

Q-12. Does the 120 percent rate apply to interest accruing on interest, penalties, additional amounts, or additions to tax as provided in section 6601(e)(2)?

A-12. The 120 percent rate applies only to taxes imposed by subtitle A (income taxes) and to interest accrued with respect to such taxes. The penalties, additional amounts, and additions to tax specified in section 6601(e)(2) are not imposed by subtitle A and are not, therefore, included in the amount of a tax motivated underpayment. They are, however, included in the amount of unpaid tax for purposes of A-9 of this section.

Example. Taxpayer A, for taxable year 1984, has a \$10,000 tax motivated underpayment and a \$2,000 addition to tax for a total unpaid tax of \$12,000. If A makes a \$5,000 payment of tax, he will still have a \$10,000 tax motivated underpayment but will now have only \$7,000 of unpaid tax. Pursuant to A-9 of this section, therefore, the 120 percent rate would apply to the \$7,000 of unpaid tax.

(Secs. 6621(d) and 7805, Internal Revenue Code of 1954 (98 Stat. 682, 26 U.S.C. 6621(d); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7998, 49 FR 50391, Dec. 28, 1984]

§ 301.6621-3 Higher interest rate payable on large corporate underpayments.

(a) *In general.* Section 6621 establishes the interest rate for purposes of computing the amount of interest that must be paid under section 6601, relating to interest on underpayments of tax. Section 6621(a)(2) provides that the underpayment rate is the sum of the Federal short-term rate (determined under section 6621(b)) plus 3 percentage points. That underpayment rate is referred to hereinafter as the “section 6621(a)(2) rate.” Section 6621(c) and this section, however, provide that the underpayment rate on any large corporate underpayment is the sum of the Federal short-term rate (determined under section 6621(b)) plus 5 percentage points. This higher underpayment rate is referred to hereinafter as the “section 6621(c) rate.” The section 6621(c) rate applies only for periods after the applicable date (as determined in paragraph (c) of this section).

(b) *Large corporate underpayment—(1) Defined.* For purposes of section 6621(c) and this section, “large corporate un-

derpayment” means any underpayment of a tax by a C corporation for any taxable period if the amount of the threshold underpayment of the tax (as defined in paragraph (b)(2)(ii) of this section) for that taxable period exceeds \$100,000.

(2) *Underpayment of a tax—(i) In general.* As used in section 6621(c) and this section, “underpayment of a tax” means the excess of a tax imposed by the Internal Revenue Code over the amount of such tax paid on or before the last date prescribed for payment. Except as provided in paragraph (b)(2)(ii) of this section, “tax” for such purposes includes interest, penalties, additional amounts, and additions to tax. See sections 6601(e)(1), 6665(a), and 6671(a). Thus, the section 6621(c) rate generally applies to any interest, penalties, additional amounts, and additions to tax, as well as to the underlying tax with respect to which such amounts are imposed.

(ii) *Threshold underpayment of a tax.* Solely for purposes of this section and not for any other purpose under section 6621(c) or elsewhere in the interpretation or administration of the federal tax laws, a “threshold underpayment of a tax” is the excess of a tax imposed by the Internal Revenue Code (exclusive of interest, penalties, additional amounts, and additions to tax) for the taxable period over the amount of such tax paid on or before the last date prescribed for payment. Thus, any payments made after the last date prescribed for payment (for example, by way of an amended return) will not affect the existence of a threshold underpayment. In determining whether there is a threshold underpayment, different types of taxes (such as income tax and FICA tax) and amounts that relate to different taxable periods are not added together.

(iii) *When determined—(A) In general.* The existence of a threshold underpayment of a tax and the amount of a large corporate underpayment are generally determined only when an assessment is made with respect to the taxable period. Thus, the amount of a deficiency or proposed deficiency set forth in a letter or notice pursuant to which the applicable date is determined (under paragraph (c) of this section)

does not determine whether there is a large corporate underpayment.

(B) *Judicial determinations.* Notwithstanding any prior assessment made with respect to a taxable period, the section 6621(c) rate does not apply if, after a federal court determines the taxpayer's liability for a period, the threshold underpayment for that taxable period does not exceed \$100,000. See Example 3 in paragraph (d) of this section.

