because it wanted the IRS to "promptly inform taxpayers of their obligations with respect to tax deficiencies and amounts due."[24] The rule is this. If an individual files a timely income tax return and the IRS does not, within thirty-six months after the later of the filing date or the due date without extensions, provide a notice specifically stating the taxpayer's liability and the basis for that liability, the IRS must suspend interest and time-sensitive penalties.[25] The suspension begins the day after the thirty-six months close and ends twenty-one days after the IRS provides the notice.[26] It applies separately to each item or adjustment, so a notice that addresses one issue does not stop the suspension on an issue the IRS raises later.[27]

Four elements decide a section 6404(g) case. The return must be an individual income tax return.[28] It must have been timely filed, and a return filed within a valid extension is timely.[29] The IRS must have missed the thirty-six-month window. And the notice, when it came, must have been adequate: in writing, stating the amount of the proposed liability and identifying the items of income, deduction, loss, or credit the IRS proposes to adjust and the reason for each adjustment.[30]

---

[24]Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3305, 112 Stat. 685, 743–44; S. Rep. No. 105-174, at 64–65 (1998).

[25]I.R.C. § 6404(g)(1)(A) ("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" the filing date or the due date without 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"). The period was eighteen months for notices provided on or before November 25, 2007, and it remains eighteen months for a return whose eighteen-month period had closed by that date. Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, § 8242(a)–(b), 121 Stat. 112, 200; Treas. Reg. § 301.6404-4(a)(5)(i).

[26]I.R.C. § 6404(g)(3) (the suspension period is 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").

[27]I.R.C. § 6404(g)(1)(B); IRM 20.2.7.8.5 (Dec. 20, 2023).

[28]I.R.C. § 6404(g)(1)(A). The IRS applies the suspension to any tax reportable on Form 1040, including the individual's share of a flow-through adjustment. IRM 20.2.7.8(2) (Dec. 20, 2023).

[29]IRM 20.2.7.8(1) (Dec. 20, 2023). A return filed late without extension does not qualify. IRM 20.2.7.8.3(3).

[30]Treas. Reg. § 301.6404-4(a)(7)(i) ("Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment. Notice of the reason for the adjustment does not require a detailed explanation" or a citation to legal authority); the same paragraph adds that the IRS "need not incorporate all of the information necessary to satisfy the notice requirement within a single document or provide all of the information at the same time," so a

EXAMPLE

Example: Thirty-Six Months and a Day

Maria filed her 2019 Form 1040 on July 15, 2020, the postponed due date under Notice 2020-18. The IRS opened an examination in 2022, sent a letter saying only that the return had been selected, and obtained her Form 872. The first document that stated an amount and a reason, a Form 4549 with Form 886-A disallowing $60,000 of Schedule C deductions, was mailed on September 11, 2023. Thirty-six months from July 15, 2020, closed on July 14, 2023. Interest on the tax attributable to the $60,000 adjustment, and interest on the accuracy-related penalty, are suspended from July 15, 2023, through October 2, 2023; the twenty percent penalty itself is fixed rather than time-based and is not suspended. Interest on both runs again from October 3, 2023, the twenty-second day after the September 11 notice. The 2022 letter did not count; it stated no liability or basis. One caution for 2019 and 2020 returns: the period runs from the later of the filing date and the due date, and the COVID-19 postponements moved those due dates to July 15, 2020 and May 17, 2021. A taxpayer who filed before the postponed date should run the period from both dates: the original date favors her, because the statute disregards extensions, but the IRS may use the postponed one, so claim the earlier start as a disclosed position. If Maria's transcript shows no TC 971 AC 064, the suspension probably was not applied, and a Form 843 captioned Section 6404(g) Notification is the first step.[31]

The exceptions are as important as the rule. Section 6404(g)(2) excludes the failure-to-file and failure-to-pay penalties under section 6651; any interest, penalty, or addition in a case involving fraud; any amount with respect to tax shown on the return; gross misstatements; listed transactions and undisclosed reportable transactions; and criminal penalties.[32] An amended return filed on or after December 21, 2005, that shows additional tax generates no suspension for the items it reports, because the amended return is itself the notice for those items; items on the original return that the amended return does not change keep their own treatment.[33]

---

series of letters can together constitute the notice; IRM 20.2.7.8.5(1) (Dec. 20, 2023). The IRS treats a CP 2000, a Form 4549 with Form 886-A, a math-error notice, a notice of final partnership administrative adjustment with specific adjustments, and a notice of deficiency as adequate. IRM 20.2.7.8.5(2). A letter that says only that the return has been selected for examination is not notice of a liability.

[31]The dates follow the IRS method for counting the notification period, which treats thirty-six months as thirty-six months minus one day and moves a weekend or holiday end date to the next business day. IRM 20.2.7.8.3(4) (Dec. 20, 2023). Practitioners should run the dates both ways; where the two methods differ, claim the date the regulation produces as the legal position and show the IRS computation as the Service's administrative method.

[32]I.R.C. § 6404(g)(2); IRM 20.2.7.8.2 (Dec. 20, 2023). A gross misstatement means a substantial omission of income under section 6501(e)(1), a gross valuation misstatement under section 6662(h), or a misstatement to which the section 6702(a) frivolous-return penalty applies. Treas. Reg. § 301.6404-4(b)(4)(i).

The IRS records a late notice by inputting a transaction code 971 with action code 064 on the module, which triggers the systemic suspension.[34] If the examiner never recorded the section 6404(g) date on the Form 4549 or Form 3198, the code was probably never input; confirm it against the IRS interest computation. The taxpayer corrects this by filing a Form 843 captioned Section 6404(g) Notification.[35] Appendix B supplies the form.

B. Section 6601(c) suspends interest when the IRS sits on a signed waiver for more than thirty days.

When a taxpayer agrees to a deficiency and signs a waiver of the restrictions on assessment, a Form 870, Form 870-AD, Form 890, Form 4089, or Form 4549, the IRS has thirty days to issue notice and demand. If it does not, interest is suspended from the thirty-first day after the waiver is filed until the date of the notice and demand.[36] The suspension applies only to deficiencies in income, estate, gift, and certain excise taxes, and it applies to the deficiency, the related penalties, and the interest accrued to the start of the suspension.[37] A Form 906 closing agreement by itself is not a waiver and earns no suspension.[38]

The IRS computer applies this suspension from the date entered in the 870-DATE field of the module.[39] Two things go wrong in practice. The field is left blank,

---

[33]Treas. Reg. § 301.6404-4(a)(2)(iii), (a)(3) ("This paragraph (a) shall be applied separately with respect to each item or adjustment."); Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, § 303(b), 119 Stat. 2577, 2609; IRM 20.2.7.8(5) (Dec. 20, 2023).

[34]IRM 20.2.7.8.5.3(1), (3) (Dec. 20, 2023) ("The IRC 6404(g) notice date is recorded onto IDRS and Master File (MF) by the input of Transaction Code (TC) 971 and Action Code (AC) 064. Only input TC 971 AC 064 if notification was not made within the 36 (or 18) month period." The code "starts the systemic interest suspension routine and then stops the routine 21 days from the notice date.").

[35]Rev. Proc. 2005-38, 2005-28 I.R.B. 81, § 3.01 ("taxpayers may notify the Service that interest was assessed in violation of section 6404(g) by submitting Form 843 . . . . Taxpayers should write 'Section 6404(g) Notification' at the top of the Form 843. The Service will review the Form 843 notification, decide whether to abate interest under section 6404(a), and notify the taxpayer of its decision."). The revenue procedure states the IRS view that no notice of final determination issues on a bare section 6404(g) notification. The Tax Court rejected that view in *Corbalis v. Commissioner*, 142 T.C. 46 (2014), discussed in Part VI. Where an IRS ministerial or managerial error kept the suspension from running, section 3.03 also allows a section 6404(e) claim with a final determination and Tax Court review.

[36]I.R.C. § 6601(c) ("if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period"); IRM 20.2.7.9 (Dec. 20, 2023).

[37]IRM 20.2.7.9(1), 20.2.7.9.1(4) (Dec. 20, 2023).

[38]IRM 20.2.7.9.2 (Dec. 20, 2023) ("Agreed cases closed by Exam via a Form 906, Closing Agreement on Final Determination Covering Specific Matters, do not receive an interest suspension period under IRC 6601(c) . . . . The form by itself does not constitute a waiver.").

[39]IRM 20.2.7.9(6) (Dec. 20, 2023) ("The date the IRS receives a signed waiver or executes the waiver on behalf of the Commissioner is displayed in the '870-DATE>' field on the transcript of account

so no suspension runs, or the field carries a later processing date instead of the date the IRS received the waiver, which starts the thirty days late and shortens the suspension. Where the waiver must be executed on behalf of the Commissioner, as with a Form 870-AD, the execution date is the correct entry, so confirm which date applies before calling a later date an error. When settling a case, send the waiver by a method that proves the date of receipt, calendar thirty days, and compare that date against the date of notice and demand, which is usually the assessment date (the 23C date) on the first bill.

C. Combat zone service disregards time, including underpayment interest.

Section 7508 disregards the period of service in a combat zone, a contingency operation, or a qualified hazardous duty area, plus 180 days. The disregard applies in determining the taxpayer's liability for interest, penalties, and additions to tax, and in computing the time to file, pay, claim a refund, or petition the Tax Court.[40] The IRS marks the account with a TC 500 and a combat indicator. If the indicator is missing, the suspension may not have run, and the practitioner must supply the entry and exit dates.

D. Federally declared disasters disregard time too, and the length of the COVID-19 disregard, sixty days or 1,268, is in litigation.

Section 7508A gives the Secretary authority to disregard a period of up to one year in determining whether acts were timely performed and the amount of any interest, penalty, or addition to tax, for taxpayers affected by a federally declared disaster.[41] For ordinary hurricanes and wildfires the IRS announces the postponement period in a news release, the computer applies a disaster indicator, and interest on a payment whose due date was postponed is suspended for the announced period; a balance already overdue when the disaster began keeps accruing.[42] Practitioners should confirm that the indicator posted and that the period matches the announcement. Congress closed one gap in 2025. When the IRS assesses a tax before its payment date, it may not demand payment until that date has passed, and for notices issued after December 26, 2025, the payment date

(TXMODA, IMFOLT OR BMFOLT).”).

[40]I.R.C. § 7508(a); IRM 20.2.7.11 (Dec. 20, 2023). Hospitalization for combat injuries extends the period. I.R.C. § 7508(a), (g); IRM 20.2.7.11.1(1).

[41]I.R.C. § 7508A(a) (for a taxpayer the Secretary determines to be affected by a federally declared disaster, “the Secretary may specify a period of up to 1 year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer (1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor . . . , (2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and (3) the amount of any credit or refund”); Treas. Reg. § 301.7508A-1(b)(1).

[42]IRM 20.2.7.13 (Dec. 20, 2023); IRM 25.16.1 (Aug. 20, 2026) (disaster assistance and emergency relief).

now counts the disaster period. The change controls when the IRS may send the bill. It does not change the interest computation.[43]

CAUTION

Caution: Sort the Penalties Before You Claim the Interest

Section 7508A disregards time. Additions that are computed by time, the failure-to-file addition under section 6651(a)(1), the failure-to-pay addition under section 6651(a)(2), and the estimated tax additions under sections 6654 and 6655, sit comfortably inside the disregard. The accuracy-related penalty under section 6662 is computed on the underpayment, not on a deadline, and a nonprecedential July 2026 Tax Court order said the disregard would not affect it.[44] Interest on each penalty runs under its own rule in section 6601(e)(2) and needs its own analysis. Classify every item on the transcript by type before you compute the suspension, and claim the section 6662 interest, if at all, only as a disclosed protective position.

The COVID-19 declaration is a different story, and it is the subject of a separate series of articles in this journal, so this article states only the rule and the limits. In 2019 Congress added a mandatory disregard, former section 7508A(d), that disregards a period of at least sixty days beginning on the earliest incident date of a federally declared disaster and ending sixty days after the latest incident date.[45] The Tax Court held in *Abdo v. Commissioner* that the mandatory disregard operates by force of statute and held the regulation invalid to the extent it limited the mandatory period to acts the Secretary chose to postpone.[46] The Court of

[43]I.R.C. § 6303(b)(2) ("For purposes of paragraph (1), the last date prescribed for payment of any tax shall be determined after taking into account any period disregarded under section 7508A."); Disaster Related Extension of Deadlines Act, Pub. L. No. 119-64, § 2(b), 139 Stat. 1984, 1984–85 (2025) (applying to "notices issued after the date of the enactment of this Act").

[44]*Bowen v. Commissioner*, Nos. 2215-24, 2216-24, 2219-24 & 562-25 (T.C. July 21, 2026) (Buch, J.) (order denying leave to file a first amended petition) (accuracy-related penalties "are predicated on an underpayment, not the failure to meet a deadline"; "[a]ssuming section 7508A applies to extend a deadline in this case, it would have no effect on any accuracy-related penalty at issue"). The order is not an opinion and is not precedent. The court later ruled for the petitioners on the merits in a bench opinion that did not reach section 7508A. *Bowen v. Commissioner*, Nos. 2215-24 et al. (T.C. Sept. 17, 2026) (bench op.) (order serving transcript Sept. 25, 2026).

[45]Taxpayer Certainty and Disaster Tax Relief Act of 2019, Pub. L. No. 116-94, div. Q, tit. II, § 205, 133 Stat. 2534, 3245–46 (2019). The Infrastructure Investment and Jobs Act amended the provision in 2021 so that the period ends sixty days after the later of the earliest incident date or the date the declaration was issued, replacing the reference to the latest incident date. Pub. L. No. 117-58, div. H, tit. V, § 80501(a), 135 Stat. 429, 1335 (2021). The 2019 text governs the COVID-19 declaration. The Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, § 2(a)–(c), 139 Stat. 471, 471–72 (2025), redesignated the mandatory disregard as section 7508A(e) and lengthened it to 120 days for declarations made after July 24, 2025. The amendment is prospective; COVID-era claims remain under former section 7508A(d).

[46]*Abdo v. Commissioner*, 162 T.C. 148, 162–63, 168 (2024) ("[T]he mandatory language of subsection (d) stands in stark contrast to the discretionary language of subsection (a). . . . On the basis of the plain and literal language of the statute, we thus read Congress to have clearly intended to provide for a postponement period that is mandatory.") (invalidating Treas. Reg. § 301.7508A-1(g)(1) and (2)

Federal Claims then held in *Kwong v. United States* that the COVID-19 incident period, January 20, 2020, through the end of the emergency, produced a mandatory period through July 10, 2023 (1,268 days by the authors' count), that made the refund suit before it timely; the court did not decide whether that period tolls the limitations clock or postpones the deadline.[47] A federal district court has since adopted the same reading, as an alternative ground, and rejected the arguments the government presses on appeal.[48] The IRS, for its part, has begun sending letters that deny *Kwong* claims or decline to consider them. The National Taxpayer Advocate has asked the IRS to pause them, and has warned that a formal notice of claim disallowance sent by certified or registered mail starts the two-year period to file a refund suit, which further correspondence with the IRS does not stop.[49] Read the letter before deciding what it is. A letter that says the claim will not be considered is not necessarily a notice of disallowance, but a letter that disallows the claim starts the two-year clock; get any extension in writing.

Three limits keep a section 7508A interest claim honest. First, the disregard removes days from a computation; it does not create a universal July 10, 2023 due date, and, on the IRS's reading, it does not reach a liability that was already delinquent when the disaster began except to the extent the regulation's examples allow.[50] Second, *Kwong* decided a limitations question; no court has yet ordered a

---

to the extent they conditioned the mandatory period on IRS action, and holding that the sixty-day period applied to the petition deadline). The IRS acquiesced in result only, as to the holding of a sixty-day period, January 20 through March 20, 2020, and not in the reasoning or the invalidation of the regulation. AOD 2026-1, 2026-23 I.R.B. 1556 (citing *Abdo*, 162 T.C. at 169 n.13).

[47]*Kwong v. United States*, 179 Fed. Cl. 382, 389 (2025) (granting in part and denying in part the government's motion for summary judgment and holding the refund suit for 2007, 2010, and 2011 timely under former section 7508A(d), measuring the COVID-19 disaster period from the January 20, 2020 incident date through sixty days after May 11, 2023, the date the COVID-19 incident period closed, and reserving the mechanism: "it does not matter whether the statute provides for tolling or a postponement period . . . . Either way, Mr. Kwong had until at least July 10, 2023, to file suit"). The decision is a trial-level ruling on appeal to the Federal Circuit (No. 26-1843, docketed May 20, 2026) as of this writing; the government's opening brief, filed Sept. 16, 2026, argues that the mandatory period is sixty days measured from the single incident date; the appellee's brief and argument are still ahead. The 1,268-day figure is the authors' count of the days from January 20, 2020 through July 10, 2023, inclusive; the opinion does not state it.

[48]*Singh v. United States*, No. 25-CV-56 (AMD) (TAM), slip op. at 19–28 (E.D.N.Y. Sept. 24, 2026) (Donnelly, J.) (denying the government's motion to dismiss; as an alternative to its informal-claim holding, *id.* at 10–19, holding the taxpayer's October 2022 claim timely because "26 U.S.C. § 7508A(d) (2019) extended her deadline to July 10, 2023," and concluding that "[n]one of the government's arguments are persuasive"). The ruling is interlocutory, decided timeliness rather than the accrual of interest, and binds no other court.

[49]Erin M. Collins, *If the IRS Denied Your* Kwong *Claim: What You Need to Know to Protect Your Rights*, NTA Blog (Oct. 13, 2026) ("If you received one of these letters, do not ignore it but don't assume it necessarily ends the matter either."); I.R.C. § 6532(a)(1) (no refund suit "after the expiration of 2 years from the date of mailing . . . of a notice of the disallowance"); I.R.C. § 6532(a)(4) (reconsideration after mailing of the notice "shall not operate to extend the period").

[50]Treas. Reg. § 301.7508A-1(f), ex. 6 (taxpayer A's 2008 return was due April 15, 2009, on extension to October 15; A did not pay by April 15 and had no extension to pay; a blizzard on September 30, 2009 led the IRS to postpone acts to December 2, 2009; the return is timely if filed by December 2, but because "the payment due date, April 15, 2009, preceded the postponement period," A remains

refund of COVID-era interest on a final judgment, and every claim must be fact-conditional. Third, a claim that rests on an unsettled reading of the statute must say so on its face. The claim should separate three amounts: what the IRS concedes, what rests on settled law, and what rests on the contested reading. It should state the protective positions and the authority for each, because the section 6676 penalty turns on reasonable cause, and disclosure alone does not supply it. And it should preserve every theory at the administrative stage, because the variance doctrine ordinarily bars a refund suit on any ground the administrative claim did not state.[51] The IRS now maintains a dedicated intake for claims for fully paid interest and penalties: a Form 843 marked Kwong vs. United States across the top, mailed to the Ogden campus, or, for individuals with an online account, filed electronically through IRS.gov.[52] Appeals has been told to concede less: until the *Kwong* litigation ends, its officers may provide no more than sixty days of COVID-19 disaster relief, January 20 through March 20, 2020.[53] Whether the disregard stops interest from accruing on a balance that existed before the pandemic is the question now pending before the Tax Court in *Wepplo v. Commissioner*.[54] The earlier articles in this series supply the computations and the claim language; this article supplies the interest law that surrounds them.

IV. Abatement Requires an IRS Mistake, Not a Sympathetic Story.

Suspension turns on dates. Abatement under section 6404(e)(1) turns on fault. Section 6404 lists the circumstances in which the IRS may, and in a few

liable for the failure-to-pay addition and interest during the postponement period).

[51]I.R.C. § 6676(a) (a 20 percent penalty on the excessive amount of an income or employment tax refund claim "unless it is shown that the claim for such excessive amount is due to reasonable cause"); *United States v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 272 (1931) (a refund suit may not be maintained on a ground not stated in the administrative claim; the claim must give notice of the amount, the nature, and the facts of the demand); Treas. Reg. § 301.6402-2(b)(1) ("The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.").

[52]IRS, Filing Form 843 for Claims Citing Kwong v. United States (updated July 1, 2026), https://www.irs.gov/forms-pubs/filing-form-843-for-claims-citing-kwong-v-united-states. The electronic option is limited to individual claims for fully paid interest and penalties that cite *Kwong*; business claims go by mail.

[53]IRS Indep. Off. of Appeals, Interim Guidance Memorandum AP-08-0626-0016, *Handling Requests for Relief Related to the COVID-19 Major Disaster Declaration Under IRC 7508A* (June 22, 2026) ("Until then, ATEs may provide no more than 60 days of COVID-19-related disaster relief, which covers only the period from January 20, 2020, through March 20, 2020."). See also IRM Procedural Update SBSE-20-0726-0731 (July 27, 2026) (examiners are to "treat the claims as protective claims until there is resolution of this issue in *Kwong*").

