

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

CC:PA:B01:CMLee  
POSTS-100376-20

date: May 11, 2021

to: Victoria Boos  
Program Manager, Office of Servicewide Interest

from: Pamela W. Fuller *PWF*  
Senior Technician Reviewer  
CC:PA:B02

---

subject: Overpayment Interest Start Date When Filing Status Changes

Your office asked questions regarding the overpayment interest start date when spouses change filing status. We understand that your office intends to use this response to address changes in programming in interest computation routines, training material, and Internal Revenue Manuals. If you integrate guidance provided here into the Internal Revenue Manuals or training materials, please send us your draft review before it is released.

ISSUE:

When circumstances permit the filing of a joint return after a separate return has been filed, or the filing of separate returns after a joint return has been filed, what is the "filing date" of the subsequent return(s) for purposes of starting overpayment interest pursuant to section 6611(b)(3), section 6611(e)(1) and section 6611(g)?

DISCUSSION:

- Section 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.
- Section 6611(b)(1) and (2) provide that interest starts to accrue as of the date the overpayment arises.
- Section 6611(b)(3) provides that if a return is filed after the last date prescribed for filing, determined with regard to extensions, then interest is not payable or allowable

for any period prior to the filing of the return. Further, for purposes of section 6611(b)(3), a return is not deemed to be filed until it is filed in “processable form.”<sup>1</sup>

- Under section 6611(e)(1), no interest is payable on an overpayment if the overpayment is refunded within 45 days of the later of the: return due date (determined without regard to any extension of time for filing); return received date; or the date the return was received in processible form.
- Taxpayers who file a return claiming the filing status Married Filing Jointly may file a superseding return claiming the filing status Married Filing Separately, Single or Head of Household on or before the due date of their originally filed Married Filing Jointly return.<sup>2</sup> If a taxpayer changes filing status from Married Filing Jointly or Married Filing Separately to Single or Head of Household, the taxpayer must be eligible to claim that different status.<sup>3</sup>
- When the Married Filing Jointly or Married Filing Separately status is invalid or incorrect, taxpayers may file their returns claiming the filing status for which they are eligible; i.e., Single or Head of Household, at any time. These situations include when the taxpayers were not legally married during the tax year, one taxpayer did not consent to file a joint return, or the joint return contained a forged signature.<sup>4</sup>
- Section 6013(b) allows two spouses to file joint returns after one or both spouse(s) file(s) a separate return.<sup>5</sup>

### Example 1:

#### Joint to Separate

John and Carol timely filed a joint tax return, Form 1040, for the 2018 tax year on April 15, 2019 on which John was listed as the primary taxpayer. Both taxpayers then filed separate returns for the 2018 tax year that reflected an overpayment. Each return was received by the IRS on December 4, 2019. The taxpayers supplied the Service with court documents on December 28, 2019, proving the marriage was not valid for the tax period involved. What is deemed to be each taxpayer’s return for the 2018 tax year and what is the “filing date” of that return

---

<sup>1</sup> § 6611(g); see also *Deutsche Bank AG v. United States*, 742 F.3d 1378, 1381-1382 (Fed. Cir. 2014).

<sup>2</sup> IRM 21.6.1.5.5(1), (November 26, 2018). Married Filing Joint to Married Filing Separate, Single, or Head of Household Procedures.

<sup>3</sup> Taxpayers who filed claiming married filing jointly status or married filing separately for a tax year may change to head of household or single filing status for that tax year if they qualify for the changed status; i.e., they were not married during the tax year for purposes of claiming a married filing status (either jointly or separately) and, if claiming head of household status, the taxpayers satisfy the eligibility criteria for that status.

<sup>4</sup> IRM 21.6.1.5.7 (October 1, 2019), Married Filing Joint or Married Filing Separate is Invalid or Filed with Incorrect Status.

<sup>5</sup> See also Treas. Reg. § 1.6013-1.

for purposes of section 6611(b)(3), section 6611(e) and section 6611(g)?

Response:

Only legally married spouses may file a joint income tax return.<sup>6</sup> In Example 1, the tax year 2018 joint return was not valid because the taxpayers were not legally married. John and Carol each filed a separate tax return in December 2019, after the statutorily prescribed return filing due date for tax year 2018. In general, the filing date of John's and Carol's separate returns will be the date the Service received each return because they were filed late.<sup>7</sup> For each taxpayer, if the separate return met the *Beard* test, the separate return was the taxpayer's valid tax year 2018 return. In addition, for purposes of sections 6611(b)(3) and (e), if the separate return from John or Carol was not processible (as prescribed by section 6611(g)), that taxpayer did not file a valid 2018 tax return.