(iv) *Special rule.* The section 6621(c) rate is not used to compute the interest charges that a taxpayer timely assesses against itself in return for using a method of tax accounting or reporting that defers the payment of tax, such as the interest charges relating to passive foreign investment companies under section 1291(c) and installment obligations of nondealers under section 453A(c). However, to the extent such charges are not paid on or before the last date prescribed for payment and therefore become part of an underpayment of a tax, the section 6621(c) rate will apply to such amounts for periods after the applicable date (as determined in paragraph (c) of this section).

(3) *C corporation defined.* For purposes of section 6621(c)(3)(A) and this section, "C corporation" means, with respect to any taxable period, a corporation that is a C corporation during any part of the taxable period. Interest on a large corporate underpayment for a taxable period continues to be imposed at the section 6621(c) rate even if during or after the taxable period—

(i) The taxpayer ceases to be a C corporation; or

(ii) The underpayment becomes the liability of a successor or transferee that is not a C corporation.

(4) *Taxable period.* For purposes of section 6621(c) and this section, the "taxable period" is the taxable year in the case of any tax imposed by subtitle A of the Internal Revenue Code. In the case of any other tax, the "taxable period" is the period to which the underpayment relates. For example, the taxable period for an underpayment of FICA taxes is the calendar quarter. If the underpayment does not relate to a particular period (for example, in the case of certain transactional excise

taxes), the "taxable period" is the period covered by a return on which the tax is required to be shown.

(5) *Last date prescribed for payment.* For purposes of this section, the "last date prescribed for payment" means the last date prescribed for payment as determined, without regard to any extension of time, under section 6601(b).

(c) *Applicable date—(1) In general.* The section 6621(c) rate applies only to periods after the applicable date. Pursuant to the effective date of section 6621(c) and paragraph (e) of this section, however, the section 6621(c) rate will not apply prior to January 1, 1991, even if the applicable date is prior to December 31, 1990. A letter or notice relating to a particular type of tax creates an applicable date only for that type of tax. For example, a letter or notice with respect to FUTA tax will not create an applicable date with respect to income tax for the same taxable year.

(2) *When deficiency procedures apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code apply, is the 30th day after the earlier of—

(i) The date on which the Service sends the taxpayer the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Service's Office of Appeals (commonly called a "30-day letter"); or

(ii) The date on which the Service sends a deficiency notice under section 6212 of the Internal Revenue Code (commonly called a "90-day letter").

(3) *When deficiency procedures do not apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures do not apply, is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment or proposed assessment of the tax. In the case of income taxes, for example, the deficiency procedures do not apply to amounts shown as due on the taxpayer's return if the taxpayer fails to remit the full amount on or before the last date prescribed for payment, and to amounts attributable to mathematical or clerical errors on a return (unless a request for abatement

is filed by the taxpayer under section 6213(b)). Because no 30-day letter or 90-day letter is issued to the taxpayer in such cases, the applicable date is the 30th day after the date on which an assessment notice under section 6303 of the Internal Revenue Code is sent.

(4) *Partnership items.* For purposes of section 6621(c) and this paragraph (c), 60-day letters and the notices described in sections 6223(a)(1) and 6223(a)(2) (relating to administrative proceedings at the partnership level) are not treated as letters of proposed deficiency that allow the taxpayer an opportunity for administrative review in the Service's Office of Appeals, deficiency notices under section 6212 of the Internal Revenue Code, or letters or notices that notify the taxpayer of an assessment or proposed assessment of the tax. Thus, in the absence of any other letter or notice described in paragraph (c)(2) or (c)(3) of this section that establishes an earlier applicable date, the applicable date in the case of any underpayment of a tax attributable, in whole or in part, to a partnership item (as defined in section 6231(a)(3)) is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment of the tax.

(5) *Exception of payment of amount shown as due—(i) In general.* A letter of notice will be disregarded for purposes of determining the applicable date if the taxpayer makes a payment equal to the amount shown as due in the letter or notice within 30 days from the date that the Service sends the letter or notice.