[54]*Wepplo v. Commissioner*, No. 36722-21 (T.C.) (Holmes, J.) (motion to redetermine interest under Tax Court Rule 261; oral argument set for Jan. 20, 2027, by order of Oct. 29, 2026). Taxpayers Assistance Center, Inc., a section 501(c)(3) organization founded by Frank Agostino and separate from the Taxpayers Assistance Corporation, filed an amicus brief in support of neither party; Kostelanetz LLP, where both authors practice, also filed an amicus brief in the case; neither author is counsel on it.

cases must, abate interest. Reasonable cause is not among them. The Internal Revenue Manual states the point in bold type: reasonable cause is never the basis for abating interest.[55]

A. Section 6404(e)(1) abates interest caused by an unreasonable IRS error or delay in a ministerial or managerial act.

PRACTICE POINTER

Practice Pointer: The Six Elements and the Record That Proves Them

The IRS disallows a section 6404(e)(1) request automatically if any of six criteria is missing. If the interest has been paid, the refund limitations period under section 6511 must be open; a request to abate interest not yet paid is not a refund claim. The tax year must have begun after December 31, 1978. The interest must relate to a tax described in section 6212(a). An unreasonable error or delay must have occurred in a ministerial or managerial act. The error or delay must have occurred after the IRS first contacted the taxpayer in writing. And no significant aspect of the error or delay may be attributable to the taxpayer or a related person. For managerial acts, the interest must relate to a tax year beginning after July 30, 1996.[56] Plead all six in the Form 843 attachment, in that order. Then prove them with the record. Attach the account transcript. Attach the examiner's case activity record, the manager's case history, and the transfer documents, all obtained under the Freedom of Information Act. Attach a dated timeline of every contact. Attach copies of your own status inquiries, which show the delay was not yours. Appendix G is the FOIA request. The Tax Court reviews the IRS determination for abuse of discretion. Do not count on the trial being limited to the administrative record, or on its being open; build the record now as if it will be the only one the court reads.

The central discretionary abatement provision is section 6404(e)(1). The IRS may abate interest on a deficiency, or on a payment of tax, to the extent the interest is attributable to an unreasonable error or delay by an IRS officer or employee, acting in an official capacity, in performing a ministerial or managerial act.[57] The error or delay counts only if no significant aspect of it is attributable to

[55]IRM 20.2.7.1.1(1) (Dec. 20, 2023) ("Unless otherwise provided by law, interest is mandatory. . . . Reasonable cause is never the basis for abating interest."); IRM 20.2.7.2(2). Reasonable cause is a penalty defense under section 6651(a) and section 6664(c). A taxpayer who wins the penalty argument wins the interest on the penalty as a derivative matter, but the interest on the tax stands.

[56]IRM 20.2.7.5.1(1) (Dec. 20, 2023) (listing the six criteria and adding: "An interest abatement request under IRC 6404(e)(1) not meeting all of the above criteria is automatically disallowed by law."); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 301(c), 110 Stat. 1452, 1457 (1996); Treas. Reg. § 301.6404-2(d)(1).

[57]I.R.C. § 6404(e)(1) ("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

the taxpayer or a related person, and only if it occurred after the IRS contacted the taxpayer in writing about the deficiency or payment.[58] Interest that accrued between the return due date and the first written contact is never abatable under this subsection, no matter how long the IRS took to open the case.[59]

The regulations define the two kinds of acts. A ministerial act is a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs after all prerequisites to the act, such as conferences and supervisory review, have taken place.[60] A managerial act is an administrative act during the processing of a case that involves the temporary or permanent loss of records or the exercise of judgment or discretion relating to the management of personnel.[61] A decision about the proper application of the tax law is neither.[62] The regulation's examples draw the line. Transferring a case after the transfer is approved is ministerial. Sending the agent to extended training, granting extended sick leave, or reassigning the agent without reassigning the case is managerial. Delaying one case to work a tax shelter or to protect a statute on another return is a general administrative decision for which no relief is available. The decision to request technical advice applies the law, so delay it causes cannot be abated, but unreasonable delay because the request was not reassigned during the attorney's extended leave can be (Example 10).[63]

---

interest for any period."). Before the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 301, 110 Stat. 1452 (1996), the section reached only ministerial acts and did not require that the error be unreasonable. The amended section applies to interest accruing for tax years beginning after July 30, 1996.

[58]I.R.C. § 6404(e)(1) (flush language) ("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"); Treas. Reg. § 301.6404-2(a)(2) (adding "a person related to the taxpayer").

[59]IRM 20.2.7.5(4) (Dec. 20, 2023).

[60]Treas. Reg. § 301.6404-2(b)(2) ("Ministerial act means a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place.").

[61]Treas. Reg. § 301.6404-2(b)(1) ("Managerial act means an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel.").

[62]Treas. Reg. § 301.6404-2(b)(1), (2) ("A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act" and "is not a ministerial act"); IRM 20.2.7.5(3) (Dec. 20, 2023).

[63]Treas. Reg. § 301.6404-2(c), exs. 1–13. Example 4: a taxpayer submits everything at an office audit, "before the report is prepared, the auditor is permanently reassigned to another group. An extended period of time passes before the auditor's cases are reassigned. The decision to reassign the auditor and the decision not to reassign the auditor's cases are not ministerial acts; however, they are managerial acts." Example 6: "a clerical employee misplaces the taxpayer's case file. The act of misplacing the case file is a managerial act." IRM 20.2.7.5.1(2) (Dec. 20, 2023) tabulates all thirteen examples.

The courts enforce the limits. In *Lee v. Commissioner* the Tax Court explained that Congress intended abatement for cases where the failure to abate would be widely perceived as grossly unfair, not as a routine escape from interest, and held that decisions about how to proceed in litigation require judgment and are not ministerial.[64] The Fifth Circuit affirmed a denial on the same reasoning in *Adams v. Commissioner*.[65] The mere passage of time is not an unreasonable delay.[66] The court repeated the point in August 2026 in *Tabaka v. Commissioner*: a deficiency case that moved from examination to Appeals to Counsel before settling showed elapsed time, not a ministerial or managerial lapse, because each step required judgment about the correct tax.[67] The Tax Court applied the same limits in July 2026 in *Matto v. Commissioner*. The taxpayers amended their 2020 return to report the added income that flowed through when their S corporations, having received employee retention credits, reduced their 2020 wage deductions, and said an IRS employee told them over the telephone that no interest would be charged. The court sustained the IRS's denial. The interest ran by statute from the day after the postponed due date of the 2020 return, and erroneous oral advice from an IRS employee does not bind the Commissioner.[68]

Section 6404(e)(1) does not reach employment taxes. The subsection reaches deficiencies and payments only of the taxes described in section 6212(a): income, estate, gift, and certain excise taxes.[69] The Seventh Circuit reversed the

[64]*Lee v. Commissioner*, 113 T.C. 145, 149–51 (1999) (quoting the committee reports' statement that Congress did not intend the provision "be used routinely to avoid payment of interest," but only where "failure to abate interest would be widely perceived as grossly unfair," H.R. Rep. No. 99-426, at 844 (1985); S. Rep. No. 99-313, at 208 (1986), and holding that "Respondent's decision on how to proceed in the litigation phase of the case necessarily required the exercise of judgment and thus cannot be a ministerial act").

[65]*Adams v. Commissioner*, T.C. Memo. 2019-99, aff'd per curiam, 811 F. App'x 276, 278 (5th Cir. 2020) ("we affirm the tax court's finding that the Commissioner did not commit an abuse of discretion in denying Adams's request for interest abatement," quoting *Lee* for the rule that a litigation decision "necessarily required the exercise of judgment").

[66]See *Lee*, 113 T.C. at 150–51; Treas. Reg. § 301.6404-2(b)(2).

[67]*Tabaka v. Commissioner*, T.C. Memo. 2026-70 (Aug. 18, 2026) (Lauber, J.) (No. 16687-24) (holding that the IRS did not abuse its discretion in declining to abate $1,649 of already-paid interest on a stipulated 2016 deficiency; the case was resolved less than sixteen months after the IRS first contacted the taxpayer in writing, "[t]he mere passage of time in the litigation phase of a tax dispute does not establish error or delay" (quoting *Lee*, 113 T.C. at 150), and the IRS's work went to determining the correct tax, which is neither a ministerial nor a managerial act).

[68]*Matto v. Commissioner*, T.C. Memo. 2026-60 (July 21, 2026) (Lauber, J.) (No. 18012-24) (granting summary judgment for the Commissioner on a Form 843 claim arising from a 2020 amended individual return that reported added S corporation income after the S corporations reduced their wage deductions by the employee retention credits they received in 2023; the court accepted the taxpayers' account of the telephone call and held that erroneous oral advice from an IRS employee is not binding on the Commissioner, that the interest ran by statute from May 18, 2021, the day after the postponed due date of the 2020 return, and that no ministerial or managerial error was shown). The opinion is a memorandum opinion and should be read in full before it is cited for any other proposition.

[69]I.R.C. §§ 6211(a), 6404(e)(1)(A); Treas. Reg. § 301.6404-2(a)(1); IRM 20.2.7.5(1) (Dec. 20, 2023) ("IRC 6404(e)(1) does not apply to employment taxes."); IRM 20.2.7.5.1(1)(c) (the request must relate

Tax Court in *King v. Commissioner* for abating employment tax interest under section 6404(a) on the theory that the interest was unfair; excessive in section 6404(a) means more than the law imposes, not more than seems fair.[70]

B. When the IRS holds, loses, or misapplies a check, the first remedy is the received date, and abatement turns on the kind of act that failed.

Clients describe an unprocessed check as misconduct. The Code asks narrower questions. Did the IRS receive the payment, and when? Was the check honored? What kind of act failed: a mechanical step, the handling of records, or a judgment about the law? Did someone take the money? Each answer points to a different remedy, and only one of them is section 6404(e).

1. An honored check pays the tax on the day the IRS received it.

Interest on an underpayment stops on the date the IRS receives the payment. The date the IRS gets around to depositing the check does not matter.[71] The IRS's own rules say the same thing. Deposit units must "[c]redit all payments for the earliest date received," and the IRS has announced that interest on a liability satisfied by a remittance "will be suspended on the date the remittance is received by the Service, regardless of when . . . the remittance is actually applied."[72] So when a check sits in a campus mail cart, on an examiner's desk, or in the unidentified remittance file and is later honored, the first remedy is a corrected posting date, and no abatement request is needed. The practitioner proves receipt with the certified-mail or courier record and the cancelled check, asks the IRS to trace the payment (the IRS records its own search on Form 4446) and to credit it as of the original received date, and then asks the IRS to recompute the interest and the failure-to-pay penalty.[73] If the inflated interest has already been paid, the request becomes a claim for refund.

"to interest on taxes described in IRC 6212(a); for example, income, estate, gift, certain excise taxes (employment taxes are specifically excluded)").

[70]*King v. Commissioner*, 829 F.3d 795 (7th Cir. 2016) (Posner, J.), rev'g T.C. Memo. 2015-36 ("as construed by the Tax Court 'excessive' is vague because it incorporates the nebulous concept of 'unfairness,'" while Treas. Reg. § 301.6404-1(a) "restates 'excessive in amount' as 'in excess of the correct tax liability,'" which "leaves no room for basing interest abatements on 'unfairness'").

[71]Treas. Reg. § 301.6601-1(a)(1) ("Interest . . . shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received."); *see* I.R.C. § 6601(a) (interest runs "for the period from such last date to the date paid").

[72]Internal Revenue Manual (IRM) 3.8.45.2.1 (Nov. 13, 2017) ("Maintaining the integrity of the IRS received date is required. Credit all payments for the earliest date received by IRS or Department of Treasury."); Rev. Proc. 2005-18, § 8 ("The running of interest on an assessed tax liability satisfied by application of a remittance (whether the remittance initially was treated as a payment of tax or a deposit) will be suspended on the date the remittance is received by the Service, regardless of when the liability is assessed or the remittance is actually applied against the taxpayer's account."). The same IRM subsection sets a "24-hour deposit standard" and requires remittances of $100,000 or more to be "deposited on the day of extraction." *Id.* For a deposit under section 6603, "the tax shall be treated as paid when the deposit is made." I.R.C. § 6603(b).

2. A check the IRS never negotiated pays nothing: ask first to date the replacement as of the original, and use section 6404(e)(1)(B) for what remains.

Section 6404(e)(1)(B) does its work when the check is lost for good. A check is a conditional payment: the taxpayer who tenders it "is not released from his or her liability until the check . . . is paid."[74] A check that the IRS misplaced and never negotiated pays nothing, so the taxpayer must send a replacement, and interest runs in the meantime. When a field employee lost the payment, the Manual has the replacement check sent with Form 3465 attached "to request that the interest and penalty be abated," and the replacement itself posts with the current date.[75] A taxpayer who can prove timely mailing has a better route. When a mailed check was never processed or cashed, the Accounts Management procedure allows the replacement payment to take the original date: the taxpayer "will need to provide proof of timely mailing of the original payment in order to change the date of the subsequent payment to the date of the original payment," and "[a] managerial decision must be made" to do it.[76] Ask for that redating first, with the certified-mail or courier record attached. If the manager refuses, the interest from the original received date to the date of the replacement is what the section 6404(e)(1)(B) claim reaches. The bank's stop-payment fee is recoverable separately on Form 8546, up to $1,000, if the claim is made within one year after it accrues.[77] That interest is abatable to the extent the delay in payment is attributable to an IRS employee "being erroneous or dilatory in performing a ministerial or managerial

[73]IRM 21.5.7.4.6.9 (Oct. 1, 2021) ("Prepare Form 4446, Payment Tracer Research Record, and attach copy of the cancelled check and copies of all research documents."); IRM 21.5.7.4.6.10 (Oct. 1, 2007) ("Absolute proof of payment is conclusive evidence that IRS received a payment, for example,: Cash receipts (Form 809 or IRS National Cash Register (NCR) receipts) Cancelled checks Negotiated money orders . . . ."); IRM 3.8.45.5.8.1 (July 7, 2017) ("If no replacement remittance was received, process using the original IRS received date."). A check handed to a field employee must be transmitted "the same day as received or as soon as possible the next business day." IRM 5.1.2.4 (Aug. 6, 2025).

[74]Treas. Reg. § 301.6311-1(b)(1) ("The person who tenders any check . . . in payment for taxes or stamps is not released from his or her liability until the check, draft, or money order is paid . . . ."); *see* I.R.C. § 6311(b).

[75]IRM 5.1.2.3.5.1 (June 20, 2013) ("Attach Form 3465 to the replacement check to request that the interest and penalty be abated."; "The remittance perfection technician will post the check with the current date."); *see also* IRM 3.8.45.5.8.1 (July 7, 2017) (when the original is found after a replacement was paid, "[i]f interest and penalties were assessed on the replacement remittance," the unit routes the case "for abatement of the erroneous assessment").

[76]IRM 21.5.7.3.5 (June 9, 2025) ("The taxpayer will need to provide proof of timely mailing of the original payment in order to change the date of the subsequent payment to the date of the original payment. A managerial decision must be made to change the date of the subsequent payment to the date of the original payment."). The same subsection tells the employee to advise the taxpayer to stop payment and to use IRS Direct Pay or EFTPS for the replacement. *Id*.

[77]IRS, Form 8546, Claim for Reimbursement of Bank Charges (Rev. Nov. 2024) (covering charges for "stopping payment on a check that the IRS lost or misplaced" where the IRS asked for a replacement payment and received it; "Claims must be made within one year of the date the claim accrues"; claims "are limited to $1,000"); 31 U.S.C. § 3723; IRM 21.5.7.4.4.4.

act."[78] Losing a remittance fits, by analogy, the regulation's definition of a managerial act, which covers "the temporary or permanent loss of records."[79] For years too early for the managerial-act category, *Palihnich v. Commissioner* supplies an argument by analogy. There the Tax Court held that the IRS's loss of a taxpayer's amended returns "was a ministerial act for purposes of section 6404(e)" and found an abuse of discretion in the refusal to abate.[80] The payment prong has also supported abatement when the IRS's own error caused the late payment, although not on a check. In *Douponce v. Commissioner* the court held that refusing to abate interest caused by a wrong payoff figure "is an abuse of discretion."[81]

A certified or cashier's check does not change the result, although it feels as if it should. The taxpayer's bank has already set the money aside, so the taxpayer has lost the use of the funds and still owes the tax. The Code treats every check that is "not duly paid" the same way: the person who tendered it "shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions."[82] The special rule for guaranteed instruments protects the government against a failed bank, not the taxpayer against a lost check. It gives the United States a lien on the bank's assets when a certified, treasurer's, or cashier's check "so received is not duly paid."[83] The taxpayer looks to the bank for the money, not the IRS, and the road is narrower than clients expect. Under the Uniform Commercial Code, the remitter of a lost cashier's check may file a declaration of loss, and the bank must pay the claim once it becomes enforceable, which is no earlier than the ninetieth day after the date of the check (for a certified check, after the date of acceptance). But the declaration must state that the loss "was not the result of a transfer by the declarer," and a taxpayer who delivered the check to the IRS has transferred it. The payee, here the IRS, may be the only party able to make the declaration, so expect the bank to ask for the IRS's cooperation or an

[78]I.R.C. § 6404(e)(1)(B) (the Secretary may abate interest on "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").

[79]Treas. Reg. § 301.6404-2(b)(1) ("Managerial act means an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel."). When a field employee loses a payment, the Manual directs that "incorrect penalties and/or interest are abated." IRM 5.1.2.3.5 (Sept. 26, 2014).

[80]*Palihnich v. Commissioner*, T.C. Memo. 2003-297 ("The Commissioner's loss of a taxpayer's return is a procedural or mechanical act that does not involve the exercise of discretion or judgment by the Commissioner."); *id.* ("We conclude that respondent's loss of petitioners' 1981-82 amended returns was a ministerial act for purposes of section 6404(e).").

[81]*Douponce v. Commissioner*, T.C. Memo. 1999-398 ("The Commissioner's refusal to abate the interest on interest after all of petitioner's liability for tax and penalties had been satisfied is an abuse of discretion.").

[82]I.R.C. § 6311(b).

[83]I.R.C. § 6311(c) (the United States, "in addition to its right to exact payment from the party originally indebted therefor," has a lien "upon all assets of the financial institution on which drawn").

indemnity bond.[84] The interest that runs while the bank holds the money and the IRS holds nothing must come off through the IRS's own loss procedures or section 6404(e)(1)(B). The loss of the use of the money is not recoverable from the IRS in tort, because the Federal Tort Claims Act does not reach "[a]ny claim arising in respect of the assessment or collection of any tax."[85] The only damages statute that might reach it is section 7433, discussed below, and only if collection followed and the taxpayer can show actual economic damages. Two practical points follow. Send a replacement payment at once, by wire or a new instrument, rather than waiting ninety days for the bank, because the delay a taxpayer could have avoided is the delay the IRS will attribute to her. And ask the bank in writing, the same day, to start its lost-instrument process.

3. The test is the kind of act, not the degree of fault.

Section 6404(e)(1) does not ask whether the employee behaved badly. It asks what kind of act the employee performed badly. Carelessness is enough if the act was ministerial or managerial, and deliberate wrongdoing adds nothing to the abatement claim if the act was a judgment about the law. No court has yet applied these definitions to a taxpayer's check, so what follows is the reading that the regulation's text and examples support, and a claim built on it should say so. Depositing a check already in hand is "a procedural or mechanical act that does not involve the exercise of judgment or discretion," and once a processable check arrives with what the IRS needs to apply it, nothing remains to be decided, so a check that sits past the IRS's own deposit standard is best argued as a ministerial delay.[86] Losing the check is best argued as a loss of records, and so a managerial act, by analogy to the regulation's own example of a clerk who misplaces a case file.[87] Posting a payment to the wrong taxpayer or the wrong year is a mechanical failure to apply the payment as the taxpayer designated it, close to the regulation's example of an employee who gave a wrong payoff figure because he did not check current data.[88] The credit transfer cures most of the interest, and the abatement

[84]U.C.C. § 3-312(a)(3), (b)(1), (b)(4) (Am. L. Inst. & Unif. L. Comm'n) (the declaration is "a statement, made in a record under penalty of perjury," that "the loss of possession was not the result of a transfer by the declarer or a lawful seizure"; once the claim is enforceable, "the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check"). Check the version enacted in the governing state.

[85]28 U.S.C. § 2680(c).

[86]Treas. Reg. § 301.6404-2(b)(2) ("Ministerial act means a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place."); IRM 3.8.45.2.1 (Nov. 13, 2017) ("Management at all levels must be committed to ensuring a 24-hour deposit standard."); IRM 5.1.2.4 (Aug. 6, 2025) ("Remittances are due at the Submission Processing Center within 3 business days from the date the IRS received the funds.").

[87]Treas. Reg. § 301.6404-2(c), Example 6 ("The act of misplacing the case file is a managerial act.").