For late-filing taxpayers overpayment interest would begin to accrue no earlier than the date the Service received their processible return.<sup>8</sup> In order to be processible, the return must contain the taxpayer's name, address and tax identification number, the taxpayer's signature and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.<sup>9</sup>

For John and Carol, if each of the separate returns received on December 4, 2019 contained information that satisfied the section 6611(g)(2) requirements for a processible return, the filing date of those returns for section 6611(b)(3) and (e) purposes would be December 4, 2019. Accordingly, overpayment interest would start no earlier than December 4, 2019. However, if the information needed to satisfy the section 6611(g)(2) requirements was not received by the Service until December 28, 2019, the filing date for each separate return would be December 28, 2019.

### Example 2:

#### Separate to Joint

David and Bonnie filed a joint tax return, Form 1040, for the 2018 tax year that reflected an overpayment. The joint tax return was received January 10, 2020; however, information needed to process the joint return was not supplied to the

---

<sup>6</sup> § 6013(a).

<sup>7</sup> *Sanderling, Inc. v. Commissioner*, 67 T.C. 176, 178-179 (1976), *aff'd. in part*, 571 F.2d 174 (3d. Cir. 1978).

<sup>8</sup> § 6611(b)(3), § 6611(g).

<sup>9</sup> § 6611(g)(2); *Deutsche Bank AG v. United States*, 742 F.3d at 1382-1383. "At issue in this case is whether Deutsche Bank's original return without Forms 8805 and 1042-S met the requirements of section 6611(g) to be in processible form." That is, whether "Deutsche Bank's original return contained sufficient required information to permit the mathematical verification of tax liability as required by § 6611(g)(2)(B)(ii).

Service until January 25, 2020. Previously, David and Bonnie had filed separate returns for the 2018 tax year on November 14, 2019 and April 15, 2019, respectively. What is deemed to be each taxpayer's return for the 2018 tax year and what is the "filing date" of that return for purposes of section 6611(b)(3), section 6611(e) and section 6611(g)? Is the criteria prescribed in section 6013(b)(3) considered when determining the "filing date" for overpayment interest purposes?

Response:

The joint tax return is David's and Bonnie's return for the 2018 tax year.<sup>10</sup> The filing date of the return is January 25, 2020 for purposes of section 6611(b)(3) and section 6611(e). Section 6013(b)(3) criteria are considered when determining the filing date for overpayment interest.

Based on the facts presented, David and Bonnie satisfied the threshold requirement permitting them to file a joint return after filing separate returns. The tax year 2018 joint return was filed (received and processible) on January 25, 2020, which was within the three-year assessment period from the last date prescribed by law for filing the return for the 2018 tax year without regard to any extension of time to file granted to either David or Bonnie with respect to their previously filed separate returns.<sup>11</sup>

In general, interest starts to accrue on the date the overpayment arose.<sup>12</sup> For a late-filed return, no interest shall be allowed or paid for any day before the date on which the return is filed.<sup>13</sup> For a late filed return, the return is deemed filed on the date it is received by the Service and the return is processible.<sup>14</sup> In Example 2, the joint return was both received and processible on January 25, 2020. In general, overpayment interest would start no earlier than January 25, 2020.

Section 6611(e)(1) may apply to further limit interest on David and Bonnie's

---

<sup>10</sup> Treas. Reg. § 1.6013-2(a)(1). "Where an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under , and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may, under conditions hereinafter set forth, make a joint return for such taxable year. The joint return filed pursuant to shall constitute the return of the husband and wife for such year, and all payments, credits, refunds, or other repayments, made or allowed with respect to the separate return of either spouse are to be taken into account in determining the extent to which the tax based on the joint return has been paid."

<sup>11</sup> Section 6013(b)(2)(A); Treas. Reg. § 1.6013-2(b)(2). In addition to the requirement that the joint return is filed within the three-year period after the tax year filing due date, there are other limitations to electing a change of filing status from separate to joint. No joint return may be filed if the Service mailed either spouse a notice of deficiency under section 6212 with respect to the taxable year and the spouse who received the notice timely petitioned the Tax Court for a redetermination. § 6013(b)(2)(B). Moreover, no joint return may be filed if either spouse filed a suit in any court to recover any part of the tax for the taxable year (section 6013(b)(2)(C)) or entered into a section 7121 closing agreement with respect to the taxable year (section 6013(b)(2)(D)). See *also* Treas. Reg. § 1.6013-2(b).

<sup>12</sup> § 6611(b)(1)-(2).

<sup>13</sup> § 6611(b)(3).

<sup>14</sup> See *Sanderling, Inc. v. Commissioner*.

overpayment. Pursuant to section 6611(e)(1), in general, no overpayment interest is allowable if the Service paid the refund within 45 days after the joint return was filed.

If you have any questions or need additional information, please contact Carolyn M. Lee at 202-317-5193.