(ii) *Special transition rule.* A letter or notice sent by the Service prior to January 1, 1991, will be disregarded by the Service for purposes of determining the applicable date if the taxpayer makes a payment on or before January 31, 1991, equal to the amount shown as due in the letter or notice plus a reasonable estimate of the interest payable on such amount computed by applying the section 6621(a)(2) rate. If the taxpayer has received two or more letters or notices with respect to the same tax for the same taxable period and pays the amount shown as due in the last letter or notice sent prior to December 19, 1990, (plus a reasonable estimate of the

interest), all of the prior letters and notices with respect to the same tax for the same taxable period will be disregarded under this paragraph (c)(5)(ii). In the case of an assessment notice, the payment of the amount of interest shown as due on the last assessment notice sent to the taxpayer prior to December 19, 1990, will be treated as a payment of a reasonable estimate of the interest payable on the amount shown in that assessment notice or in any prior assessment notice sent with respect to the same tax for the same taxable period. The special transition rule in this paragraph (c)(5)(ii) applies even if the payment is not made within 30 days of the date on which the Service sent the letter or notice.

(iii) *Amount shown as due.* For purposes of section 6621(c)(2)(B)(ii) and this paragraph (c)(5), the "amount shown as due" in any letter or notice means the total amount of tax, as well as any interest, penalties, additional amounts, and additions to tax that are set forth in the letter or notice. A deposit in the nature of a cash bond will not be considered a payment of the amount shown as due.

(6) *Exception for withdrawn letters and notices—(i) Letters of proposed deficiency.* A letter of proposed deficiency will be disregarded for purposes of determining the applicable date if the letter of proposed deficiency is issued as a result of an administrative error either to the wrong taxpayer or for the wrong taxable period.

(ii) *Deficiency notices.* A deficiency notice under section 6212 of the Internal Revenue Code will be disregarded for purposes of determining the applicable date if the deficiency notice is rescinded under section 6212(d).

(iii) *Assessment letters and notices.* A letter or notice that notifies the taxpayer of an assessment or proposed assessment of tax will be disregarded for purposes of determining the applicable date if the full amount of tax assessed is subsequently abated.

(d) *Examples.* The application of this section may be illustrated by the following examples.

Example 1. V, a C corporation, timely files Form 941 on January 31, 1991, for the fourth quarter of 1990. On September 1, 1992, the

Service sends V a section 6303 notice and demand reflecting an additional FICA tax liability for that quarter of \$90,000. Interest computed at the section 6621(a)(2) rate totals \$15,000 as of September 1, 1992. Accordingly, V's underpayment of FICA tax for the fourth quarter of 1990 exceeds \$100,000. However, V's \$90,000 threshold underpayment of FICA tax for that taxable period is less than \$100,000, so that the section 6621(c) rate will not apply to the underpayment for that taxable period.

Example 2. (i) W, a C corporation, timely files its 1990 income tax return on March 15, 1991, showing a liability of \$95,000, of which W pays only \$35,000 with the return. On June 1, 1991, the Service sends W an assessment notice reflecting the balance due of \$60,000 plus interest computed at the section 6621(a)(2) rate. W pays all amounts due on August 1, 1991. On July 1, 1993, the Service sends W a 90-day letter (without having sent a 30-day letter) reflecting an additional income tax deficiency of \$85,000 for the taxable year 1990. W files a petition in the Tax Court within 90 days. In 1995, the Tax Court determines a \$50,000 income tax deficiency (exclusive of interest, penalties, additional amounts, and additions to tax) for 1990, which the Service promptly assesses against W.

(ii) As a result of the combination of the failure to timely pay the \$60,000 of income tax reported as due on the return and the Tax Court's determination of an additional deficiency of \$50,000, W's threshold underpayment of income tax for 1990 is \$110,000. Because W is a C corporation and the threshold underpayment for 1990 exceeds \$100,000, the section 6621(c) rate applies to W's 1990 large corporate underpayment for periods after the applicable date.

