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Subject: Transferee interest;

A. Value of the transferred assets as less than or more than the transferor's liability.

Where the value of assets transferred is less than the transferor's liability, the Chief Counsel litigating position is based on a general rule stated in Estate of Stein v. CIR, 37 T.C. 945, 961 (1962). See, FSA 1993 WL 1470312. That general rule in Stein provides:

[W]here ... the transferred assets are insufficient to pay the transferor's total liability, interest is not assessed against the deficiencies because the transferee's liability for such deficiencies is limited to the amount actually transferred to him. Interest may be charged against the transferee only for the use of the transferred assets, and since this involves the extent of transferee liability, it is determined by state law. [Citing CIR v. Stern, 357 U.S. 39, 45-47 (1958).]

Thus, state law may provide for such interest during the second period though, thereby, the total liability imposed on the transferee exceeds the value of the assets received by the transferee. See, also, Voss v. Wiseman, 234 F.2d 237 (10th Cir. 1956); Pallister v. U.S., 182 F. Supp. 720 (SD NY 1960); Patterson v. Sims, 281 F.2d 577 (5th Cir. 1960); IRM 4.10.13.3.5, IRM 5.17.14.5.9, IRM 8.7.5.6.2.

Although calculated in respect of the use of the transferred assets, the premise for state law imposition of the interest during the second period may be the transferee's participation or knowledge (tort), use of assets (implied contract), or a right to pre-judgment interest (discretionary or to encourage settlement). See, Stansbury v. CIR, 102 F.3d 1088 (10th Cir. 1996) (the transferees were liable for interest from the date of transfer rather than from the date interest began on the determined liability of the transferee, even though the value of transferred assets were less than the transferor's liability, where the transferees caused the transfer); Estate of Stein v. CIR, 37 T.C. 945 (1962) (due to actual fraud, the transferees were liable for interest from the date of transfer even though the value of the assets transferred was less than the transferor's liability on the date of transfer); Borg v. CIR, T.C.Memo. 1987-596 (state law provided for pre-judgment interest).

Where the total value of assets transferred is more than the transferor's total tax liability on the date of transfer, another general rule stated in Stein, supra, at 961, provides:

In cases where the transferred assets exceed the total liability of the transferor, the interest being charged is upon the deficiency, and is therefore a right created by the Internal Revenue Code.

Thus, section 6601 interest accrues on the total tax liability during the second period and is recoverable from the transferee to the extent that the total liability imposed on the transferee is not in excess of the value of assets received by the transferee. Robinette v. CIR, 139 F.2d 285 (6th Cir. 1943) (transferee chargeable with interest as the transferor would have been, the excess of the value of the assets over the tax liability of the transferor was peculiarly within the knowledge of the transferee, and she should have shown this value if she wished to win on the question of interest); Doman v. Moe, 183 F. Supp. 802 (SD NY 1959) (if the value of the transferred assets exceeded the transferor's liability on the date of transfer, the transferee was liable for interest to the extent of such excess); Lowy v. CIR, 35 T.C. 393 (1960) (where the value of the transferred assets was substantially in excess of the transferor's liability, the transferee was held liable for all of the federally imposed interest from the date of transfer to the date of notice); Bos Lines Inc. v. CIR, 354 F.2d 830 (8th Cir. 1965) (alternative to the primary holding of successor liability by contract, where the value of the assets transferred exceeded the transferor's liability by an amount sufficient to cover the deficiency plus interest the transferee was liable for interest which accrued on the transferor's liability); Nat'l Pneumatic Co. v. U.S., 176 Ct. Cl. 660 (Ct. Cl. 1966) (where assets received exceeded liabilities assumed by an amount larger than the interest imposed from the date of transfer to the date of payment, the interest was properly assessed against the transferee).

Where the total value of assets transferred exceeded the transferor's total liability on the date of transfer, and the excess of value of assets has been exhausted by the imposition of section 6601 interest but time remains in the second period, imposition of interest under state law may apply under the principles first discussed above.

B. Multiple transferees. Generally, where the transferor's assets are distributed to more than one transferee, the total value of assets among all transferees is subject to collection of the transferor's total liability, and the value of assets in the possession of any one of the transferees is in full subject to collection of the transferor's liability. There are a number of factors to be taken into account in determining the limits of collection in regard to the assets in possession of one of multiple transferees.

1. Where the total value of the assets transferred to all transferees is less than the transferor's total tax liability, then each transferee is treated as having received less in value of assets than the applicable portion of the transferor's total tax liability, unless the portion of the transferor's total tax liability asserted against that transferee is less than the value of assets received by that transferee.
2. Where the value of assets received by any one, or each of more than one, of the transferees exceeds the total tax liability of the transferor, the total tax liability of the transferor can be asserted against each such transferee, and in that case each such transferee is viewed as receiving more in value of assets than the total tax liability of the transferor. Phillips v. CIR, 283 U.S. 589, 603-604 (1931). One full, final payment, however, will discharge the whole liability. Exton v. CIR, 33 B.T.A. 215, 224 (1935).
3. Where the total value of the assets transferred to all transferees is more than the transferor's total tax liability, then each transferee should be treated as having received more in value of assets than an allocable portion of the transferor's total tax liability, unless the portion of the transferor's total tax liability asserted against that transferee is more than the value of assets received by that transferee.