[88]Treas. Reg. § 301.6404-2(c), Example 11 ("Accessing the most recent data is a ministerial act."); IRM 21.5.7.4.6.5 (Oct. 1, 2013) ("If the taxpayer's payments are applied to an incorrect tax period, transfer the payment to the correct module if the credit is still available (refund not issued)."); IRM 21.5.7.4.6.6 (May 28, 2026) ("If the taxpayer's payment is applied to an incorrect account: Transfer

claim reaches only what is left. The claim depends on what the taxpayer told the IRS. A voluntary payment goes where the taxpayer directs only if the direction is in writing; without one, the IRS applies the payment as it chooses, and its choice is not an error.[89] Write the tax, the period, and the type of liability on the check and on a cover letter every time. In one field service advice the IRS re-credited a misposted payment as of its payment date but refused to abate the interest that the taxpayer's own failure to pay the adjusted balance had caused.[90]

Two kinds of failure fall outside section 6404(e). The first is a check held or returned because an employee decided the law did not allow it to be applied, as when an examiner decides a remittance is not a valid section 6603 deposit or returns a payment because she believes nothing is owed. "A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act," and the regulation says the same of managerial acts.[91] The answer is to show that nothing was left to decide. For a designated deposit, Rev. Proc. 2005-18 fixes the date the remittance stops interest, and a request framed as a failure to follow that procedure, supported by the written designation and the delivery record, does not depend on section 6404(e) at all.[92] The second is a general administrative decision. The regulation excludes decisions about how the IRS organizes the processing of returns, and a campus backlog of unopened mail is likely to be treated as one.[93] For a backlog the received-date rule is the only remedy, and it is a good one, because the IRS must stamp and credit the date the mail arrived.[94]

A check the IRS returns when it should have kept it is the hardest case. A returned check pays nothing, so the reason for the return decides everything. A return for a mechanical reason, such as a misread name or account number, a missing voucher, or a payment that matched no module, is a processing error, and

---

the credit to the correct account.").

[89]*Gessert v. United States*, 703 F.3d 1028, 1038 (7th Cir. 2013) ("under revenue procedure 2002-26 (applicable here), a taxpayer must specify in writing the payment's designation"); Rev. Proc. 2002-26, 2002-1 C.B. 746; I.R.S. Chief Couns. Adv. 202129007 (July 23, 2021) (under Rev. Proc. 2002-26, a designation "must be specific, in writing, and made at the time of the payment").

[90]I.R.S. Field Serv. Adv. 200005002 (Feb. 4, 2000) ("The Service has not disputed that the failure to properly credit the $d payment to X's YR2 account was an error. Although the Service erred, § 6404(e)(1) only authorizes the Service to abate interest when the Service's error or delay is attributable to a ministerial act."). Written determinations have no precedential value. I.R.C. § 6110(k)(3).

[91]Treas. Reg. § 301.6404-2(b)(1), (2).

[92]Rev. Proc. 2005-18, § 8, 2005-13 I.R.B. 798; I.R.C. § 6603(b).

[93]Treas. Reg. § 301.6404-2(b)(1) (a general administrative decision, such as the IRS's decision on how to organize the processing of tax returns "or its delay in implementing an improved computer system, is not a managerial act").

[94]IRM 3.10.72.6.1 (Jan. 1, 2026) ("The date a document is received in the Campus or an IRS office that can accept tax returns is the date stamped as the 'IRS Received Date'."); IRM 3.8.45.2.1 (Nov. 13, 2017).

the interest from receipt until the taxpayer sends the payment again is abatable if written contact came first. A return because an employee concluded that nothing was owed, that the collection period had expired, or that the remittance could not be treated as a deposit is a legal judgment. Section 6404(e) does not reach it, however wrong the conclusion. Either way, the taxpayer's response is the fact the IRS will weigh. A taxpayer who sends the payment back within days, with a letter explaining why it should be kept, has contributed nothing to the delay. A taxpayer who deposits the returned check and waits for the next notice has. No published guidance located for this article addresses interest on a remittance the IRS returned in error, so the request should rest on the received-date regulation and the definitions in section 301.6404-2, and should say so.

4. Theft and misconduct have their own remedies, and none of them is an interest provision.

When an IRS employee steals or embezzles a remittance, the Manual credits the injured taxpayer's account from a Treasury loss account, refers the matter to the Treasury Inspector General for Tax Administration, and makes the employee answer for the money. The Code lets the IRS issue notice and demand to the employee and, if the employee does not pay, treat the amount as assessed against the employee and collect it with the tax-collection tools.[95] The practitioner should ask that the credit carry the original received date, which the deposit rules require. The rule is different when a postal or other government employee takes a mailed check before the IRS has it. The Manual then treats the IRS as not obligated to credit the account and, in its words, sends the taxpayer to the payor bank, which it describes as strictly liable for paying a forged instrument.[96] Get both sides of the cancelled check at once; the endorsement shows who negotiated it.

Does a lost check go to the Treasury Inspector General for Tax Administration? The taxpayer need not take it there unless someone may have taken the money or covered up what happened. An ordinary lost or late check is a processing failure, handled through a payment tracer and, if needed, an abatement claim, and the taxpayer need not allege misconduct to get either. The IRS may make the referral itself: when a package of remittances it ships between offices goes missing, its employees must "[i]mmediately report all lost remittance packages" to TIGTA.[97] The Manual sends an altered or stolen remittance to TIGTA and the Remittance Security Coordinator, and TIGTA works complaints that an

[95]IRM 3.0.167.5.5 (Sept. 16, 2020) ("Injured taxpayer's account(s) are credited from the 7610 Account. The 7610 Account is debited for the loss amount."); IRM 21.5.7.4.6.8 (Oct. 1, 2025) (altered or stolen payments are referred to TIGTA and the Remittance Security Coordinator); I.R.C. § 7804(c) (an officer or employee who "fails to account for and pay over any amount of money or property collected or received by him" is subject to notice and demand, and the amount is "deemed imposed upon such officer or employee and assessed upon the date of such notice and demand").

[96]IRM 3.0.167.5.3 (Oct. 1, 2012) ("If the remittance was mailed to the IRS but is taken by a Postal or other government employee, the Service is not legally obligated to credit a taxpayer's account under such circumstances. Therefore, the 7610 Account is not used. The taxpayer's recourse is against the payor bank as it is held strictly liable to the true owner if it pays on a forged instrument.").

employee violated a law, regulation, or rule of conduct.[98] A taxpayer or practitioner may also call the TIGTA hotline directly.[99] A TIGTA referral does not abate interest or restore the payment date. The account correction runs on its own track, and the practitioner should not hold the received-date request while an investigation proceeds. Section 7804(c) is the government's remedy against the employee, not the taxpayer's remedy against the government.

Misconduct that leads to collection can support damages. If, "in connection with any collection of Federal tax," an IRS employee "recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title," the taxpayer may sue in district court for actual damages up to $1,000,000, or $100,000 for negligence.[100] A levy issued after the IRS received the payment but did not post it presents the strongest facts, although the levy alone does not prove every element of the claim. Whether a failure to deposit a voluntary payment is itself "in connection with any collection" is not settled, so the claim is strongest when a notice of levy or lien followed.[101] Name the specific collection act the claim rests on. The taxpayer must first file an administrative claim, may not sue until six months later or until the claim is decided, and must sue within two years after the claim accrues. A claim filed in the last six months of those two years may be followed by suit at once.[102] The damages must be real. In *Gessert* the Seventh Circuit affirmed dismissal of a company's claim that the IRS misapplied its voluntary payments, because the company alleged no economic loss, and it held that the company's owner could not sue because the IRS had not collected from him.[103] A section 7433 action recovers damages; it does not abate interest. Interest still comes off through the received-date credit or a section 6404(e) claim, and the two tracks should run together.

---

[97]IRM 3.8.45.2.3 (Apr. 16, 2025) ("Immediately report all lost remittance packages to the Treasury Inspector General for Tax Administration (TIGTA) Office of Investigations at 800-366-4484.").

[98]IRM 21.5.7.4.6.8 (Oct. 1, 2025); IRM 13.1.15.3(1) (Dec. 26, 2023) (such cases "are worked and reported by TIGTA").

[99]IRM 13.1.15.4(2) (Dec. 26, 2023) (a person may report "by telephoning TIGTA" at 1-800-366-4484).

[100]I.R.C. § 7433(a), (b).

[101]*See Ivy v. Commissioner*, No. 16-5242, slip op. at 6 (D.C. Cir. Dec. 19, 2017) (no jurisdiction under section 7433(a) where "the IRS took no affirmative steps to collect taxes"); *Agility Network Servs., Inc. v. United States*, 848 F.3d 790, 794 (6th Cir. 2017) (an IRS employee acting in connection with collection "would be taking an affirmative step to recover money owed to the government"; conducting a CDP hearing is not such a step).

[102]I.R.C. § 7433(d)(1), (3); Treas. Reg. § 301.7433-1(d)(2); Treas. Reg. § 301.7433-1(d), (e), (g) (the claim goes "in writing to the Area Director, Attn: Compliance Technical Support Manager" for the area where the taxpayer resides; the action accrues when the taxpayer "has had a reasonable opportunity to discover all essential elements of a possible cause of action").

[103]*Gessert*, 703 F.3d at 1034 ("the Group must allege actual economic damage to state a claim under section 7433"; "the statute does not permit nominal damages"); *id*. at 1033 (the owner "is not 'such [a] taxpayer' under section 7433").

What went wrong	First remedy	Section 6404(e)(1)(B)	Other relief
Check received, deposited late, honored	Credit as of the received date (Treas. Reg. § 301.6601-1(a)(1); Rev. Proc. 2005-18, § 8)	Not needed	Refund claim for interest already paid
Check lost and never negotiated	Stop payment and send a replacement; with proof of timely mailing, ask a manager to redate it to the original payment date (IRM 21.5.7.3.5). Otherwise it posts on its own date (IRM 5.1.2.3.5.1)	Arguable, if after written contact and the other elements are met: loss of records (managerial) by analogy, or ministerial under Palihnich	Form 8546 for the stop-payment fee; act promptly
Payment posted to the wrong account or year	Credit transfer (IRM 21.5.7.4.6.5, .6)	Arguable for interest the misposting caused, if the other elements are met	Usually none needed
Check held or returned on a legal judgment	Show a mandatory procedure left nothing to decide (Rev. Proc. 2005-18)	Usually no: legal judgments are excluded	Appeals; Taxpayer Advocate
Mail backlog at a campus	Credit as of the stamped received date (IRM 3.10.72.6.1)	Usually no: a general administrative decision, unless a specific act within it failed	None
Certified or cashier's check lost by the IRS	Replacement payment at once; recover the funds from the bank (U.C.C. § 3-312)	Arguable, on the same terms as any lost check	No tort claim for loss of use (28 U.S.C. § 2680(c)); section 7433 only if collection followed
Check returned in error	Send it again at once, with a letter	Arguable for a mechanical return; no for a legal judgment	Appeals; Taxpayer Advocate
Theft by an IRS employee	Credit from the loss account (IRM 3.0.167.5.5); TIGTA referral	Available for any residual interest	TIGTA hotline; section 7433 if collection followed
Theft by a postal employee	Recourse against the payor bank, per IRM 3.0.167.5.3	No, unless separate IRS conduct caused interest	Claim against the bank

EXAMPLE

Example: The Check in the Cart

Dana Ostrowski, a composite client, receives a balance-due notice for her 2022 Form 1040 showing $18,400 owed. She mails a check for that amount with the notice stub by certified mail. The Postal Service tracking record shows delivery to the campus on July 8, 2024. Her bank statements show nothing for months. In December the check clears, and her transcript posts the payment as of December 2, 2024. A new notice charges interest and the failure-to-pay penalty through that date.

Her representative does not start with section 6404(e). He sends the tracking record, a copy of both sides of the cancelled check showing the IRS endorsement, and a request for a payment trace, and asks the IRS to credit the payment as of July 8, 2024. The IRS received the check that day, and its own procedures direct it to process a discovered remittance "using the original IRS received date." At the 8 percent underpayment rate that applied throughout 2024, compounded daily, the 147 days between receipt and deposit added about $600 of interest on $18,400. When the posting date is corrected, that interest and the matching failure-to-pay penalty disappear.

Now change one fact. The IRS never finds the check, and Dana sends a replacement on February 3, 2025. The original check never cleared, so she remained liable until the replacement was paid. Her representative first sends the tracking record with the replacement and asks a manager to give the replacement the July 8, 2024 date, which the Manual permits on proof of timely mailing. If the manager refuses, the interest for July 8, 2024 through February 3, 2025 can come off only under section 6404(e)(1)(B). The written contact came first (the balance-due notice). Losing the remittance is argued, by analogy, as a loss of records. And Dana acted promptly once she learned the check had not cleared. She files Form 843 with the tracking record, her bank's stop-payment confirmation, and a dated timeline. If the IRS denies the claim, she may petition the Tax Court within 180 days of the final determination.

5. Three limits decide most of these claims.

The usual limits still apply, and the written-contact rule is the one that surprises clients. A check mailed with an original return arrives before the IRS has written to the taxpayer about anything, so section 6404(e) cannot reach a delay in depositing it, and the received-date rules must do all the work. The payment prong reaches only taxes described in section 6212(a), so a lost payroll-tax check gets the received-date correction, and a replacement may be redated on proof of timely mailing, but no section 6404(e) relief is available. The IRS error must come after the IRS contacted the taxpayer in writing about the payment. A taxpayer who learns the check was never cashed and waits months to stop payment and send another has contributed to the delay. *DeSabato v. United States*, a failure-to-pay

penalty case rather than an interest case, shows where courts draw the line. The taxpayers mailed a $230,000 check with their extension request in April 2003; the IRS never cashed it; on the IRS's advice they stopped payment on June 9, 2003, and then paid nothing until August 2004. The court held that there was "no reasonable cause for plaintiffs' failure to pay their tax liability after June 9, 2003," but left for trial whether the disappearance of the check excused the weeks before.[104] The 1996 amendment added managerial acts only for tax years beginning after July 30, 1996, and the payment prong has been in the statute since 1986.[105] Review of a denial lies only in the Tax Court, and only for a taxpayer who meets the net-worth limits of section 7430(c)(4)(A)(ii).[106] A wealthy client whose check went missing should therefore push hardest for the received-date correction, because a court may never review a denied abatement claim. No reported opinion located for this article rules squarely on section 6404(e) relief for an IRS failure to deposit a check, so the received-date rules and the redating procedure carry most of the weight. Appendix I supplies a request that asks for the received-date credit first and abatement in the alternative.

C. Section 6404(a) abates interest that is excessive, illegal, or assessed after the limitations period.

Section 6404(a) authorizes abatement of the unpaid portion of any assessment, including interest, that is excessive in amount, assessed after the limitations period expired, or erroneously or illegally assessed.[107] This is the subsection the IRS uses to correct its own computational errors, and the Manual directs employees to correct interest errors on their own, without a request from

[104]*DeSabato v. United States*, 538 F. Supp. 2d 422, 428 (D. Mass. 2008) ("there was no reasonable cause for plaintiffs' failure to pay their tax liability after June 9, 2003"); *id.* at 429 ("Summary judgment will therefore be denied as to any § 6651(a)(2) penalties assessed for any months prior to June 9, 2003."). The case decided the failure-to-pay penalty, not a section 6404(e) claim, but the same diligence principle governs whether a significant aspect of the delay is attributable to the taxpayer.

[105]I.R.C. § 6404(e)(1) ("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"); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 301(c), 110 Stat. 1452 (1996) ("The amendments made by this section . . . shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act."); IRM 20.2.7.5.2 (Dec. 20, 2023) ("Prior to July 31, 1996, IRC 6404(e)(1) addressed only interest abatement requests due to ministerial acts."). The payment prong appeared in the original 1986 enactment. *See Douponce* (quoting the 1986 text: "any payment of any tax described in section 6212(a) to the extent that any delay in such payment is attributable to such officer or employee being dilatory in performing a ministerial act").

[106]I.R.C. § 6404(h)(1) ("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 . . . ."); *Hinck v. United States*, 550 U.S. 501 (2007) ("We hold that the Tax Court provides the exclusive forum for judicial review of a refusal to abate interest under §6404(e)(1), and affirm.").

[107]I.R.C. § 6404(a) ("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.").

the taxpayer.[108] Section 6404(b) adds a limit that practitioners misread in both directions. It provides that no claim for abatement may be filed by a taxpayer in respect of an assessment of income, estate, or gift tax, and the Tax Court in *Urbano v. Commissioner* read that bar to reach the interest on income tax as well, holding that the taxpayers there did not qualify for abatement under section 6404(a)(1).[109] *Urbano* does not close the Tax Court to a suspension claim on income tax. In *Corbalis* the court held that it may review the denial of a section 6404(g) claim under section 6404(h), and it found no reason why section 6404(b) should bar that review when it does not bar review under section 6404(e).[110] The bar is on the taxpayer's claim, not on the IRS's power. The IRS may abate interest that is not legally due on its own motion, the Manual obligates employees to do so, and Rev. Proc. 2005-38 tells the taxpayer to file a Form 843 notification precisely so that the IRS will exercise that power.[111] And once the interest has been paid, the vehicle is no longer abatement at all but a claim for refund of an amount erroneously or illegally collected, which section 6404(b) does not touch.[112] After *King*, the argument that correctly computed interest is excessive because the result is unfair is foreclosed in the Seventh Circuit and is a poor bet anywhere.[113]

D. Three narrower provisions give relief for math errors, erroneous refunds, and erroneous written advice.

Section 6404(d) authorizes the IRS to abate interest on a deficiency that results from a mathematical error on a return prepared by an IRS employee, through the thirtieth day after notice and demand.[114] Section 6404(e)(2) requires

[108]IRM 20.2.7.3(2) (Dec. 20, 2023) ("IRS employees are obligated to correct interest errors discovered on taxpayer accounts without the taxpayer having to file a request.").

[109]I.R.C. § 6404(b) ("No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B."); *Urbano v. Commissioner*, 122 T.C. 384, 390, 395 (2004) (in a lien case under section 6320, holding that because the case concerned income tax the taxpayers did not qualify for an abatement of interest under section 6404(a)(1), while redetermining the amount of the interest under section 6330(d) and reviewing the section 6404(e)(1) request for abuse of discretion). The court also held that the revenue agent's error there "results not from a ministerial act but from a misapplication of Federal tax law." *Id.* at 395.

[110]*Corbalis v. Commissioner*, 142 T.C. 46 (2014) ("There is no explanation of why section 6404(b) precludes section 6404(h) judicial review of section 6404(g) determinations while not conflicting with judicial review of section 6404(e) determinations."). *Corbalis* cites *Urbano* with approval for the scope of section 6404(h) review and does not discuss *Urbano*'s section 6404(b) holding.

[111]Rev. Proc. 2005-38, 2005-28 I.R.B. 81, § 3.01; IRM 20.2.7.3(2) (Dec. 20, 2023). *Corbalis* holds that a letter denying such a notification is a final determination reviewable in the Tax Court under section 6404(h). *Corbalis*, 142 T.C. at 53–58.

[112]I.R.C. §§ 6402(a), 6511(a), 7422(a). The refund claim is filed on Form 843 for interest, states the ground that the interest was not legally due, and proceeds to a district court or the Court of Federal Claims after disallowance or six months. *Hinck v. United States*, 550 U.S. 501, 503 (2007), confines only section 6404(e)(1) claims to the Tax Court.

[113]*King*, 829 F.3d at 798 ("excessive in amount" means "in excess of the correct tax liability").

[114]I.R.C. § 6404(d); IRM 20.2.7.4.1 (Dec. 20, 2023). Mathematical error has the meaning given in section 6213(g)(2)(A). The subsection authorizes abatement; it does not command it.

abatement of interest on an erroneous refund of $50,000 or less, from the refund date to the date of demand for repayment, if the taxpayer or a related party did not cause the refund; for larger refunds the Manual makes abatement discretionary.[115] Section 6404(f) requires abatement of any penalty or addition to tax attributable to erroneous written advice furnished by the IRS in response to a specific written request, if the taxpayer reasonably relied on the advice and supplied accurate information.[116] The written request and the written answer must be attached to the Form 843. Section 6404(f) does not reach oral advice, which is why every question to the IRS that matters should be asked in writing.

V. Interest Netting Turns the Rate Differential to Zero.

The government charges a higher rate on underpayments than it pays on overpayments. For corporations the gap is one point on ordinary amounts, two and a half points on the portion of an overpayment above $10,000, and three or four and a half points once hot interest applies.[117] Section 6621(d) eliminates the gap. To the extent that, for any period, interest is payable on an underpayment and allowable on an overpayment by the same taxpayer, the net rate of interest on the overlapping amounts for that period is zero.[118] The provision applies across tax years and across types of tax.[119] For individuals the two rates have been the same since 1999, so netting is now a corporate remedy.

---

[115]I.R.C. § 6404(e)(2) (the Secretary "shall abate" interest on an erroneous refund "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"); IRM 20.2.7.7 (Dec. 20, 2023).

[116]I.R.C. § 6404(f)(1) (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"); § 6404(f)(2) (the abatement applies only if "the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer" and "the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information"); Treas. Reg. § 301.6404-3.

[117]I.R.C. § 6621(a)(1) (corporate overpayment rate of the short-term rate plus two points, and plus one-half point on the portion of an overpayment exceeding $10,000), (a)(2) (underpayment rate plus three points), (c) (plus five points). For individuals the overpayment and underpayment rates have been the same since January 1, 1999, so there is no rate differential to net for interest accruing after that date; Rev. Proc. 2000-26, 2000-1 C.B. 1257, § 3.02(2) (the procedure does not apply to "interest accruing on or after January 1, 1999, for taxpayers other than corporations (the interest rate on underpayments and overpayments is equal for such taxpayers on or after January 1, 1999)").