(iii) The applicable date is July 1, 1991, the 30th day after the date on which the Service sent W the first assessment notice.

(iv) From March 16, 1991, through July 1, 1991, interest on W's 1990 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621(a)(2) rate. From July 2, 1991, such interest is computed at the section 6621(c) rate.

(v) If W had paid the amount shown as due on the June 1, 1991, assessment notice on or before June 30, 1991, instead of on August 1, 1991, the applicable date would have been July 31, 1993.

(vi) Assume that W had paid the amount shown as due on the June 1, 1991, assessment notice on or before June 30, 1991. If W had made a \$40,000 deposit in the nature of a cash bond on July 15, 1993, the applicable date would be July 31, 1993. Moreover, the deposit would have no effect on the existence or amount of W's threshold underpayment or large corporate underpayment for 1990. In such a case, however, when the Service assesses the amount due from W in 1995, the de-

posit would be treated as a payment made as of July 15, 1993, for purposes of computing interest due after that date. As a result, interest would accrue after July 15, 1993, (at the section 6621(c) rate) only on the portion of W's 1990 underpayment that exceeds the \$40,000 deposit amount.

Example 3. (i) X, a C corporation, filed its 1989 income tax return on September 17, 1990, pursuant to an automatic extension. X enclosed payment of the \$7,500 balance reported on the return as due (plus interest). On January 1, 1992, the Service sends X a written notification that X's 1989 income tax return is being examined. This written notification also contains a request that X provide supplemental information with respect to particular deductions totalling \$1.5 million. On July 1, 1993, the Service sends X a 30-day letter proposing a \$450,000 deficiency (without any reference to penalties, additional amounts, additions to tax, and interest) with respect to 1989. On December 15, 1993, the Service sends X a 90-day letter asserting a deficiency of \$300,000 (excluding penalties, additional amounts, additions to tax, and other interest). X does not file a Tax Court petition and the Service assesses the \$300,000 (plus interest and penalties) on April 1, 1994. On April 5, 1994, X pays the full amount assessed. Thereafter, X timely files an administrative claim for refund and a refund suit in federal district court for the amounts assessed on April 1, 1994. On September 30, 1995, the federal district court determines that, exclusive of interest and penalties, X overpaid its 1989 income tax by \$250,000.

(ii) The April 1, 1994, assessment establishes at that time that X's threshold underpayment of income tax for 1989 is \$300,000. Because X is a C corporation and the threshold underpayment for 1989 exceeds \$100,000, X's underpayment of income tax for 1989 is a large corporate underpayment to which the section 6621(c) rate applies for periods after the applicable date. X's decision to file a refund claim does not affect, in and of itself, either the existence of a threshold underpayment or the amount of X's large corporate underpayment.

(iii) For purposes of determining the amount of interest to assess on April 1, 1994, the applicable date is July 31, 1993, the 30th day after the date on which the Service sent X a 30-day letter. The January 1, 1992, notice of examination and request for additional information has no effect on the applicable date. Similarly, the September 30, 1995, federal district court decision has no effect on the applicable date.

(iv) From March 16, 1990, through July 31, 1993, interest on X's 1989 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621(a)(2) rate. From

August 1, 1993, through April 5, 1994, such interest is computed at the section 6621(c) rate.

(v) Because of the federal district court's decision that X's underpayment, exclusive of interest and penalties, was only \$50,000, X does not have a large corporate underpayment of income tax for 1989. Thus, the interest X paid with respect to the remaining \$250,000 in taxes (exclusive of interest and penalties) becomes part of the overpayment and will be refunded. In addition, any interest computed at the section 6621(c) rate for the period from August 1, 1993, through April 5, 1994, should be recomputed at the section 6621(a)(2) rate and the difference refunded.

Example 4. (i) Y, a C corporation, timely filed its 1989 income tax return on March 15, 1990, and enclosed payment of the amount reported on the return as due. On May 1, 1990, the Service sent to Y an assessment notice for \$1,000 resulting from a math error on Y's return. Y did not request an abatement of the assessment pursuant to section 6213(b). Instead, Y paid the \$1,000, plus interest, on July 31, 1990. On March 31, 1992, the Service sends Y a 90-day letter showing an income tax deficiency for 1989 of \$125,000 (exclusive of interest, penalties, additional amounts, and additions to tax). No 30-day letter had been issued previously to Y in connection with its 1989 taxable year. Y does not file a petition with the Tax Court, but files an amended return for 1989 on April 15, 1992, showing \$30,000 of tax due. Y pays this amount (plus interest from March 15, 1990, computed at the section 6621(a)(2) rate) with the amended return. Shortly thereafter, the Service assesses the \$125,000 deficiency (plus interest) and credits the April 15, 1992, payment against the assessment.

(ii) Y's threshold underpayment for 1989 is \$125,000 notwithstanding Y's April 15, 1992, payment of \$30,000. Because Y is a C corporation and the threshold underpayment for 1989 exceeds \$100,000, Y has a large corporate underpayment of income tax for the taxable period 1989 to which the section 6621(c) rate applies for periods after the applicable date.

(iii) Because Y paid the \$1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date is April 30, 1992, the 30th day after the 90-day letter is sent.

(iv) From March 16, 1990, through April 30, 1992, interest is computed on Y's underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) at the section 6621(a)(2) rate. From May 1, 1992, such interest is computed at the section 6621(c) rate.

(v) If Y had not paid the \$1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date would have been May 31, 1990, and interest would be computed at the section 6621(c) rate beginning on January 1, 1991. If, however, Y had timely re-

quested an abatement of the assessment under section 6213(b), the applicable date would be April 30, 1992.

Example 5. (i) Effective January 1, 1993, Y converts from a C corporation to an S corporation. On January 31, 1993 Y files its 1992 FUTA tax return and encloses a payment equal to the amount reported as due on the return. On March 15, 1993, Y files its 1992 income tax return and encloses a payment equal to the amount reported as due on the return. On August 1, 1993, the Service sends to Y an assessment notice for \$150,000 of FUTA tax, plus interest, with respect to calendar year 1992. Y pays the full amount shown as due in the assessment notice on August 7, 1993. On January 1, 1995, Y files an amended income tax return for 1992 showing \$15,000 of tax due. Y pays this amount with the amended return. On February 10, 1995, the Service sends Y an assessment notice for the interest payable on the \$15,000. Y pays this interest on February 13, 1995.

(ii) Y's threshold underpayment of FUTA tax for 1992 is \$150,000. Because Y was a C corporation in 1992 and the threshold underpayment of FUTA tax for 1992 exceeds \$100,000, Y has a large corporate underpayment of FUTA tax. However, Y's threshold underpayment of income tax for the same taxable period (*i.e.*, calendar 1992) is \$15,000, so that Y does not have a large corporate underpayment of income tax for that year.

(iii) Because Y pays within 30 days the amount shown as due on the August 1, 1993, assessment notice, there is no applicable date with respect to the large corporate underpayment of FUTA tax for 1992.

(iv) All of the interest payable with respect to the 1992 underpayments of FUTA and income taxes is computed at the section 6621(a)(2) rate.

(v) If Y had not paid the amount shown as due on the August 1, 1993, FUTA tax assessment notice within 30 days, the applicable date would have been August 31, 1993, (the 30th day after the assessment notice is sent). Thus, interest would have been computed at the section 6621(c) rate after that date, even though Y is not at that time a C corporation.

(vi) If the amended 1992 income tax return Y files on January 1, 1995, had shown \$115,000 of tax due instead of \$15,000, Y's threshold underpayment of income tax for 1992 would have been \$115,000. Because Y was a C corporation in 1992 and the threshold underpayment of income tax for that year would have exceeded \$100,000, Y would have a large corporate underpayment of income tax for that year. However, because Y would have paid the amount shown as due in the February 10, 1995, assessment notice within 30 days of when that assessment notice was sent, there would have been no applicable

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date with respect to that large corporate underpayment and the section 6621(c) rate would have not applied.