[118]I.R.C. § 6621(d) ("To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.").

[119]Rev. Proc. 2000-26, 2000-1 C.B. 1257, § 1 (section 6621(d) "provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments"); IRM 20.2.14.2(6) (Aug. 18, 2025) ("IRC 6621(d) applies to interest on all types of tax.").

Netting is not automatic in practice. The statute does not require a request, and the IRS takes reasonable steps to find overlaps, but it cannot apply the zero rate automatically, so the taxpayer should ask. The procedure is a Form 843 captioned Request for Net Interest Rate of Zero under Rev. Proc. 2000-26, with the matching top-of-form box checked, filed with the Ogden campus (Appendix C gives the address), that identifies each overpayment and underpayment, the period of overlap, and the amount of interest to be recomputed.[120] Appendix C supplies the form.

In plain terms, netting works in four steps. First, find the overlap: a period in which the same taxpayer both owed tax for one year and was owed a refund for another. Second, measure it: the overlap is the smaller of the two balances, for the days both were outstanding. Third, compute both interest figures on that overlapping amount, the interest the IRS charged and the interest the IRS paid. Fourth, ask the IRS to make the difference zero. If the taxpayer can still claim back underpayment interest, the IRS reduces the underpayment interest; if that period has closed but the period for claiming more overpayment interest is open, the IRS increases the overpayment interest instead.[121]

Two clocks control the request, and the practitioner should calendar both. A claim to recover underpayment interest is a refund claim under section 6511: it must be filed within three years after the return was filed or two years after the interest was paid, whichever is later. A claim for more overpayment interest is not a refund of tax; it must be brought within the six-year period for suits against the United States, and filing a Form 843 does not stop that clock. The only way to fully protect a claim for additional overpayment interest is to file suit before the six years run.[122] Three amounts do not count toward an overlap: periods for which no

---

[120]Rev. Proc. 2000-26, 2000-1 C.B. 1257, §§ 4, 5; *id*. § 2.04(3) (for interest accruing on or after October 1, 1998, "there is no statutory requirement that the taxpayer request that the Service apply § 6621(d)"). Rev. Proc. 2000-26 governs interest accruing on or after October 1, 1998, and sections 5.01 through 5.04 list what the request must contain; Rev. Proc. 99-43, 1999-2 C.B. 579, governs the earlier periods. The current Form 843 names Rev. Proc. 2000-26. A claim to reduce paid underpayment interest must be filed within the section 6511 period for that interest; if that period has closed, the overpayment leg may still be open, and the discussion of the two clocks below explains its separate six-year period for suit.

[121]Rev. Proc. 2000-26, § 4.03(1) (if the period for refunding underpayment interest is open when the claim is filed, "the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer"), § 4.03(2) (if that period is closed but the period for additional overpayment interest is open, the Service applies the net rate by increasing overpayment interest).

[122]Rev. Proc. 2000-26, § 4.02(1) (a claim for refund of underpayment interest "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"), § 4.02(2) (a claim for additional overpayment interest "must be filed within the 6-year period in which a suit must be filed pursuant to 28 U.S.C. §§ 2401 and 2501," a netting request "does not protect the taxpayer's rights with respect to suits against the government," and "[t]he only manner in which a taxpayer can fully protect its rights to additional overpayment interest is by filing a civil suit against the United States prior to the termination of the 6-year statutory period"); IRM 20.2.14.6.2(4)–(5) (Aug. 18, 2025) (the six-year period runs from "the 23C date of the refund or the cycle date of an offset overpayment," and "filing

interest runs by law, such as the forty-five-day period in which the IRS may refund an overpayment without interest; amounts already offset against each other under sections 6402(a) and 6601(f); and, for taxpayers other than corporations, interest accruing on or after January 1, 1999, when the two rates became equal.[123]

EXAMPLE

Example: The Overlap That Was Never Netted

Siena Corporation's 2019 examination produced a $500,000 deficiency. The thirty-day letter went out on August 1, 2022, so the large corporate rate applied from September 1, 2022, the first day after the applicable date, and Siena paid the deficiency and interest on June 28, 2024. Separately, Siena overpaid its 2021 estimated tax by $300,000. The IRS refunded that overpayment in 2025, with overpayment interest from April 15, 2022, the date on which the Code treats estimated tax as paid.[124] From April 15, 2022 until June 28, 2024, Siena owed the government $500,000 for 2019 and the government owed Siena $300,000 for 2021. On the overlapping $300,000, the government charged interest at 4 to 10 percent and paid interest at 1.5 to 5.5 percent. Over that period the underpayment interest on $300,000 came to about $60,800 and the overpayment interest to about $29,500.[125] Section 6621(d) sets the net rate on the overlapping $300,000 at zero, so Siena should have paid about $31,200 less. The IRS computer did not do it because no one asked. A Form 843 under Rev. Proc. 2000-26, with a schedule showing the two balances quarter by quarter, recovers the difference. Siena filed that claim on May 1, 2026, inside the two years that section 6511(a) allows after the June 28, 2024 payment; a claim filed after June 29, 2026 would have reached only the overpayment leg.

The phrase same taxpayer has been the battleground. The Federal Circuit held in *Energy East* that the taxpayer must be the same at the time the overpayment and the underpayment were made, so a parent could not net its

Form 843 will not stop the running of the six-year period").

[123]Rev. Proc. 2000-26, § 3.02(2)–(4).

[124]I.R.C. § 6513(b)(2) ("Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return)."); § 6611(d) (section 6513 applies "in determining the date of payment for purposes of subsection (a)"). April 15, 2022 was Emancipation Day in the District of Columbia, so section 7503 made a return filed on Monday, April 18 timely. Section 7503 permits timely performance on the next business day; it does not change the last day prescribed for filing, and the estimated tax is still deemed paid on April 15.

[125]Computed daily under section 6622(a) on an actual 365- or 366-day basis at the published quarterly rates: underpayment at the federal short-term rate plus three points, and plus five points from September 1, 2022 under section 6621(c) (the higher rate applies "for periods after the applicable date," which is the thirtieth day after the thirty-day letter is sent, I.R.C. § 6621(c)(1), (c)(2)(A)); overpayment at the short-term rate plus two points on the first $10,000 and plus one-half point on the excess under section 6621(a)(1). The quarter-by-quarter figures are in Schedule 1 in Appendix C.

underpayment against an overpayment a subsidiary made before the acquisition.[126] *Wells Fargo* addressed three situations. Where the surviving corporation itself made both the overpayment and the later underpayment, the government conceded netting, so the court did not decide the point. Where two different corporations made the two payments before they merged, netting was refused. And where an acquired corporation's overpayment, made before the merger, overlapped with the survivor's underpayment, made after it, netting was allowed, because the survivor had succeeded to the acquired corporation's position.[127] The Fourth Circuit adopted the same reading in July 2025 in *Bank of America*, denying netting between Merrill Lynch's pre-merger overpayments and Bank of America's pre-merger underpayments and rejecting the argument that state merger law retroactively made the two entities one taxpayer.[128] The practical rule for corporate practitioners: map every payment to the legal entity that made it on the day it made it, and do not assume a merger cures a mismatch.

The Tax Court can apply netting in a case that is already before it. In *Exxon Mobil* the Tax Court reopened a decided case under section 7481(c) to redetermine interest and applied section 6621(d) across the taxpayer's overlapping years, and the Second Circuit affirmed. The court also held that netting reaches interest for periods before July 22, 1998, when section 6621(d) was enacted, if either leg's limitations period was still open on that date. The special rule that reaches those older periods also required the taxpayer to ask for netting by December 31, 1999, so it matters today only for a taxpayer who made that request.[129] Outside that setting the forum is a refund suit, and the Federal Circuit has held that the Court

[126]*Energy East Corp. v. United States*, 645 F.3d 1358, 1361 (Fed. Cir. 2011) (the statute "provides an identified point in time at which the taxpayer must be the same, i.e., when the overpayments and underpayments are made").

[127]*Wells Fargo & Co. v. United States*, 827 F.3d 1026, 1034–35 (Fed. Cir. 2016) ("it is the identity of the corporation at the time of the payments that matters," at 1035; the court applies that rule to the two contested situations; the government conceded the remaining one).

[128]*Bank of Am. Corp. v. United States*, 148 F.4th 171 (4th Cir. 2025) ("Bank of America and Merrill Lynch were not the 'same taxpayer' when they made the under- and overpayments at issue here," and "the laws of Delaware do not retroactively make those corporations the same at the time of payment"). The court also distinguished the balance-offset provision of section 6402(a), observing that "the balance-netting provision has a broader scope than the interest-netting provision."

[129]Pub. L. No. 105-206, § 3301(c)(2), 112 Stat. 685 (1998), as amended (the rule applies if the taxpayer "not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d)"), *quoted in Exxon Mobil Corp. v. Commissioner*, 689 F.3d 191 (2d Cir. 2012). *Exxon Mobil Corp. v. Commissioner*, 136 T.C. 99, 119 (2011) ("we hold that interest netting should be available even if only one applicable limitations period was open on July 22, 1998"), aff'd, 689 F.3d 191, 199 (2d Cir. 2012) (netting "may be applied when at least one leg of the overpayment/underpayment overlapping period is not barred by the applicable statute of limitations"). But see *Fed. Nat'l Mortg. Ass'n v. United States*, 379 F.3d 1303 (Fed. Cir. 2004). Section 7481(c) lets the Tax Court reopen a decided case to redetermine interest only on a motion filed within one year after the decision becomes final. I.R.C. § 7481(c)(1); Tax Ct. R. 261(a)(2). Rule 261 allows two kinds of motion. A motion on a deficiency must state that the taxpayer "has paid the entire amount of the deficiency assessed under Code section 6215 plus interest claimed by the Commissioner," and a motion on an overpayment must state that the court has determined an overpayment under section 6512(b). Tax Ct. R. 261(b)(2)(A), (b)(3)(A); see I.R.C. § 7481(c)(2).

of Federal Claims has exclusive jurisdiction over claims for overpayment interest exceeding $10,000.[130] That 2020 decision and the 2025 Fourth Circuit decision in *Bank of America* come from the same lawsuit. The bank sued in the Western District of North Carolina for a refund of underpayment interest it had paid and for additional overpayment interest. After the Federal Circuit ruled, the district court sent the overpayment-interest claims over $10,000 to the Court of Federal Claims and kept the claims for refund of underpayment interest and the smaller overpayment-interest claims. Those claims reached the Fourth Circuit on interlocutory appeal.[131]

VI. Procedure Decides Interest Cases: Form 843, Appeals, and the Tax Court.

Every rule above is enforced through a procedure that forgives nothing. The claim must be in the right form. The protest must go to the right office. The petition must be filed within the right number of days, must check the right box, and must plead the right facts. Interest cases are often lost on procedure before the merits are reached.

A. The claim begins with Form 843, one per period and per type of tax, captioned for the provision invoked.

Form 843, Claim for Refund and Request for Abatement, is the vehicle for nearly every interest claim discussed in this article, including netting requests (Appendix C); one exception is a netting request made while the return is already before Examination, Appeals, or a court, which Rev. Proc. 2000-26, § 5.06, allows by letter.[132] The IRS will also accept signed correspondence that contains the same elements as the form: the taxpayer's name and identification number, the interest period in question, the reasons for the request, and a signature under penalties of perjury.[133] Use the form anyway. It routes to the right unit, and it leaves no argument about whether a claim was filed.

---

[130]*Bank of Am. Corp. v. United States*, 964 F.3d 1099, 1103 (Fed. Cir. 2020) (holding that 28 U.S.C. § 1346(a)(1) does not give district courts jurisdiction over stand-alone claims for overpayment interest, so that claims exceeding the $10,000 Tucker Act limit belong in the Court of Federal Claims); accord *Pfizer Inc. v. United States*, 939 F.3d 173 (2d Cir. 2019) (rejecting the Sixth Circuit's contrary view). But see *E.W. Scripps Co. v. United States*, 420 F.3d 589 (6th Cir. 2005) (district court has jurisdiction over such a claim under section 1346(a)(1)).

[131]*Bank of Am. Corp. v. United States*, 148 F.4th 171 (4th Cir. 2025) (describing the procedural history: after the Federal Circuit held that "the Court of Federal Claims held exclusive jurisdiction over the Bank's claims for overpayment interest exceeding $10,000," the district court "severed those claims and transferred them to the Court of Federal Claims," and the partial summary judgment on the same-taxpayer issue was certified for interlocutory appeal under 28 U.S.C. § 1292(b)).

[132]T.D. 8789, 63 Fed. Reg. 70012 (Dec. 18, 1998) (requests under section 6404(e) should be made on Form 843); Rev. Proc. 2005-38, 2005-28 I.R.B. 81, § 3.01 (section 6404(g) notification on Form 843); Rev. Proc. 2000-26, 2000-1 C.B. 1257, § 5 (netting on Form 843); IRS, Instructions for Form 843, Claim for Refund and Request for Abatement (Rev. Dec. 2024).

WARNING

Warning: The Two-Year Trap

A request to abate interest that has not been paid is a request for abatement. A request to recover interest that has been paid is a claim for refund, and a claim for refund is ordinarily timely only if filed within three years of the return or two years of the payment, whichever is later.[134] For interest paid years after the return was filed, the two-year rule controls, and the amount recoverable is limited to the amount paid within the two years before the claim.[135] A taxpayer who pays an interest bill in installments has a separate two-year clock on each installment. A second clock starts once a refund claim is denied: suit must be brought within two years after the IRS mails a notice of disallowance, or after the taxpayer files a written waiver of that notice, and a protest to Appeals or any later reconsideration does not stop it.[136] File the Form 843 the day the client decides to contest the interest, not the day the research is finished.

File a separate Form 843 for each tax period and each type of tax, unless a single ministerial or managerial act affected several periods or types of tax, in which case one form may cover them.[137] The December 2024 revision of the form moved the reason for the request to a row of checkboxes at the top of the form, and the line numbers changed; a practitioner working from the old layout will fill in the wrong lines. On the current form, check the top-of-form box for abatement or refund of interest due to IRS error or delay under section 6404(e)(1), or the box for a net interest rate of zero under Rev. Proc. 2000-26. No printed box fits a section 6404(g) notification, so check Other (specify) and write Section 6404(g) Notification in the space provided. Write the provision across the top of the form as well.[138] Line 1 is the tax period; line 2 the amount; line 3 the dates of the payments

---

[133]IRM 20.2.7.14 (Dec. 20, 2023).

[134]I.R.C. § 6511(a) (a claim "shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid").

[135]I.R.C. § 6511(b)(2)(B) ("If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim."). The Disaster Related Extension of Deadlines Act, Pub. L. No. 119-64, § 2(a), 139 Stat. 1984, 1984 (2025), added a subsection to section 7508A providing that a period disregarded for filing a return is treated as an extension of time to file for purposes of section 6511(b)(2)(A), for claims filed after December 26, 2025; it does not extend the two-year-from-payment period.

[136]I.R.C. § 6532(a)(1) (no suit "after the expiration of 2 years from the date of mailing . . . of a notice of the disallowance"), (a)(3) (if a person "files a written waiver of the requirement that he be mailed a notice of disallowance," the two-year period "shall begin on the date such waiver is filed"), (a)(4) (reconsideration after the notice "shall not operate to extend the period within which suit may be begun").

[137]IRS, Instructions for Form 843 (Rev. Dec. 2024); IRM 20.2.7.14 (Dec. 20, 2023).

[138]IRS, Form 843 (Rev. Dec. 2024) (top-of-form reason checkboxes); Rev. Proc. 2005-38, § 3.01; Rev. Proc. 2000-26, 2000-1 C.B. 1257 (netting procedure for interest accruing on or after October 1, 1998).

being refunded; line 4 the type of tax; line 5 the type of return; line 6 the Internal Revenue Code section of any penalty involved; line 7 the reason, where box a is IRS error or delay; and line 8 the explanation.[139] On line 8 set out the facts and the law in a numbered attachment that tracks the statutory elements in order. The attachment becomes part of the administrative record, and it will be judged by someone who was not in the room.

CAUTION

Ethics: What Circular 230 Requires Before You File the Protective Claim

A section 7508A interest claim built on *Kwong* takes a position on an unsettled question under appeal, and the rules for any return position govern it. Circular 230 bars a practitioner from willfully, recklessly, or through gross incompetence signing a refund claim, or advising a client to take a position on one, that lacks a reasonable basis or is unreasonable under section 6694(a)(2), and it requires the practitioner to tell the client which penalties may apply and how disclosure can avoid them; the section 6694 preparer penalty turns on substantial authority or, for a disclosed position, a reasonable basis, and the section 6676 erroneous-claim penalty turns on reasonable cause, which disclosure alone does not establish.[140]

Three measures document the analysis; they do not by themselves establish a reasonable basis or reasonable cause. The Form 843 states the authority on each side, including AOD 2026-1, the pending appeal, and Treas. Reg. § 301.7508A-1(g), so the claim discloses. The engagement letter tells the client, in writing, that the broad claim depends on the Federal Circuit, that the sixty days from January 20 through March 20, 2020 are the most the IRS concedes, and only for deadlines that fell within them, and that a refund claim the IRS rejects may carry the section 6676 penalty on the excess, although that penalty does not apply to a request for abatement. And the file holds the computation under both readings, because the claim is defensible only if the practitioner can show the number was computed, not guessed. A practitioner who cannot do those three things should file only the sixty-day claim, and only for a deadline that fell within it and interest that the postponement actually affected.

[139]IRS, Instructions for Form 843 (Rev. Dec. 2024) (lines 1 through 8; for a section 6404(e)(1) request, check box a on line 7 and state on line 8 the type of tax, the date of first written contact, the period, the circumstances, and why the failure to abate would be grossly unfair).

[140]31 C.F.R. § 10.34(a)(1) (a practitioner may not willfully, recklessly, or through gross incompetence sign, or advise a client to take a position on, a claim for refund that the practitioner knows or reasonably should know lacks a reasonable basis or is an unreasonable position under section 6694(a)(2)); I.R.C. § 6694(a)(2)(A), (B) (a position is unreasonable "unless there is or was substantial authority for the position," or, if disclosed, a reasonable basis); § 6694(a)(2)(C) (a higher, more-likely-than-not standard for tax shelters and reportable transactions); I.R.C. § 6676(a) (20 percent penalty on the excessive amount of an income or employment tax refund claim absent reasonable cause); 31 C.F.R. § 10.34(c)(1), (2) (the practitioner must inform the client of the penalties reasonably likely to apply to a position and of any opportunity to avoid them by disclosure); IRM 4.10.11.2.2.3(1) (Sept. 29, 2022) ("The penalty does not apply to requests for abatement."); Treas. Reg. §§ 1.6694-2(d)(3)(i)(A), 1.6694-3(c)(2).

B. A disallowance can be protested to the Independent Office of Appeals, and the final determination letter starts the Tax Court clock.

PRACTICE POINTER

Practice Pointer: Two Dates Go on the Calendar

Send the Form 843 by certified mail, return receipt requested, and calendar from the IRS receipt date, not the mailing date. If no final determination has been mailed by day 180, section 6404(h)(1)(A)(ii) opens the Tax Court door on day 181, and the statute sets no closing date while no determination has been mailed. The closing date in section 6404(h)(1)(B) runs only from the mailing of a final determination: 180 days from that date. So two entries go on the calendar: day 181 after filing, when a petition first becomes possible, and day 180 after the mailing date of any final determination letter, when it stops being possible. Treat the second deadline as jurisdictional and file well before it.

The IRS answers a section 6404(e)(1) request with Letter 3010-C (full disallowance) or Letter 3022-C (partial disallowance), each of which carries appeal rights.[141] A taxpayer who disagrees sends a written protest to the office that issued the letter, and that office forwards it to the Independent Office of Appeals.[142] Appendix E supplies the protest. If the taxpayer does not protest, or Appeals sustains the disallowance, the IRS issues a notice of final determination by certified mail, Letter 3180-C or Letter 3181-C.[143] That letter is the jurisdictional document. Calendar it the day it arrives.

The Manual states that section 6404(g) determinations cannot be appealed administratively or reviewed in the Tax Court, and Rev. Proc. 2005-38 states that the IRS does not issue a final determination on a bare section 6404(g) notification.[144] That position does not control the Tax Court. In *Corbalis* the Tax Court held that letters denying a section 6404(g) claim were final determinations for purposes of section 6404(h) even though the letters told the taxpayers that the Tax Court review provisions did not apply, and that the court's jurisdiction to

[141]IRM 20.2.7.5.3(1) (Nov. 13, 2018) ("If the determination is to disallow the request, use a disallowance letter with appeal rights. Letter 3010 (Letter 3010-C), Full Disallowance of Interest Abatement Request or Letter 3022 (Letter 3022-C), Disallow Partial Interest Abatement Request are available for use.").

[142]IRM 20.2.7.15 (Dec. 20, 2023).

[143]IRM 20.2.7.5.3(2) (Nov. 13, 2018) ("If the taxpayer does not agree or appeal the initial disallowance determination, issue a notice of final determination by certified mail . . . . Interest abatement coordinators (IACs) should use Letter 2392 (Letter 3180-C), Full Disallowance for Abatement of Interest-Final Determination, or Letter 2391 (Letter 3181-C), Partial Disallowance for Abatement of Interest - Final Determination.").

[144]Rev. Proc. 2005-38, § 3.01 (the IRS response to a section 6404(g) notification "does not constitute a final determination letter from which the taxpayer can petition the Tax Court under section 6404(h)"); IRM 20.2.7.15 (Dec. 20, 2023).

review a failure to abate interest under this section reaches suspension under subsection (g) as well as abatement under subsection (e).[145] A practitioner who receives a letter denying a section 6404(g) claim should treat it as a final determination and petition within 180 days.

C. The Tax Court reviews a final determination for abuse of discretion, within 180 days, for taxpayers who meet the net worth limits.

PRACTICE POINTER

Practice Pointer: Check the Box, Assign the Error, Plead the Net Worth

The Tax Court petition form has a box for a section 6404(h) interest abatement action. Check it. In the assignments of error, state that the Commissioner abused his discretion in failing to abate interest, identify the periods and the amounts, and plead the elements of the provision invoked: for section 6404(e), the ministerial or managerial acts and the dates of the delay; for section 6404(g), the filing date, the notice date, the suspension period, and why no exception applies. Allege that the petitioner meets the net worth requirements of section 7430(c)(4)(A)(ii), as Rule 281(b)(7) requires, and be ready to prove it with a net worth statement. The allegation belongs in the petition itself; the proof comes later. Name interest in the petition, check the section 6404(h) box, and allege net worth; if any is missing, move to amend at once.[146] And once the liability is abated or paid and the lien is released, the collection due process case ends with it.

Section 6404(h) gives the Tax Court jurisdiction over an action brought by a taxpayer who meets the net worth requirements of section 7430(c)(4)(A)(ii). The court decides whether the failure to abate interest was an abuse of discretion and may order abatement. The action must be brought within 180 days after the mailing of the final determination.[147] The Supreme Court held in *Hinck v. United States* that the Tax Court is the exclusive forum for that review; a district court

---

[145]*Corbalis v. Commissioner*, 142 T.C. 46, 53–58 (2014) ("we agree with petitioners that all of section 6404 deals with abatement, of which suspension is a category"; "A claim that interest should have been suspended for a period is the logical equivalent of a claim" for abatement; and, as to Rev. Proc. 2005-38, "A procedural pronouncement cannot restrict or revise section 6404(h)"). The Letters 3477 told the taxpayers that the judicial review provisions of section 6404(h) did not apply to section 6404(g); the statement that a letter was not the IRS's final determination appeared in the separate Letters 2289 on the section 6404(e) claim.

[146]*Corbalis v. Commissioner*, 142 T.C. 46, 59 (2014) ("Such an allegation is required in the petition and is inherently subject to proof, but 'evidence' is not appropriately included in a petition."); Tax Ct. R. 281(b)(7).

[147]I.R.C. § 6404(h)(1) ("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 . . . 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).").

and the Court of Federal Claims have no jurisdiction over a section 6404(e)(1) claim.[148] Tax Court Rules 280 through 284 govern the action.[149]

Four procedural points decide these cases.

First, the 180 days. The Supreme Court in *Boechler* held the thirty-day CDP deadline in section 6330(d)(1) nonjurisdictional because its text did not clearly link the deadline to the grant of jurisdiction. The Court pointed to the predecessor of section 6404(h), which granted jurisdiction "if such action is brought within 180 days," as the kind of clear link that section 6330 lacked.[150] Treat the 180-day period as jurisdictional. *Boechler* points that way, and the authors have found no decision tolling it. Once a final determination has been mailed, file the petition no later than the 170th day after the mailing date, an office safety margin rather than a statutory deadline.

Second, net worth. Section 6404(h) incorporates the limits of 28 U.S.C. § 2412(d)(2)(B): a net worth of $2,000,000 or less for an individual, and $7,000,000 or less with no more than 500 employees for a business, measured when the petition is filed. A section 501(c)(3) organization and an agricultural cooperative qualify without regard to net worth, subject to the employee limit.[151] The petition must allege that the taxpayer meets the requirement.[152] A taxpayer who cannot truthfully allege it has no action under section 6404(h). A taxpayer who qualifies but forgot to say so should move for leave to amend the petition at once, rather than wait to raise the point in an objection to a motion to dismiss.[153]

---

[148]*Hinck v. United States*, 550 U.S. 501, 503, 506 (2007) ("We hold that the Tax Court provides the exclusive forum for judicial review of a refusal to abate interest under § 6404(e)(1).") (applying the rule that "a precisely drawn, detailed statute pre-empts more general remedies").

[149]Tax Ct. R. 280–284.

[150]*Boechler, P.C. v. Commissioner*, 596 U.S. 199, 206 (2022) ("Other tax provisions enacted around the same time as § 6330(d)(1) much more clearly link their jurisdictional grants to a filing deadline," quoting the then-numbered section 6404(g)(1) (now section 6404(h)(1)), which gives the Tax Court "jurisdiction over any action . . . if such action is brought within 180 days," and concluding that "[t]hese provisions accentuate the lack of comparable clarity in § 6330(d)(1)").

[151]I.R.C. §§ 6404(h)(1), 7430(c)(4)(A)(ii); 28 U.S.C. § 2412(d)(2)(B) (a "party" is "an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed" or a business, partnership, corporation, or organization "the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed," and a tax-exempt section 501(c)(3) organization or agricultural cooperative "regardless of the net worth of such organization or cooperative association"); I.R.C. § 7430(c)(4)(D) (spouses filing jointly are tested separately; an estate at the date of death; a trust at year-end).

[152]Tax Ct. R. 281(b)(7) (the petition in an interest abatement action must contain, among other things, a statement that the petitioner meets the net worth requirements of section 7430(c)(4)(A)(ii)).

[153]Tax Ct. R. 41(a) (after a responsive pleading is served, a party may amend a pleading only by leave of court or written consent of the adverse party).

Third, the final determination. Before 2015 a final determination was a prerequisite to jurisdiction.[154] A taxpayer no longer need wait forever for one. Since 2015, section 6404(h)(1)(A) permits a petition once 180 days have passed after the filing of a claim for abatement with the IRS if the IRS has not issued a final determination by then.[155] The same Act extended the small tax case procedure to interest abatement actions in which the abatement sought does not exceed $50,000.[156]

Fourth, the standard. The Tax Court reviews for abuse of discretion, which means the taxpayer must show that the IRS exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law.[157] The court cannot abate interest on equitable grounds; it is a court of law, not of equity.[158] The taxpayer bears the burden of proving the abuse, and the proof is the documentary record of how the IRS handled the case, which is why Part IV insisted on building that record before the claim was filed.

D. Collection due process is a forum for interest abatement, but not a refund forum, and Zuch ends a levy case once the balance is paid.

A taxpayer who receives a notice of federal tax lien filing or a final notice of intent to levy may request a collection due process (CDP) hearing on Form 12153 within the thirty-day period stated in the notice: for a lien, thirty days after the five-business-day period that follows the filing; for a levy, thirty days after the notice.[159] The Tax Court held in *Katz v. Commissioner* that a taxpayer may raise interest abatement at the hearing and that the court has jurisdiction to review the Appeals Officer's determination on the interest that is the subject of the collection action.[160] Raise the claim at the hearing in writing and give the information Form

[154]*Bourekis v. Commissioner*, 110 T.C. 20, 25–26 (1998) (under the statute as it then read, the Commissioner's final determination letter "is a prerequisite to the Court's jurisdiction and serves as a taxpayer's 'ticket' to the Tax Court"; the notice of deficiency at issue there was not a final determination not to abate interest and did not confer jurisdiction under then-section 6404(g)).

[155]I.R.C. § 6404(h)(1)(A), as amended by Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, div. Q, § 421, 129 Stat. 2242, 3123 (2015) (effective for claims filed after Dec. 18, 2015); see S. Rep. No. 114-14, at 2–4 (2015) (accompanying S. 903).

[156]I.R.C. § 7463(f)(3) (as added by Pub. L. No. 114-113, div. Q, § 422, 129 Stat. 2242, 3123 (2015)) (a petition under section 6404(h) in which "the amount of the abatement sought does not exceed $50,000" may be conducted under the small tax case procedures at the taxpayer's option with the concurrence of the Tax Court).

[157]*Woodral v. Commissioner*, 112 T.C. 19, 23 (1999) (the court may order abatement only where the Commissioner "exercised this discretion arbitrarily, capriciously, or without sound basis in fact or law").

[158]*Stovall v. Commissioner*, 101 T.C. 140 (1993) (the Tax Court is not a court of equity and lacks general equitable powers); *King*, 829 F.3d at 798 (unfairness is not a ground for abatement under section 6404(a)).

[159]I.R.C. §§ 6320(a)(2), (a)(3)(B), 6330(a)(2), (a)(3)(B).

[160]*Katz v. Commissioner*, 115 T.C. 329, 340–41 (2000) ("Because we view petitioner's request as a request for an abatement of interest, we hold that we have jurisdiction to review the Appeals officer's

843 calls for: the type of tax, the date of the first written contact, the specific period, the circumstances, and the reasons the failure to abate would be grossly unfair; an issue not raised with Appeals generally cannot be raised in the Tax Court.[161] Appendix F supplies the Form 12153 attachment.

Two limits make the CDP forum narrower than it looks. The Tax Court has no refund jurisdiction in a CDP case, so it can order the IRS to abate unpaid interest but cannot order the IRS to refund interest the taxpayer already paid.[162] And in *Commissioner v. Zuch* the Supreme Court held that the Tax Court's CDP jurisdiction under section 6330(d)(1) exists only to review the determination whether a levy may proceed. Once the IRS is no longer pursuing the levy, because the balance has been paid or offset, there is no determination left to review, and the court's jurisdiction under section 6330 ends, whatever issues the taxpayer raised.[163] A taxpayer who wins the underlying liability in a CDP case, or whose refunds are applied to the balance while the case is pending, loses the section 6330 forum for the interest claim in the same stroke. A petition under section 6404(h) from a final determination on a Form 843 claim rests on a separate grant of jurisdiction, which *Zuch* did not address. *Zuch* decided a levy case. Whether it ends a lien case under section 6320 the same way is open. Section 6320(c) borrows the hearing and review rules of section 6330, but a filed notice of lien keeps doing harm until the IRS releases it, and the IRS must issue the release within thirty days after it finds the liability fully satisfied. Commentators have read that difference as a possible basis for the Tax Court to keep a lien case alive. No published opinion has decided whether payment alone ends a lien case while the notice of lien remains of record, and the IRS can be expected to argue that the *Zuch* rule applies, with its strongest mootness argument once the lien is released. Plan for

---

determination with regard to the interest that is the subject of respondent's collection activities."). *Katz* applied the provision then designated section 6404(i), now section 6404(h).

[161]*Magana v. Commissioner*, 118 T.C. 488, 493 (2002) (the court generally considers only arguments, issues, and other matters that were raised at the collection hearing or otherwise brought to the attention of the Appeals Office); Treas. Reg. § 301.6330-1(f)(2), Q&A-F3 (an issue is not properly raised if the taxpayer fails to request consideration of it by Appeals or fails to present evidence after being given a reasonable opportunity). Cf. IRS, Instructions for Form 843 (Rev. Dec. 2024) (line 8). For raising section 7508A and the COVID-19 disaster period in a CDP hearing, see Frank Agostino, *The 1,268-Day Disregard: Reading the Account Transcript Against the COVID-19 Disaster Window to Abate Penalties and Interest, Invalidate Premature Assessments, and Defeat Liens and Levies in Collection Due Process Hearings*, TAC J. Tax Controversy (July 2026).

[162]*Greene-Thapedi v. Commissioner*, 126 T.C. 1, 8, 11 (2006) ("section 6330 does not expressly give this Court jurisdiction to determine an overpayment," and the court would not "assume, without explicit statutory authority, jurisdiction either to determine an overpayment" or to order a refund; section 6330 does not cross-reference the refund authority of section 6404(h)(2)(B)).

[163]*Commissioner v. Zuch*, 605 U.S. 422, 428–32 (2025) ("The 'determination' in § 6330(d)(1) refers to the binary decision whether a levy may proceed," and once the taxpayer's overpayments had zeroed the balance "there was no longer any basis for a levy" and therefore no relevant determination for the Tax Court to review; concluding, at 432, that "[b]ecause there was no longer a proposed levy, the Tax Court properly concluded that it lacked jurisdiction to resolve questions about Zuch's disputed tax liability").

that argument and keep the Form 843 track open in every lien case.[164] The Taxpayer Due Process Enhancement Act, which would restore the jurisdiction, passed the House on May 19, 2026, and was referred to the Senate Committee on Finance the next day; it had not been enacted as of this writing.[165]

The practical response is to run the two tracks in parallel. File the Form 843 the same day as the Form 12153 so that the section 6404(h) track exists independently of the CDP case. Raise the interest claim at the CDP hearing in writing. If the IRS concedes the tax and the CDP case ends, the Form 843 is still pending, and the section 6404(h) route to the Tax Court remains open once the IRS issues a final determination or the statutory 180 days pass without one. If the interest has already been paid, the refund suit in a district court or the Court of Federal Claims remains available for a section 6404(g) or section 7508A claim (for a section 6621(d) claim, see the discussion of forum in Part V); *Hinck* confines the section 6404(e)(1) claim to the Tax Court, and the IRS may argue the same for section 6404(g). Paying one installment of interest preserves a refund claim for that installment, but it does not by itself open the courthouse door: the full-payment rule requires payment of the whole assessment before a refund suit.[166] Confinement does not mean the taxpayer loses the money. Section 6404(h) borrows the Tax Court's overpayment rules, so in a timely section 6404(h) action the court can find that the taxpayer overpaid the interest, and the IRS must credit or refund it once the decision is final.[167] A refund suit may be filed six months after the claim, or sooner if the IRS disallows it, and must be filed within two years after the IRS mails a notice of disallowance.[168]

---

[164]I.R.C. §§ 6320(c) ("subsections (c), (d) (other than paragraph (3)(B) thereof), (e), and (g) of section 6330 shall apply"), 6325(a)(1) (the IRS shall issue a certificate of release not later than thirty days after it finds that the liability, "together with all interest in respect thereof, has been fully satisfied"); Shan Hassib Kadkoy & M. Dennis Nguyen, *Navigating the New Boundaries: The Supreme Court's Ruling in Zuch v. Commissioner Redraws the Boundary of Tax Court Jurisdiction*, A.B.A. Sec. Tax'n, ABA Tax Times (Spring 2025) ("The implications for Lien CDP cases (under I.R.C. § 6320) are distinct and unresolved.").

[165]H.R. 6506, 119th Cong. (2025) (introduced Dec. 9, 2025; reported Jan. 7, 2026; passed House May 19, 2026; received in Senate and referred to the Committee on Finance May 20, 2026), https://www.congress.gov/bill/119th-congress/house-bill/6506.

[166]*Flora v. United States*, 362 U.S. 145, 177 (1960) ("§ 1346 (a)(1), correctly construed, requires full payment of the assessment before an income tax refund suit can be maintained in a Federal District Court."); *Shore v. United States*, 9 F.3d 1524, 1527–28 (Fed. Cir. 1993) (a taxpayer who challenges assessed interest "on grounds not fully determined by the claim for recovery of principal must . . . prepay such interest and penalties as well as the assessed tax principal").

[167]I.R.C. § 6404(h)(2)(B) ("Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection."); § 6512(b)(1) (the Tax Court "shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer"); § 6512(b)(2) (enforcement on motion after 120 days); cf. § 6512(b)(3) (limit on the amount of credit or refund). The net worth limits and the 180-day deadline still apply. I.R.C. § 6404(h)(1).

[168]I.R.C. §§ 6532(a)(1), (4), 7422(a).

NOTE

A Note on Restitution-Based Assessments

A restitution order in a criminal tax case creates two debts for one liability: the restitution judgment, which the Department of Justice collects under 18 U.S.C. § 3612, and the restitution-based assessment under section 6201(a)(4), which the IRS assesses and collects as if it were a tax. The IRS once charged section 6601 interest and the failure-to-pay addition on the assessment. The Tax Court ended that practice in *Klein v. Commissioner*: because the statute says the amount is assessed as if it were a tax, and restitution is not a tax, neither underpayment interest nor the section 6651(a)(3) addition applies to the restitution-based assessment.[169] Chief Counsel has instructed that interest charged on such an assessment be abated on request, except interest the sentencing court itself included in the restitution order.[170] A client with a restitution-based assessment should pull the transcript, look for TC 340 or TC 196 interest and a TC 276 failure-to-pay addition on the separate assessment module (MFT 31), and file a Form 843 under section 6404(a) for every dollar the IRS itself accrued, as distinct from interest the sentencing court included in the restitution order. Interest on the client's civil liability for the same years, once separately assessed, is a different matter and follows the rules in this article.

VII. Conclusion

The client in the opening paragraph should not have been charged all $37,300 of that interest. Her 2014 return had been timely filed on April 15, 2015, and the examination report of September 26, 2018 was the first notice that stated a liability and its basis. It arrived forty-one months after the filing date. Section 6404(g) suspended accrual from April 15, 2018, the day after the thirty-six months closed, through October 17, 2018, twenty-one days after the notice.[171] The TC 971

[169]*Klein v. Commissioner*, 149 T.C. 341 (2017) (holding that the IRS may not assess underpayment interest or failure-to-pay additions to tax on a restitution-based assessment under section 6201(a)(4)); I.R.C. § 6201(a)(4)(A) (the Secretary "shall assess and collect the amount of restitution under an order pursuant to section 3556 of title 18 . . . for failure to pay any tax imposed under this title in the same manner as if such amount were such tax"). The Supreme Court's decision in *Ellingburg v. United States*, 607 U.S. 163, No. 24-482 (Jan. 20, 2026) (Kavanaugh, J., for a unanimous Court), that "[r]estitution under the MVRA is plainly criminal punishment for purposes of the Ex Post Facto Clause," reinforces the point by analogy, although it decided nothing about tax interest: an amount that is criminal punishment is not a tax, and the civil interest provisions do not reach it merely because section 6201(a)(4) borrows the assessment machinery. On remand the Eighth Circuit held the retroactive order invalid and did not reach whether the MVRA's mandatory interest separately violates the Clause. *United States v. Ellingburg*, No. 23-3129, slip op. n.2 (8th Cir. Aug. 20, 2026) ("we need not address whether the MVRA's imposition of mandatory interest separately violates the Clause").

[170]I.R.S. Chief Couns. Notice CC-2019-004 (June 27, 2019).

[171]Treas. Reg. § 301.6404-4(a)(4), (a)(5)(ii). The regulation counts from the filing date and does not roll the start of the suspension to the next business day. In its second example, a return filed April 15, 2009 begins suspension on April 15, 2012, a Sunday. Treas. Reg. § 301.6404-4(a)(6), Example 2. The

AC 064 was on the transcript, but the restricted interest computation (TC 340) never applied the suspension. The IRS received her signed Form 4549 on January 17, 2019, the campus did not assess the deficiency or issue notice and demand until February 20, 2019, and section 6601(c) stopped the interest for the days after the thirtieth day. The examination had opened with a letter in March 2016, so the IRS had contacted her in writing before the case file was lost from June 1, 2016 through April 30, 2017, when the examiner retired, which the case activity record obtained under FOIA documented day by day, and section 6404(e)(1) supports abatement of that period. She paid $20,000 on November 14, 2025, which stopped the meter on that amount, and paid the balance on October 6, 2026. The first payment carried no designation, so the IRS applied it to tax first;[172] the interest was paid with the balance, and the two-year refund period for it runs from October 6, 2026. A section 6603 deposit was not available to her by then, because a deposit can be made only on tax that has not been assessed. If the suspensions are applied and the abatement claim succeeds, the arithmetic comes to a little over $5,000, about one dollar in seven. The two suspensions are statutory; the lost-file abatement is discretionary and depends on proof that the IRS's delay, not hers, kept the balance open.[173] Because she has paid in full, the relief now comes as a refund, claimed on Form 843 within two years after each payment. None of it required a sympathetic story. All of it required reading the transcript, knowing the rules, and filing the right form within the right time.

The Taxpayer Bill of Rights promises the right to pay no more than the correct amount of tax, including interest and penalties.[174] That right is enforced by practitioners who refuse to accept the interest line on a notice as a fact of nature. The forms that follow are the tools.

Manual rolls a weekend or holiday end date to "the next business day." IRM 20.2.7.8.3 (Dec. 20, 2023). Here that is Tuesday, April 17, 2018, after a Saturday and Emancipation Day, so the IRS will start suspension April 18 and compute about $2,143, not $2,178.

[172]IRM 20.2.5.2.1 (Oct. 2, 2020) (an undesignated payment "is first credited, on its effective date, to the earliest taxable year for which there is a liability, typically in the following order: Tax . . . Penalties and fees[,] Non-TMT interest").