Example 6. (i) On August 1, 1990, the Service sent to Z, a C corporation, an assessment notice for \$200,000 of income tax, plus \$30,000 in interest and penalties, with respect to calendar year 1988. Subsequent assessment notices were sent to Z on September 12, 1990, October 10, 1990, and November 14, 1990, each including additional interest. The November 14, 1990, assessment notice provided that the total amount of tax, interest and penalties due was \$242,000. On December 31, 1990, Z pays \$230,000. On February 13, 1991, the Service sends Z an assessment notice for the remaining balance (plus additional interest thereon). On December 31, 1991, Z pays all amounts owed as of that date in connection with its 1988 income tax liability.

(ii) Z's threshold underpayment of income tax for 1988 is \$200,000. Because Z is a C corporation and its threshold underpayment of income tax for 1988 exceeds \$100,000, Z has a large corporate underpayment for 1988 to which the section 6621(c) rate applies for periods after the applicable date.

(iii) Notwithstanding Z's payment of \$230,000 on December 31, 1990, the applicable date with respect to the large corporate underpayment of 1988 income tax is August 31, 1990, the 30th day after the date on which the Service sent the first assessment notice.

(iv) From March 16, 1989, to December 31, 1990, interest is computed on Z's underpayment of income tax (including any interest, penalties, additional amounts and additions to tax) at the section 6621(a)(2) rate. From January 1, 1991, through December 31, 1991, interest is computed on that underpayment at the section 6621(c) rate.

(v) If Z had paid on or before January 31, 1991, the full \$242,000 shown as due on the November 14, 1990, assessment notice, the applicable date with respect to any remaining unpaid interest would have been March 15, 1991, the 30th day after the Service sent the February 13, 1991, assessment notice.

(vi) The same result as in paragraph (v) of this *Example 6* would apply if the November 14, 1990, assessment notice had provided that only \$150,000 was due with respect to calendar year 1988 (as a result of a correction by the Service of an error in its original August 1, 1990, assessment, and not as a result of any payment by Z), and if Z had paid that \$150,000 on or before January 31, 1991.

(e) *Effective date.* Section 6621(c) and this section are effective for determining interest for periods after December 31, 1990, regardless of the taxable period to which the underlying tax

may relate and even if the applicable date is prior to December 31, 1990.

[T.D. 8447, 57 FR 53554, Nov. 12, 1992; 57 FR 60846, Dec. 22, 1992]

§ 301.6622-1 Interest compounded daily.

(a) *General rule.* Effective for interest accruing after December 31, 1982, in computing the amount of any interest required to be paid under the Internal Revenue Code of 1954 or sections 1961(c)(1) or 2411 of title 28, United States Code, by the Commissioner or by the taxpayer, or in computing any other amount determined by reference to such amount of interest, or by reference to the interest rate established under section 6621, such interest or such other amount shall be compounded daily by dividing such rate of interest by 365 (366 in a leap year) and compounding such daily interest rate each day.

(b) *Exception.* Paragraph (a) of this section shall not apply for purposes of determining the amount of any addition to tax under sections 6654 or 6655 (relating to failure to pay estimated income tax).

(c) *Applicability to unpaid amounts on December 31, 1982—(1) In general.* The unpaid interest (or other amount) that shall be compounded daily includes the interest (or other amount) accrued but unpaid on December 31, 1982.

(2) *Illustration.* The provisions of this (c) may be illustrated by the following example.

Example. Individual A files a tax return for calendar year 1981 on April 15, 1982, showing a tax due of \$10,000. A pays \$10,000 on December 31, 1982, but A does not pay any interest with respect to this underpayment until March 1, 1983, on which date A paid all amounts of interest with respect to the \$10,000 underpayment of tax. On December 31, 1982, A's unsatisfied interest liability was \$1,424.66 (\$10,000 × 20 percent × 260/365 days). Interest, compounded daily, accrues on this unsatisfied interest obligation beginning on January 1, 1983, until March 1, 1983, the date the total interest obligation is satisfied. On March 1, 1983, the total interest obligation is \$1,462.62, computed as follows:

Item	Amount
Unpaid tax at December 31, 1982	0
Unpaid interest at December 31, 1982	\$1,424.66