[173]Computed on the same assumptions as the opening example, carried to the payments of November 14, 2025 and October 6, 2026. Taken one at a time, the section 6404(e)(1) abatement for June 1, 2016 through April 30, 2017 is worth about $3,100, the section 6404(g) suspension for April 15 through October 17, 2018 about $2,180, and the section 6601(c) suspension for February 17 through February 20, 2019 about $60. Applied together they come to about $5,260, slightly less than the sum, because each removes interest on which the others would otherwise have compounded.

[174]I.R.C. § 7803(a)(3)(C) (the Commissioner shall ensure that IRS employees act in accord with taxpayer rights, including "the right to pay no more than the correct amount of tax"). The Taxpayer Bill of Rights as published by the IRS describes that right as the right "to pay only the amount of tax legally due, including interest and penalties."

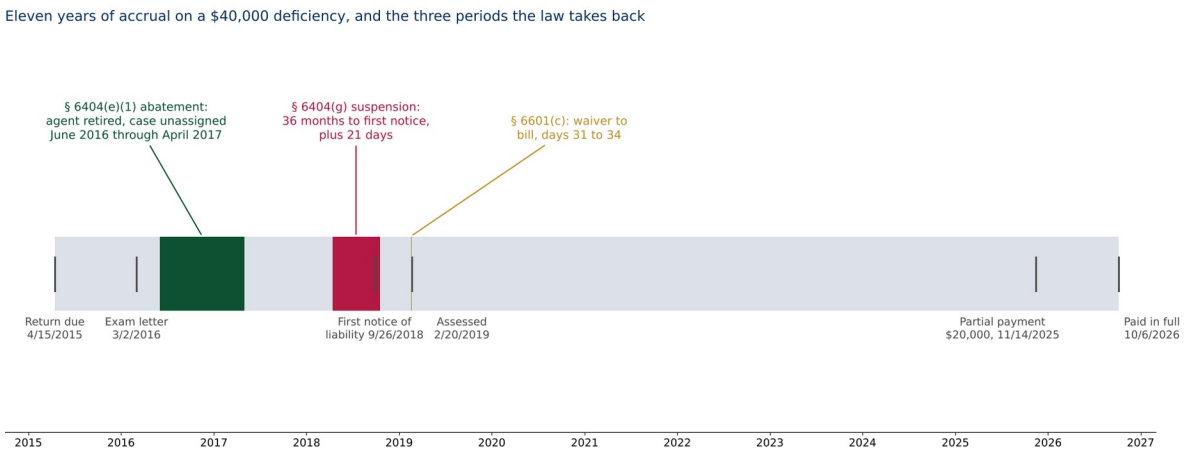


Figure 3. The opening client's 2014 tax year on one line: the abatement period under section 6404(e)(1), the suspension under section 6404(g), the section 6601(c) days after the waiver, the partial payment, and the payment in full.

Appendix A. Form 843 Attachment: Request for Abatement of Interest Under Section 6404(e)(1)

Use the December 2024 revision of Form 843. Check the top-of-form box for abatement or refund of interest due to IRS error or delay under section 6404(e)(1), and write Request for Abatement of Interest Under Section 6404(e) across the top as well. File one form per tax period, except that the instructions allow one Form 843 for a single ministerial or managerial act that affected several periods or types of tax. Attach this statement as the answer to line 8. Attach the transcript, the timeline, and the FOIA documents as exhibits. Sign the Form 843 under penalties of perjury; a representative may sign only with an attached Form 2848 that authorizes the request for the periods. If the claim relates to a joint return, both spouses must sign.[175]

Form 843 line	Pro forma entry
Top margin	Request for Abatement of Interest Under Section 6404(e)
Line 1 (period)	January 1, 2019 to December 31, 2019
Line 2 (amount)	$14,212 (interest accrued June 1, 2022 through April 30, 2023; see Exhibit 4)
Line 3 (payment dates)	Dates of any payment of interest or tax for the period, from the TC 670 entries on the transcript
Line 4 (type of tax)	Income
Line 5 (type of return)	1040
Line 6 (Code section of penalty)	Leave blank (not a penalty claim)
Line 7 (reason)	Box a: interest was assessed as a result of IRS errors or delays
Line 8 (explanation)	See attached Statement in Support of Request for Abatement of Interest

The completed form below shows a hypothetical 2019 claim by a composite taxpayer, under a fictional name, tracking the pro forma table. The page-one boxes identify the claim as a request under section 6404(e)(1) for income tax; the line 8 narrative on page two is the short form of the attachment that follows.

[175]IRS, Instructions for Form 843 (Rev. Dec. 2024), Signature ("If you are filing Form 843 to request a refund or an abatement relating to a joint return, both you and your spouse from the related joint return must sign the Form 843.").

REQUEST FOR ABATEMENT OF INTEREST UNDER I.R.C. § 6404(e)(1)

Form **843** (Rev. December 2024)
Department of the Treasury
Internal Revenue Service

Claim for Refund and Request for Abatement

Go to *www.irs.gov/Form843* for instructions and the latest information.

OMB No. 1545-0024

Check the box below that indicates your reason for filing Form 843.

Tax

- ☐ Abatement or refund of tax other than income, estate, or gift tax
- ☐ Abatement or refund of tax that can't be claimed on any form except Form 843
- ☐ Refund to employee of excess social security, Medicare, or RRTA tax withheld by any one employer, but only if your employer will not adjust the overcollection
- ☐ Refund to employee of excess tier 2 RRTA tax when, for the year, you had more than one railroad employer and your total tier 2 RRTA tax withheld or paid exceeds the tier 2 limit
- ☐ Refund to employee of social security, Medicare, or RRTA tax withheld in error, but only if your employer will not adjust the overcollection
- ☐ Abatement or refund of tier 1 RRTA tax for an employee representative

Penalty

- ☐ Abatement or refund of a penalty or addition to tax due to reasonable cause or other reason allowed under the law
- ☐ Abatement or refund of penalty imposed under section 6672 for failure to collect and pay over tax, or attempt to evade or defeat tax (Trust Fund Recovery Penalty)
- ☐ Refund of penalty imposed under section 6695A for misstatements due to incorrect appraisals
- ☐ Refund of penalty imposed under section 6715 for misuse of dyed fuel
- ☐ Abatement or refund under section 6404(f) of a penalty or addition to tax attributable to erroneous written advice by the IRS

Interest

- ☒ Abatement or refund of interest due to IRS error or delay under section 6404(e)(1)
- ☐ Request for net interest rate of zero under Rev. Proc. 2000-26

Other

- ☐ Abatement or refund of assessed penalties, interest, or additions to tax because you were unable to read and timely respond to a standard print notice from the IRS
- ☐ Refund of branded prescription drug fee
- ☐ Refund of annual fee on health insurance providers
- ☐ Other (specify) _____

CAUTION: Do **not** use Form 843 when you **must** use a different tax form. For example, do **not** use Form 843 to claim a refund or abatement of an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding; a refund of excise taxes based on the nontaxable use or sale of fuels; or an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290. Also, do **not** use Form 843 to claim a refund of tax return preparer or promoter penalties. See instructions for the forms to use.

Name of person requesting the refund or abatement (see instructions)	Social security number (SSN)
Maria R. Santos	XXX-XX-4321
Name of spouse if filing Form 843 relating to a joint return (see instructions)	Spouse's social security number (SSN)

Address (number and street or P.O. box if mail is not delivered to street address)			Apt., room, or suite no.
118 Prospect Street			
City, town, or post office. If you have a foreign address, also complete spaces below.	State	ZIP code	Employer ID number (EIN)
Hackensack	NJ	07601	
Foreign country name	Foreign province/state/county		Foreign postal code
Name and address shown on return if different from above			Daytime telephone number
			(201) 555-0142

1 Enter the tax period or fee year. Prepare a separate Form 843 for each tax period or fee year.
Beginning date (MM/DD/YYYY) 01/01/2019 Ending date (MM/DD/YYYY) 12/31/2019

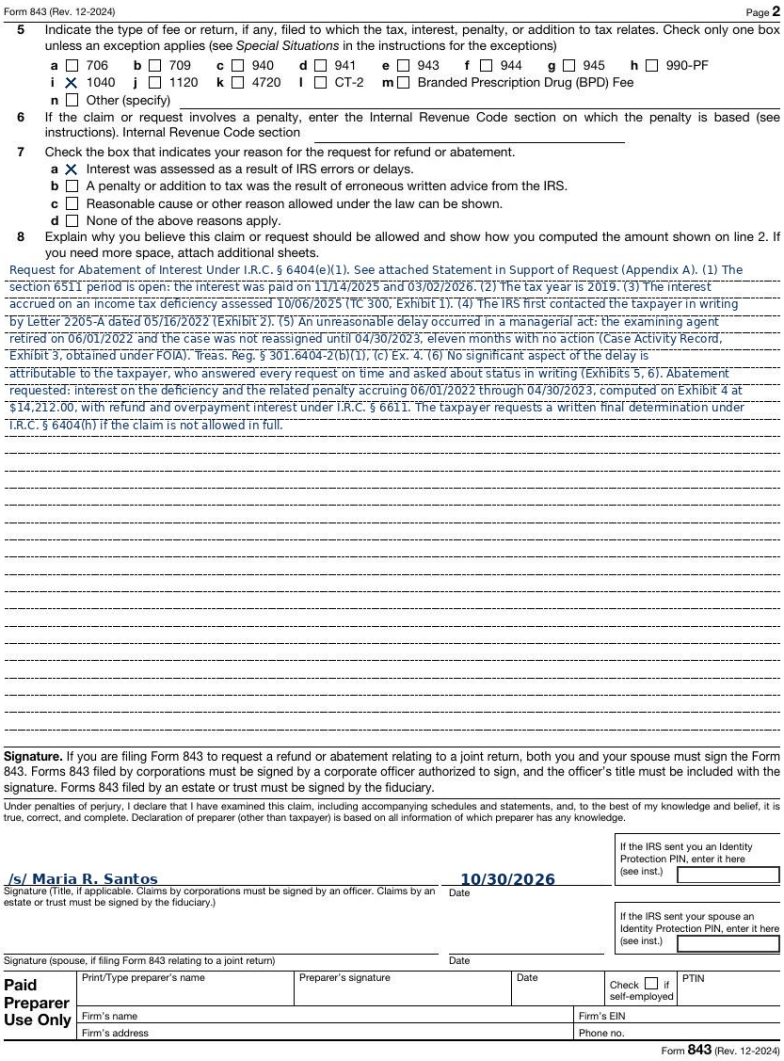
2 **Amount to be refunded or abated. $** 14,212.00

3 Date(s) of payment(s) for which you are requesting a refund (MM/DD/YYYY). If you need more space, attach additional sheets.
a 11/14/2025 b 03/02/2026 c _____ d _____ e _____ f _____
g _____ h _____ i _____ j _____ k _____ l _____

4 Check the box(es) with the type of tax or fee for which you are asking a refund or abatement. Or check the box(es) with the type of tax or fee to which the interest, penalty, or addition to tax is related. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions).
a ☐ Employment b ☐ Estate c ☐ Gift d ☐ Excise e ☒ Income f ☐ Fee g ☐ Civil penalty

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 10180R Form **843** (Rev. 12-2024)

Figure 4. Form 843 (Rev. Dec. 2024), page 1, completed for a section 6404(e)(1) request. The reason box at the top and line 4 are checked; the payment dates on line 3 establish the two-year period under section 6511(a).



Form 843 (Rev. 12-2024) Page **2**

5 Indicate the type of fee or return, if any, filed to which the tax, interest, penalty, or addition to tax relates. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions)

a ☐ 706 **b** ☐ 709 **c** ☐ 940 **d** ☐ 941 **e** ☐ 943 **f** ☐ 944 **g** ☐ 945 **h** ☐ 990-PF
i ☒ 1040 **j** ☐ 1120 **k** ☐ 4720 **l** ☐ CT-2 **m** ☐ Branded Prescription Drug (BPD) Fee
n ☐ Other (specify)

6 If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). Internal Revenue Code section

7 Check the box that indicates your reason for the request for refund or abatement.
a ☒ Interest was assessed as a result of IRS errors or delays.
b ☐ A penalty or addition to tax was the result of erroneous written advice from the IRS.
c ☐ Reasonable cause or other reason allowed under the law can be shown.
d ☐ None of the above reasons apply.

8 Explain why you believe this claim or request should be allowed and show how you computed the amount shown on line 2. If you need more space, attach additional sheets.

Request for Abatement of Interest Under I.R.C. § 6404(e)(1). See attached Statement in Support of Request (Appendix A). (1) The section 6511 period is open: the interest was paid on 11/14/2025 and 03/02/2026. (2) The tax year is 2019. (3) The interest accrued on an income tax deficiency assessed 10/06/2025 (TC 300, Exhibit 1). (4) The IRS first contacted the taxpayer in writing by Letter 2205-A dated 05/16/2022 (Exhibit 2). (5) An unreasonable delay occurred in a managerial act: the examining agent retired on 06/01/2022 and the case was not reassigned until 04/30/2023, eleven months with no action (Case Activity Record, Exhibit 3, obtained under FOIA). Treas. Reg. § 301.6404-2(b)(1), (c) Ex. 4. (6) No significant aspect of the delay is attributable to the taxpayer, who answered every request on time and asked about status in writing (Exhibits 5, 6). Abatement requested: interest on the deficiency and the related penalty accruing 06/01/2022 through 04/30/2023, computed on Exhibit 4 at $14,212.00, with refund and overpayment interest under I.R.C. § 6611. The taxpayer requests a written final determination under I.R.C. § 6404(h) if the claim is not allowed in full.

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the Form 843. Forms 843 filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be included with the signature. Forms 843 filed by an estate or trust must be signed by the fiduciary.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

/s/ Maria R. Santos — 10/30/2026
Signature (Title, if applicable. Claims by corporations must be signed by an officer. Claims by an estate or trust must be signed by the fiduciary.) — Date

If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)

Signature (spouse, if filing Form 843 relating to a joint return) — Date

Paid Preparer Use Only: Print/Type preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN; Firm's name | Firm's EIN; Firm's address | Phone no.

Form **843** (Rev. 12-2024)

Figure 5. Form 843, page 2. Line 5 identifies the return, line 7 assigns the error to the IRS, and line 8 states the claim in enough detail to satisfy Treas. Reg. § 301.6402-2(b)(1).

STATEMENT IN SUPPORT OF REQUEST FOR ABATEMENT OF INTEREST UNDER I.R.C. § 6404(e)(1)

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Year: 2019

1. Timeliness. [If the interest has been paid:] The interest at issue was paid on [date], by the payment that the IRS applied to interest under its ordering rules. This claim is filed within two years of that payment. I.R.C. § 6511(a). [If it has not been paid:] This is a request to abate assessed, unpaid interest, not a claim for refund.

2. The tax year is 2019, which began after July 30, 1996, the date after which the section applies to managerial acts. Treas. Reg. § 301.6404-2(d)(1).

3. The interest relates to income tax. The interest accrued on a deficiency in income tax, a tax described in I.R.C. § 6212(a), assessed on [date] (TC 300, Exhibit 1).

4. The IRS first contacted the taxpayer in writing on [date] (Letter 2205-A, Exhibit 2).

Only interest accruing after that date is claimed.

5. An unreasonable delay occurred in the performance of a managerial act. On [date] the examining agent retired. The case was not reassigned until [date], a period of eleven months, during which no action was taken (Case Activity Record, Exhibit 3, obtained under the Freedom of Information Act). The failure to reassign a case for an extended period after the departure of the examiner is a managerial act. Treas. Reg. § 301.6404-2(b)(1); cf. *id.* § 301.6404-2(c), ex. 4 (auditor reassigned); IRM 20.2.7.5(3).

6. No significant aspect of the delay is attributable to the taxpayer. The taxpayer responded to every information request within the time allowed (Exhibit 5) and inquired about the status of the examination in writing on [dates] (Exhibit 6). The taxpayer would have paid the deficiency when it was proposed; the delay in proposing it caused the interest.

7. Failure to abate would be grossly unfair. The interest claimed accrued only because the case sat unassigned for eleven months after the examiner retired. The taxpayer was ready to resolve the examination throughout those eleven months, and once the deficiency was assessed she paid the interest now claimed, designating her payments to it (Exhibit 7). Charging her interest for the IRS's inaction would result in grossly unfair treatment. Instructions for Form 843 (Rev. Dec. 2024), line 8.

8. Relief requested. The taxpayer requests abatement of interest accruing on the deficiency and the related penalty from [date] through [date], computed on Exhibit 4 at $14,212, and refund of that amount with overpayment interest under I.R.C. § 6611.

9. Reservation. The taxpayer reserves the right to supplement this claim and requests a written final determination under I.R.C. § 6404(h) if the claim is not allowed in full.

Under penalties of perjury, I declare that I have examined this claim, including accompanying statements and exhibits, and to the best of my knowledge and belief it is true, correct, and complete.

_____ Date: _____

[Taxpayer]

Appendix B. Form 843 Attachment: Section 6404(g) Notification

None of the printed reason boxes on the December 2024 form describes a section 6404(g) notification, so check Other (specify) and write Section 6404(g) Notification in the space provided and across the top margin. Check Income on line 4 and 1040 on line 5. On line 7, check box d ("None of the above reasons apply"), because the interest is not legally due rather than the product of an IRS error. On line 8, refer to this attachment. If the 2019 return was joint, both spouses sign the form and this attachment. The IRS treats the notification as a request for abatement under section 6404(a); request a written final determination, because under *Corbalis* a denial letter is reviewable in the Tax Court within 180 days.

SECTION 6404(g) NOTIFICATION AND REQUEST FOR ABATEMENT OF INTEREST NOT LEGALLY DUE

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Year: 2019

1. The taxpayer is an individual who timely filed a Form 1040 for 2019 on July 15, 2020 (TC 150, Exhibit 1), the due date as postponed by Notice 2020-18. The return was timely under that postponement, and the 36 months run from the filing date. The period for assessment was extended by Form 872.

2. The 36-month notification period under I.R.C. § 6404(g)(1) began on July 15, 2020, and closed on July 14, 2023.

3. The first notice specifically stating the taxpayer's liability and the basis for the liability within the meaning of I.R.C. § 6404(g)(1) and Treas. Reg. § 301.6404-4(a)(7) was the Form 4549 with Form 886-A mailed on September 11, 2023 (Exhibit 2). The examination letter dated [date] (Exhibit 3) stated no amount and no basis and is not a notice for this purpose.

4. None of the exceptions in I.R.C. § 6404(g)(2) applies. The claim does not involve a section 6651 penalty, fraud, tax shown on the return, a gross misstatement, a listed or undisclosed reportable transaction, or a criminal penalty.

5. The account transcript (Exhibit 1) contains no TC 971 AC 064, and the interest the IRS assessed (Exhibit 1) runs without interruption through the suspension period. The interest suspension required by I.R.C. § 6404(g) was not applied, and the interest assessed for the period July 15, 2023 through October 2, 2023 was not legally due. I.R.C. § 6404(a).

6. Relief requested. The taxpayer requests that the IRS input the section 6404(g) notice date of September 11, 2023, recompute the interest on the tax and on the accuracy-related penalty to exclude the suspension period, and abate or refund the difference, computed on Exhibit 4 at $[amount].

7. The taxpayer requests a written determination. If the IRS does not allow the claim in full, the taxpayer will treat the denial as a final determination under I.R.C. § 6404(h). *Corbalis v. Commissioner*, 142 T.C. 46 (2014).

Under penalties of perjury, I declare that I have examined this claim, including accompanying statements and exhibits, and to the best of my knowledge and belief it is true, correct, and complete. _____ Date: _____

Appendix C. Form 843: Request for Net Interest Rate of Zero Under Rev. Proc. 2000-26

This appendix completes the Siena netting request from Part V. Follow these steps.

Step 1. Decide whether a Form 843 is needed. If the return for either year is still with Examination, with Appeals, or in a court case that will require an interest computation, no Form 843 is needed. Send the contact person in that office the letter at the end of this appendix instead.[176] Otherwise, use Form 843 (Rev. Dec. 2024).

Step 2. Fill in the form. Check the top-of-form box for a net interest rate of zero under Rev. Proc. 2000-26, and write across the top margin: Request for Net Interest Rate of Zero Under Rev. Proc. 2000-26. The current form instructions give this request its own map: leave line 1 blank; line 2 is optional; do not complete lines 3, 6, or 7; and complete lines 4, 5, and 8. One Form 843 can cover all the years in the overlap.[177]

Step 3. Write the line 8 statement. It must identify the years in which the taxpayer underpaid and overpaid, state when the tax was paid and when the refund was received, identify the overlapping periods and amount, attach the examination reports, notices, and IRS interest computations that show the two balances, state that the overlapping periods have been used only once in a netting request, and compute, to the extent possible, the interest to be abated, credited, or refunded.[178] Schedule 1 below is the computation.

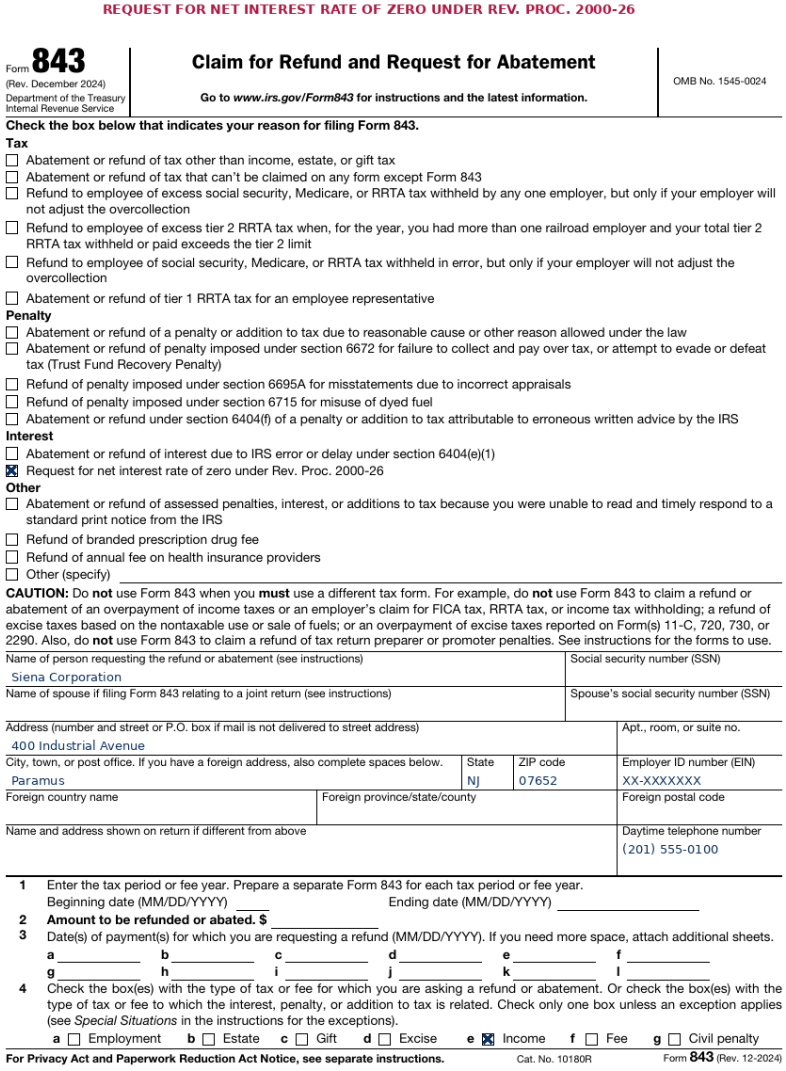
Step 4. File and calendar. Mail the request to the Ogden campus, where the IRS files and processes net rate requests: Internal Revenue Service, 1973 N. Rulon White Blvd., Mail Stop 6800, Ogden, UT 84404. The revenue procedure, written before the IRS centralized the work, says to file where the taxpayer filed its most recent return; check the current Form 843 instructions before mailing. If any year in the overlap is still with Examination, Appeals, or a court, skip Ogden and use the letter at the end of this appendix.[179] Calendar the section 6511 deadline for the

[176]Rev. Proc. 2000-26, § 5.06 ("No Form 843 is required when a computation of interest using the net interest rate of zero . . . 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).").

[177]IRS, Instructions for Form 843 (Rev. Dec. 2024) (special instructions for a request for a net interest rate of zero); Rev. Proc. 2000-26, § 5.04(5)(a) ("A separate Form 843 is not required for each separate taxable period involved in the request"). The line numbers in section 5.04 of the revenue procedure refer to an earlier revision of the form; follow the current instructions.

[178]Rev. Proc. 2000-26, § 5.04(5)(a)–(f). The statement in § 5.04(5)(e) reads: "to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established . . . the period(s) has (have) been used only once in a request to obtain the net interest rate of zero under § 6621(d)."

underpayment interest and the six-year suit deadline for any additional overpayment interest; the Form 843 does not extend the second.



REQUEST FOR NET INTEREST RATE OF ZERO UNDER REV. PROC. 2000-26

Form **843** (Rev. December 2024)
Department of the Treasury
Internal Revenue Service

Claim for Refund and Request for Abatement

Go to *www.irs.gov/Form843* for instructions and the latest information.

OMB No. 1545-0024

Check the box below that indicates your reason for filing Form 843.

Tax

- ☐ Abatement or refund of tax other than income, estate, or gift tax
- ☐ Abatement or refund of tax that can't be claimed on any form except Form 843
- ☐ Refund to employee of excess social security, Medicare, or RRTA tax withheld by any one employer, but only if your employer will not adjust the overcollection
- ☐ Refund to employee of excess tier 2 RRTA tax when, for the year, you had more than one railroad employer and your total tier 2 RRTA tax withheld or paid exceeds the tier 2 limit
- ☐ Refund to employee of social security, Medicare, or RRTA tax withheld in error, but only if your employer will not adjust the overcollection
- ☐ Abatement or refund of tier 1 RRTA tax for an employee representative

Penalty

- ☐ Abatement or refund of a penalty or addition to tax due to reasonable cause or other reason allowed under the law
- ☐ Abatement or refund of penalty imposed under section 6672 for failure to collect and pay over tax, or attempt to evade or defeat tax (Trust Fund Recovery Penalty)
- ☐ Refund of penalty imposed under section 6695A for misstatements due to incorrect appraisals
- ☐ Refund of penalty imposed under section 6715 for misuse of dyed fuel
- ☐ Abatement or refund under section 6404(f) of a penalty or addition to tax attributable to erroneous written advice by the IRS

Interest

- ☐ Abatement or refund of interest due to IRS error or delay under section 6404(e)(1)
- ☒ Request for net interest rate of zero under Rev. Proc. 2000-26

Other

- ☐ Abatement or refund of assessed penalties, interest, or additions to tax because you were unable to read and timely respond to a standard print notice from the IRS
- ☐ Refund of branded prescription drug fee
- ☐ Refund of annual fee on health insurance providers
- ☐ Other (specify) _____

CAUTION: Do **not** use Form 843 when you **must** use a different tax form. For example, do **not** use Form 843 to claim a refund or abatement of an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding; a refund of excise taxes based on the nontaxable use or sale of fuels; or an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290. Also, do **not** use Form 843 to claim a refund of tax return preparer or promoter penalties. See instructions for the forms to use.

Name of person requesting the refund or abatement (see instructions)			Social security number (SSN)
Siena Corporation			
Name of spouse if filing Form 843 relating to a joint return (see instructions)			Spouse's social security number (SSN)
Address (number and street or P.O. box if mail is not delivered to street address)			Apt., room, or suite no.
400 Industrial Avenue			
City, town, or post office. If you have a foreign address, also complete spaces below.	State	ZIP code	Employer ID number (EIN)
Paramus	NJ	07652	XX-XXXXXXX
Foreign country name	Foreign province/state/county		Foreign postal code
Name and address shown on return if different from above			Daytime telephone number
			(201) 555-0100

1 Enter the tax period or fee year. Prepare a separate Form 843 for each tax period or fee year.
Beginning date (MM/DD/YYYY) ____ Ending date (MM/DD/YYYY) _____

2 **Amount to be refunded or abated. $** _____

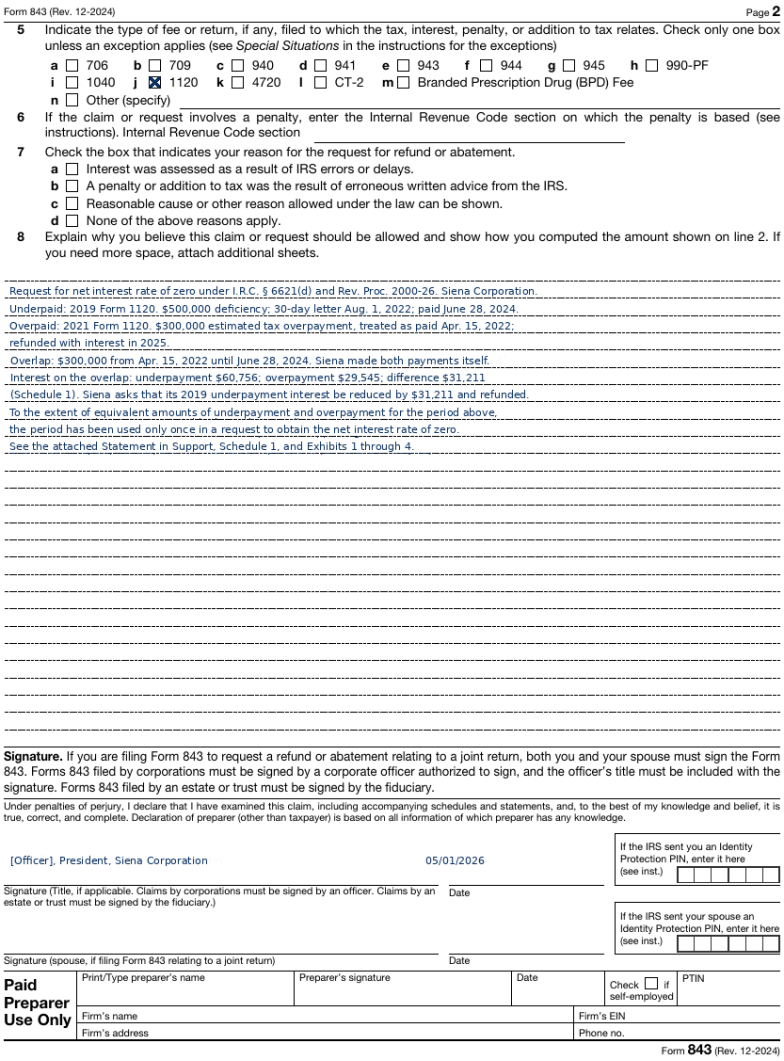
3 Date(s) of payment(s) for which you are requesting a refund (MM/DD/YYYY). If you need more space, attach additional sheets.
a _____ **b** _____ **c** _____ **d** _____ **e** _____ **f** _____
g _____ **h** _____ **i** _____ **j** _____ **k** _____ **l** _____

4 Check the box(es) with the type of tax or fee for which you are asking a refund or abatement. Or check the box(es) with the type of tax or fee to which the interest, penalty, or addition to tax is related. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions).
a ☐ Employment **b** ☐ Estate **c** ☐ Gift **d** ☐ Excise **e** ☒ Income **f** ☐ Fee **g** ☐ Civil penalty

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 10180R Form **843** (Rev. 12-2024)

Figure 6. Form 843 (Rev. Dec. 2024), page 1, completed for the Siena request. The Rev. Proc. 2000-26 box is checked, the identifying block is filled in, and line 4 marks income tax. Lines 1, 2, and 3 stay blank.

[179]IRM 20.2.14.6.1.1(3) (Aug. 18, 2025) ("Requests for the net rate are to be filed and processed at the Ogden Campus."; requests involving periods "currently under consideration by any function of the IRS" are not forwarded to Ogden); Rev. Proc. 2000-26, 2000-1 C.B. 1257, § 5.02; IRS, Instructions for Form 843 (Rev. Dec. 2024), Where To File.



Form 843 (Rev. 12-2024) Page **2**

5 Indicate the type of fee or return, if any, filed to which the tax, interest, penalty, or addition to tax relates. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions)

a ☐ 706 **b** ☐ 709 **c** ☐ 940 **d** ☐ 941 **e** ☐ 943 **f** ☐ 944 **g** ☐ 945 **h** ☐ 990-PF
i ☐ 1040 **j** ☒ 1120 **k** ☐ 4720 **l** ☐ CT-2 **m** ☐ Branded Prescription Drug (BPD) Fee
n ☐ Other (specify)

6 If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). Internal Revenue Code section

7 Check the box that indicates your reason for the request for refund or abatement.
a ☐ Interest was assessed as a result of IRS errors or delays.
b ☐ A penalty or addition to tax was the result of erroneous written advice from the IRS.
c ☐ Reasonable cause or other reason allowed under the law can be shown.
d ☐ None of the above reasons apply.

8 Explain why you believe this claim or request should be allowed and show how you computed the amount shown on line 2. If you need more space, attach additional sheets.

Request for net interest rate of zero under I.R.C. § 6621(d) and Rev. Proc. 2000-26. Siena Corporation.
Underpaid: 2019 Form 1120. $500,000 deficiency; 30-day letter Aug. 1, 2022; paid June 28, 2024.
Overpaid: 2021 Form 1120. $300,000 estimated tax overpayment, treated as paid Apr. 15, 2022;
refunded with interest in 2025.
Overlap: $300,000 from Apr. 15, 2022 until June 28, 2024. Siena made both payments itself.
Interest on the overlap: underpayment $60,756; overpayment $29,545; difference $31,211
(Schedule 1). Siena asks that its 2019 underpayment interest be reduced by $31,211 and refunded.
To the extent of equivalent amounts of underpayment and overpayment for the period above,
the period has been used only once in a request to obtain the net interest rate of zero.
See the attached Statement in Support, Schedule 1, and Exhibits 1 through 4.

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the Form 843. Forms 843 filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be included with the signature. Forms 843 filed by an estate or trust must be signed by the fiduciary.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

[Officer], President, Siena Corporation — 05/01/2026

Signature (Title, if applicable. Claims by corporations must be signed by an officer. Claims by an estate or trust must be signed by the fiduciary.) — Date

If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Signature (spouse, if filing Form 843 relating to a joint return) — Date

If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

Form **843** (Rev. 12-2024)

Figure 7. Form 843, page 2, for the Siena request. Line 5 marks Form 1120, lines 6 and 7 stay blank, and line 8 states the overlap, the amount, and the one-use statement and refers to the attached statement and Schedule 1.

STATEMENT IN SUPPORT OF REQUEST FOR NET INTEREST RATE OF ZERO UNDER I.R.C. § 6621(d) AND REV. PROC. 2000-26

Taxpayer: Siena Corporation EIN: [xx-xxxxxxx] Form 1120 Tax years 2019 and 2021

1. What Siena owed. For 2019 the IRS assessed a $500,000 deficiency (TC 300, Exhibit 1). The thirty-day letter was dated August 1, 2022, so interest at the large corporate rate under I.R.C. § 6621(c) applied from September 1, 2022, the day after the applicable date. Siena paid the deficiency and interest on June 28, 2024 (TC 670, Exhibit 2).

2. What Siena was owed. Siena overpaid its 2021 estimated tax by $300,000. The overpayment is treated as paid on April 15, 2022 (I.R.C. §§ 6513(b)(2), 6611(d)). The IRS refunded it with interest on [date] 2025 (TC 846, Exhibit 3).

3. The overlap. From April 15, 2022 until June 28, 2024, Siena owed tax for 2019 and was owed a refund for 2021. The overlapping amount is $300,000. Siena Corporation made both payments itself; it was the same taxpayer at the time of each.

4. The computation. On $300,000 for that period, the IRS charged underpayment interest of $60,756 and paid overpayment interest of $29,545 (Schedule 1). Section 6621(d) makes the net rate on that amount zero. The difference is $31,211.

5. Relief requested. Siena asks the IRS to reduce its 2019 underpayment interest by $31,211, to refund that amount with interest under I.R.C. § 6611, and to provide its computation.

6. One use only. To the extent of equivalent amounts of underpayment and overpayment for the period identified in paragraph 3, the period has been used only once in a request to obtain the net interest rate of zero under I.R.C. § 6621(d). Rev. Proc. 2000-26, § 5.04(5)(e).

7. Timeliness. This claim is filed on May 1, 2026, within two years after June 28, 2024, when Siena paid the 2019 underpayment interest. I.R.C. § 6511(a). In the alternative, the 2021 overpayment was refunded on [date in 2025], less than six years before this claim, and Siena requests that any netting barred on the underpayment leg be applied by increasing overpayment interest. Rev. Proc. 2000-26, § 4.03(2).

8. Exhibits. Examination report and thirty-day letter (Exhibit 1); account transcript for 2019 (Exhibit 2); account transcript and refund notice for 2021 (Exhibit 3); IRS interest computations for both years (Exhibit 4).

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and exhibits, and to the best of my knowledge and belief it is true, correct, and complete.

_____ Date: _____

[Officer], President, Siena Corporation

Schedule 1. Interest on the overlapping $300,000 for the 805 days after April 15, 2022 through June 28, 2024, the payment date, following the IRS convention of counting from the day after a balance arises through the day it is paid. Interest is compounded daily on an actual-day basis. The overpayment rate shown is the rate on the amount above $10,000; the first $10,000 earns one and a half points more. Rows may not add to the totals because of rounding.

Period	Underpayment rate	Overpayment rate (above $10,000)	Underpayment interest	Overpayment interest	Difference (netting benefit)
Apr. 16 to June 30, 2022	4%	1.5%	$2,509	$970	$1,539
July 1 to Aug. 31, 2022	5%	2.5%	$2,580	$1,307	$1,273
Sept. 1 to Sept. 30, 2022	7%	2.5%	$1,760	$634	$1,126
Oct. 1 to Dec. 31, 2022	8%	3.5%	$6,250	$2,723	$3,527
Jan. 1 to Mar. 31, 2023	9%	4.5%	$7,025	$3,449	$3,577
Apr. 1 to June 30, 2023	9%	4.5%	$7,263	$3,527	$3,737
July 1 to Sept. 30, 2023	9%	4.5%	$7,511	$3,606	$3,904
Oct. 1 to Dec. 31, 2023	10%	5.5%	$8,547	$4,455	$4,092
Jan. 1 to Mar. 31, 2024	10%	5.5%	$8,645	$4,456	$4,189
Apr. 1 to June 28, 2024	10%	5.5%	$8,666	$4,419	$4,247
Total			$60,756	$29,545	$31,211

Letter for a case already before Examination, Appeals, or a court (Rev. Proc. 2000-26, § 5.06). Send it to the contact person handling the case in place of a Form 843.

[Date]

[Name], [Revenue Agent / Appeals Officer / Counsel attorney], Internal Revenue Service, [address]

Re: Siena Corporation, EIN [xx-xxxxxxx]; Form 1120; tax years 2019 and 2021; request for net interest rate of zero

Dear [Name]:

1. Siena Corporation requests the net interest rate of zero under I.R.C. § 6621(d) in the interest computation for the case you are handling.

2. The type of tax is income tax, and the return is Form 1120.

3. The payment that affects the computation is Siena's overpayment of $300,000 of 2021 estimated tax, treated as paid on April 15, 2022 and outstanding until June 28, 2024, the period in which the 2019 underpayment was also outstanding.

4. To the extent of equivalent amounts of overpayment and underpayment, the period in paragraph 3 has not previously been applied to obtain a net interest rate of zero under I.R.C. § 6621(d).

A computation is enclosed. Please contact the undersigned representative with any questions.

Very truly yours,

[Representative], Form 2848 attached

Appendix D. Section 6603 Deposit: Designation Letter and Request for Return

Send the deposit to the service center where the return was filed, or to the examiner or Appeals Officer if the case is assigned, with this letter attached to the check. Keep proof of the date of receipt; interest stops on that date. To recover the deposit, send the second letter to the same office.

[Date]

Internal Revenue Service, [address]

Re: Deposit under I.R.C. § 6603 and Rev. Proc. 2005-18

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Year: 2022

Dear Sir or Madam:

The enclosed check in the amount of $75,000 is a deposit under I.R.C. § 6603 and Rev. Proc. 2005-18. It is not a payment of tax. The taxpayer does not concede the proposed deficiency and reserves all rights, including the right to petition the United States Tax Court.

Type of tax: income tax. Taxable period: calendar year 2022. Of the $75,000, $68,000 is deposited against the proposed deficiency in tax, and $7,000 is a separate deposit against the proposed accuracy-related penalty and the interest accrued on the proposed deficiency. Amount of disputable tax: $68,000, the proposed deficiency stated in the 30-day letter dated [date] and the Revenue Agent's Report dated [date], copies of which are enclosed. The basis of the dispute is stated in the taxpayer's written response to the report dated [date], also enclosed.

Please post the remittance as a deposit (TC 640) and confirm in writing.

Very truly yours,

_____

[Taxpayer or Representative with Form 2848]

REQUEST FOR RETURN OF DEPOSIT

[Date]

Re: Return of deposit under I.R.C. § 6603(c) and Rev. Proc. 2005-18, § 6

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Year: 2022

On [date] the taxpayer deposited $75,000 under I.R.C. § 6603: $68,000 with respect to the proposed deficiency for 2022 and $7,000 with respect to the proposed accuracy-related penalty and interest. The dispute has been resolved by [decision of the Tax Court entered on (date) / closing agreement dated (date)], a copy of which is enclosed. The taxpayer requests return of the deposit, less any amount applied to the liability as finally determined, with interest under I.R.C. § 6603(d) on the portion attributable to disputable tax.

_____

Appendix E. Protest of Disallowance of Interest Abatement Request

Send the protest to the office that issued Letter 3010-C or Letter 3022-C within the time stated in the letter. That office forwards it to the Independent Office of Appeals. Attach the original Form 843 and exhibits. Request a conference.

[Date]

Internal Revenue Service, [office and address shown on Letter 3010-C]

Re: Protest of Letter 3010-C dated [date]; request for Appeals conference

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Year: 2019

1. The taxpayer protests the disallowance of the request for abatement of interest under I.R.C. § 6404(e)(1) filed on [date] and requests that the matter be forwarded to the Independent Office of Appeals for a conference.

2. Statement of facts. [Restate the timeline in numbered paragraphs with exhibit references.]

3. Statement of law. The failure to reassign a case for an extended period after the examiner's departure is a managerial act. Treas. Reg. § 301.6404-2(b)(1); cf. *id.* § 301.6404-2(c), ex. 4. The delay of eleven months was unreasonable. No significant aspect of the delay is attributable to the taxpayer, who responded to every request and inquired in writing about the status of the case. I.R.C. § 6404(e)(1). The disallowance letter states that the delay was attributable to IRS workload; the record shows that the delay resulted from a failure to reassign the case, a managerial act, rather than from a reasonable decision about how to order the IRS's work.

4. The taxpayer requests a written final determination under I.R.C. § 6404(h) if the request is not allowed in full.

Under penalties of perjury, I declare that the facts stated in this protest and the accompanying documents are, to the best of my knowledge and belief, true, correct, and complete.

_____ Date: _____

[Taxpayer]

_____

[Representative]: I prepared this protest. I do not know personally whether the statements of fact are true and correct, but they are based on information furnished by the taxpayer and on the documents attached, which I believe to be true and correct.

Appendix F. Form 12153 Attachment: Raising Interest Abatement at the Collection Due Process Hearing

Attach to Form 12153 and check the box for other issues. Raise every interest theory in writing at the hearing and give the Appeals Officer the evidence for it; an issue mentioned but not supported with evidence after a reasonable opportunity is not raised, and the Tax Court will not consider an issue that was not raised with Appeals. The reverse rule also applies: an issue that was raised and considered in an earlier hearing or proceeding in which the taxpayer participated meaningfully may not be raised again.[180] A Form 843 already decided by Appeals may therefore bar the same theory at the hearing. File the Form 843 in Appendix A or B on the same day so that the section 6404(h) track survives if the collection case ends.

[180]I.R.C. § 6330(c)(4)(A) (an issue is barred if "the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding" and "the person seeking to raise the issue participated meaningfully in such hearing or proceeding"); *see* I.R.C. § 6320(c).

ATTACHMENT TO FORM 12153: ISSUES RAISED AT THE COLLECTION DUE PROCESS HEARING

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Years: 2019, 2020

1. Verification. The taxpayer requests verification under I.R.C. § 6330(c)(1) that the requirements of applicable law and administrative procedure were met, including that notice and demand was mailed to the taxpayer's last known address, and requests copies of the notices relied upon.

2. Abatement of interest. The taxpayer raises abatement of interest under I.R.C. § 6404 as an issue at the hearing. *Katz v. Commissioner*, 115 T.C. 329 (2000).

(a) Type of tax: income tax, Form 1040, tax years 2019 and 2020.

(b) First written contact: Letter 2205-A dated [date].

(c) Period for which abatement is requested: [date] through [date].

(d) Circumstances: [State the ministerial or managerial act and the delay, with dates, or the section 6404(g) notice failure, or the section 7508A disregarded period.]

(e) Why the failure to abate would be grossly unfair: [State the causal link between the IRS delay and the interest and the taxpayer's own diligence.]

3. Section 6404(g). The taxpayer timely filed the 2019 return on July 15, 2020, the postponed due date. The first notice stating a liability and its basis was mailed on September 11, 2023, more than 36 months later. Interest, including interest on the accuracy-related penalty, and any time-based penalty not excluded by section 6404(g)(2) for the period July 15, 2023 through October 2, 2023 must be suspended; the fixed section 6662 penalty itself is not affected. I.R.C. § 6404(g); *Corbalis v. Commissioner*, 142 T.C. 46 (2014).

4. Collection alternative. [State the installment agreement or offer in compromise proposed, with the financial statement attached.]

5. The taxpayer has filed a Form 843 with respect to the interest described above on [date] and requests that the Appeals Officer consider it at the hearing.

_____ Date: _____

Form **12153** (July 2022)

Department of the Treasury - Internal Revenue Service

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or Equivalent Hearing (EH) with the IRS Independent Office of Appeals (Appeals) if you have received a letter offering an appeal under IRC 6320/6330 (CDP notice).

Complete this form and send it to the address for requesting a hearing (not the payment address) shown on your CDP notice. Include a copy of your CDP notice to ensure proper handling of your request. For further information on these hearings, please see the instructions for this form.

IRS Use Only

Call the phone number on the CDP notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your hearing request.

Si desea ver el formulario y las instrucciones en español, visite http://www.irs.gov/pub/irs-pdf/f12153sp.pdf.

1. Basis for hearing request *(both boxes can be checked if you have received lien and levy notices)*
   ☐ Filed Notice of Federal Tax Lien ☒ Notice of Proposed or Actual Levy

2. Equivalent Hearing *(see the instructions for more information on Equivalent Hearings)*
   ☐ If my request does not meet the requirements for a timely CDP hearing, I would like a hearing that is equivalent to a CDP hearing

3. Taxpayer name *(Taxpayer 1)* Maria R. Santos
   Taxpayer Identification Number XXX-XX-4321
   Current address 118 Prospect Street
   City Hackensack State NJ ZIP code 07601

4. Best telephone number and time to call during normal business hours
   ☐ Home ☐ Work ☐ Cell
   Telephone number Time ☐ a.m. ☐ p.m.

5. Taxpayer name *(Taxpayer 2)*
   Taxpayer Identification Number
   Current address *(if different from address above)*
   City State ZIP code

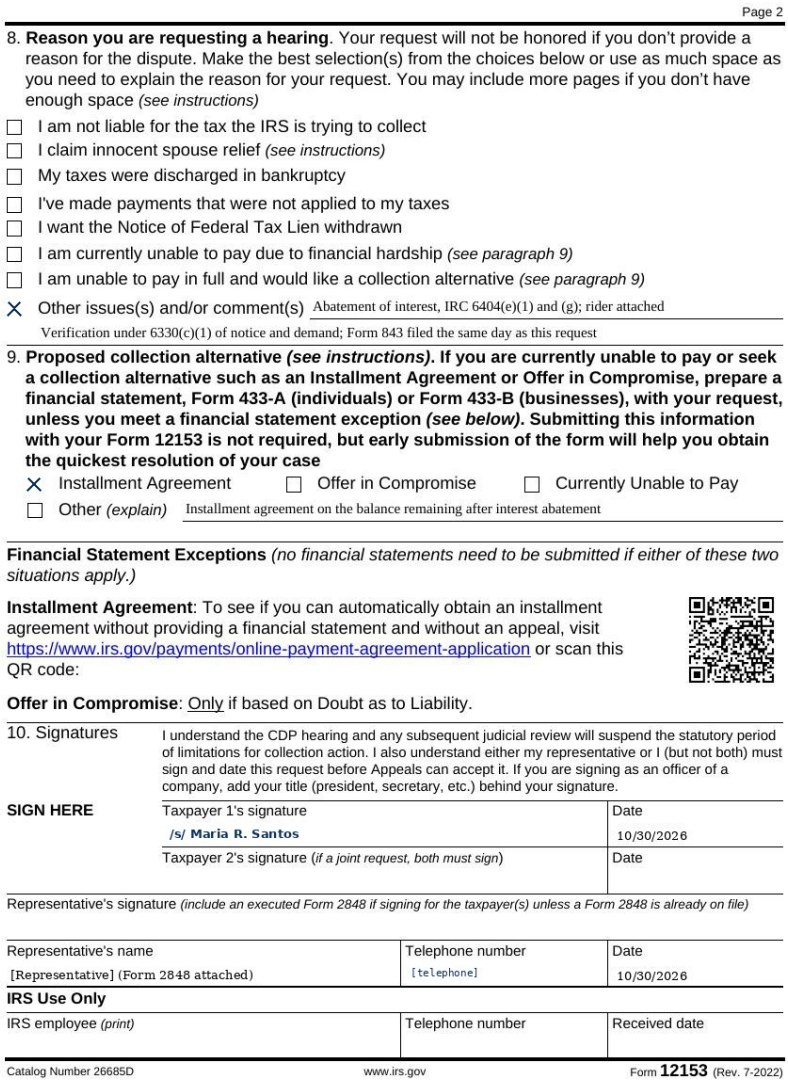
6. Best telephone number and time to call during normal business hours
   ☐ Home ☐ Work ☐ Cell
   Telephone number Time ☐ a.m. ☐ p.m.

7. Tax information as shown on your lien or levy notice (*include a copy of the notice(s)*). You do not have to complete section 7 if you include a copy of the notice(s) you are appealing

Type of Tax *(Income, Employment, Excise, etc. or Civil Penalty)*	Tax Form Number *(1040, 941, 720, etc.)*	Tax Period or Periods
Income	1040	12/31/2019
Income	1040	12/31/2020

Catalog Number 26685D www.irs.gov Form **12153** (Rev. 7-2022)

Figure 8. Form 12153, page 1, for the same hypothetical taxpayer as Figures 4 and 5. She designated her two payments to the 2019 interest, so the 2019 tax and her 2020 balance remain unpaid and a levy notice followed (Rev. Proc. 2002-26, § 3.01). The CDP case cannot refund the paid interest, so she files the Form 843 the same day (Part VI.D). The levy box is checked and both periods are listed.



Page 2

8. **Reason you are requesting a hearing**. Your request will not be honored if you don't provide a reason for the dispute. Make the best selection(s) from the choices below or use as much space as you need to explain the reason for your request. You may include more pages if you don't have enough space *(see instructions)*

☐ I am not liable for the tax the IRS is trying to collect
☐ I claim innocent spouse relief *(see instructions)*
☐ My taxes were discharged in bankruptcy
☐ I've made payments that were not applied to my taxes
☐ I want the Notice of Federal Tax Lien withdrawn
☐ I am currently unable to pay due to financial hardship *(see paragraph 9)*
☐ I am unable to pay in full and would like a collection alternative *(see paragraph 9)*
☒ Other issues(s) and/or comment(s) Abatement of interest, IRC 6404(e)(1) and (g); rider attached
Verification under 6330(c)(1) of notice and demand; Form 843 filed the same day as this request

9. **Proposed collection alternative *(see instructions)*. If you are currently unable to pay or seek a collection alternative such as an Installment Agreement or Offer in Compromise, prepare a financial statement, Form 433-A (individuals) or Form 433-B (businesses), with your request, unless you meet a financial statement exception *(see below)*. Submitting this information with your Form 12153 is not required, but early submission of the form will help you obtain the quickest resolution of your case**

☒ Installment Agreement ☐ Offer in Compromise ☐ Currently Unable to Pay
☐ Other *(explain)* Installment agreement on the balance remaining after interest abatement

Financial Statement Exceptions *(no financial statements need to be submitted if either of these two situations apply.)*

Installment Agreement: To see if you can automatically obtain an installment agreement without providing a financial statement and without an appeal, visit https://www.irs.gov/payments/online-payment-agreement-application or scan this QR code:

Offer in Compromise: Only if based on Doubt as to Liability.

10. Signatures — I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand either my representative or I (but not both) must sign and date this request before Appeals can accept it. If you are signing as an officer of a company, add your title (president, secretary, etc.) behind your signature.

SIGN HERE	Taxpayer 1's signature	Date
	/s/ Maria R. Santos	10/30/2026
	Taxpayer 2's signature (*if a joint request, both must sign*)	Date

Representative's signature *(include an executed Form 2848 if signing for the taxpayer(s) unless a Form 2848 is already on file)*

Representative's name	Telephone number	Date
[Representative] (Form 2848 attached)	[telephone]	10/30/2026

IRS Use Only

IRS employee *(print)*	Telephone number	Received date

Catalog Number 26685D www.irs.gov Form **12153** (Rev. 7-2022)

Figure 9. Form 12153, page 2. The other-issues box is checked and refers to the attachment; the taxpayer signs; a representative may sign instead, attaching a signed Form 2848 unless one is already on file (Form 12153, Rev. July 2022, Section 10).

Appendix G. Freedom of Information Act Request for the Examination Case File

The IRS processes FOIA requests centrally. Submit through the IRS FOIA Public Access Portal (foiapublicaccessportal.for.irs.gov), by fax to 877-891-6035, or by mail to the address in the letter below. The request must state the requester category and a commitment to pay fees. Attach the Form 2848 that authorizes the representative and the taxpayer's proof of identity. The case activity record is the document that proves the dates of delay.[181]

[Date]

IRS FOIA Request, GLDS Support Services, Stop 93A, P.O. Box 621506, Atlanta, GA 30362

Re: Freedom of Information Act request, 5 U.S.C. § 552

Taxpayer: [Name] TIN: [xxx-xx-1234] Form 1040 Tax Years: 2019, 2020

Dear Disclosure Officer:

Under the Freedom of Information Act the taxpayer requests copies of the following records relating to the examination of the taxpayer's 2019 and 2020 income tax returns, including the examination conducted under case number [number] and any related Appeals case:

1. The examiner's case activity record (Form 9984) and any electronic activity log.

2. The group manager's case history, workload review notes, and any record of case reassignment.

3. All Forms 3198, 4549, 4549-A, 886-A, and 5344, and all workpapers, including the lead sheets for interest and for I.R.C. § 6404(g).

4. All documents recording the date of any notice provided for purposes of I.R.C. § 6404(g), including any input of TC 971 AC 064.

5. All IRS interest-computation reports for the periods, and any manual interest computation (Form 2285 or equivalent).

6. All correspondence between the IRS and the taxpayer or the taxpayer's representative, with the mailing envelopes or certified mail records.

7. All records of the transfer of the case between offices or functions.

The taxpayer is an “other requester” under 26 C.F.R. § 601.702(f)(3)(ii)(E) and agrees to pay search and copying fees up to $[amount]. Please produce the records in electronic form. If any record is withheld, please identify it and state the exemption claimed. The taxpayer's identity and authorization are established by the enclosed Form 2848 and the enclosed sworn statement of identity.

Very truly yours,

_____

[Representative]

[181] IRS, *IRS Freedom of Information Act (FOIA) Guidelines*, https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines (last visited Oct. 30, 2026) (central mailing address, fax number, portal, and the requirements that a request state the requester category, agree to pay fees, and include proof of identity and of the requester's authority).

Appendix H. Interest Review Checklist

Run this list against the transcript for every period before drafting the Form 843.

Question	Where to look	Rule
Did interest on the tax start on the original due date, not the extended date?	TC 150 date; TC 340 start date	I.R.C. § 6601(a), (b)(1)
Did interest on a § 6662 or § 6651(a)(1) penalty start on the due date including extensions?	TC 240/TC 160; interest computation	I.R.C. § 6601(e)(2)(B)
Did interest on an assessable penalty start on the notice and demand date?	TC 240 date; 23C date	I.R.C. § 6601(e)(2)(A)
Was the return timely filed and the first notice of liability more than 36 months later?	TC 150; first Form 4549 or CP 2000; TC 971 AC 064	I.R.C. § 6404(g); Treas. Reg. § 301.6404-4
Did the IRS take more than 30 days to bill after the signed waiver?	870-DATE field; 23C date	I.R.C. § 6601(c)
Was the taxpayer an affected taxpayer, and did a payment or filing deadline fall within a disaster period?	-O or -S disaster freeze; dates against the declaration and the IRS notice	I.R.C. § 7508A; Treas. Reg. § 301.7508A-1; IRM 25.16.1 (Aug. 20, 2026)
Was the taxpayer in a combat zone?	TC 500; combat indicator	I.R.C. § 7508
Was a payment made within 21 days (10 business days) of notice and demand?	TC 670 date against the notice date	I.R.C. § 6601(e)(3)
Was any remittance a § 6603 deposit?	TC 640	I.R.C. § 6603; Rev. Proc. 2005-18
Did the IRS delay after first written contact in a ministerial or managerial act?	Case activity record (FOIA)	I.R.C. § 6404(e)(1); Treas. Reg. § 301.6404-2
Is there an overpayment for another period that overlaps the underpayment?	TC 846 and TC 776 on other modules	I.R.C. § 6621(d); Rev. Proc. 2000-26
If the underpayment refund period has closed, is the overpayment still within six years of its refund or offset?	TC 840 or TC 846 23C date; TC 820 or TC 826 cycle date	Rev. Proc. 2000-26, §§ 4.02(2), 4.03(2); 28 U.S.C. §§ 2401(a), 2501
Was hot interest charged on a corporate underpayment, and does the $100,000 threshold apply?	Large corporate underpayment (LCU) indicator; 30-day letter date	I.R.C. § 6621(c); IRM 20.2.5.8.1–.8.2 (July 8, 2025)
Is any interest or failure-to-pay addition posted on a restitution-based assessment?	MFT 31 module; TC 340, TC 196, TC 276	*Klein*, 149 T.C. 341; CC-2019-004
Has the interest been paid, and when does the two-year refund period close?	TC 670 dates	I.R.C. § 6511(a), (b)(2)(B)

Appendix I. Request to Credit a Remittance as of Its IRS Received Date and, in the Alternative, to Abate Interest Under Section 6404(e)(1)(B)

Use this letter when the IRS deposited a check late, lost it, or posted it to the wrong account or year. Send it to the office that issued the most recent notice, or to the employee who received the check. Form 4446 is the IRS's own record of its search, not a taxpayer form; the taxpayer's proof of delivery and, where it exists, the cancelled check are what decide the case. If the check was lost and a replacement was paid, also file Form 843 with this letter as its attachment, check box 7a, and enter the interest computed in paragraph 5 on line 2. The bracketed text is a placeholder. Use one end date throughout: the deposit date for a late-deposited check, or the replacement-payment date for a lost one.

[Date]

[IRS office and address shown on the most recent notice]

Re: [Taxpayer name], [full SSN or EIN in the copy filed with the IRS; redact all but the last four digits in any copy shared outside the IRS], Form [1040], tax period [2022]

Request to credit remittance as of IRS received date; alternative request for abatement of interest under I.R.C. § 6404(e)(1)(B)

1. The payment. On [July 8, 2024] the IRS received the taxpayer's check no. [1234] for $[18,400], payable to the United States Treasury, with the payment voucher for the [notice number] dated [June 10, 2024]. Exhibit 1 is the [certified-mail or courier] delivery record. Exhibit 2 is a copy of both sides of the cancelled check [or, if it was never negotiated, the bank's statement that it was not presented and the stop-payment confirmation].

2. What happened. [The check was deposited on December 2, 2024, and the account credits the payment as of that date.] [or: The check was never negotiated. The taxpayer stopped payment on [date] and paid a replacement on [February 3, 2025] (Exhibit 3).] [or: The payment was posted to [tax period or account] instead of [tax period].]

3. First request: correct the payment date. Interest runs “to the date on which payment is received.” Treas. Reg. § 301.6601-1(a)(1). The IRS's procedures require it to credit all payments for the earliest date received and, for a discovered remittance with no replacement, to process it using the original IRS received date. IRM 3.8.45.2.1; IRM 3.8.45.5.8.1. [If the check was never negotiated and a replacement was paid:] With proof of timely mailing (Exhibit 1), the replacement payment may be given the date of the original payment on a managerial decision. IRM 21.5.7.3.5. [If the original check was found after a replacement was paid:] The same procedures direct abatement of the interest and penalties assessed on the replacement. IRM 3.8.45.5.8.1. [If the IRS lost a payment it received:] Its payment-loss procedures direct that “incorrect penalties and/or interest are abated.” IRM 5.1.2.3.5. Rev. Proc. 2005-18, § 8, suspends interest “on the date the remittance is received by the Service.” Please credit the payment as of [July 8, 2024] [and transfer it to the correct

module, IRM 21.5.7.4.6.5, .6], recompute the interest and the failure-to-pay addition, and refund or credit any excess already paid.

4. Alternative request: abate interest under § 6404(e)(1)(B). If the payment date cannot be corrected, the taxpayer asks for abatement of the interest that accrued from [July 8, 2024] through [the end date in paragraph 5]. The tax is income tax described in I.R.C. § 6212(a). The IRS contacted the taxpayer in writing about this payment on [June 10, 2024], before the error. Depositing a check in hand is a ministerial act. The taxpayer contends that losing a remittance is analogous to the loss of records that the regulation treats as a managerial act. Treas. Reg. § 301.6404-2(b)(1), (2), (c), Example 6; see Palihnich v. Commissioner, T.C. Memo. 2003-297. No significant aspect of the delay is attributable to the taxpayer, who stopped payment and sent a replacement within [number] days after learning the check had not cleared.

5. Computation. Interest on $[18,400] from [July 8, 2024], the IRS received date, through [December 2, 2024, the date the check was deposited] [or: February 3, 2025, the date the replacement was paid], at the underpayment rates in effect, compounded daily: $[computed]. The matching failure-to-pay addition: $[computed]. Schedule attached.

6. Timeliness. [If the interest has been paid:] This claim is made within two years after the interest was paid. I.R.C. § 6511(a). [If it has not been paid, omit this paragraph; a request to abate unpaid interest is not a refund claim.]

7. Contact. Please contact the undersigned representative (Form 2848 attached) at [telephone].

Under penalties of perjury, I declare that I have examined this request, including the accompanying exhibits, and to the best of my knowledge and belief it is true, correct, and complete.

_____ Date: _____

[Taxpayer]

_____ Date: _____

[Representative], Form 2848 attached