

1999-015  
October 18, 1999

CC:DOM:FS:PROC  
PWFuller

**ACTION ON DECISION**

SUBJECT: William & Helen Woodral v. Commissioner  
112 T.C. 19 (1999)  
T.C. Dkt. No. 6385-98

**Issues:** To the extent that petitioners' claim for abatement of interest on employment taxes arises under I.R.C. § 6404(a), whether the Tax Court lacks jurisdiction to review the Internal Revenue Service's denial of that claim, *i.e.*, whether the Court's jurisdiction is limited to reviewing the denial of claims brought under section 6404(e).

**Discussion:** Petitioner husband ("petitioner") and his brother were general partners in a partnership. Petitioner's brother filed the employment tax returns for the periods at issue; he did not pay, however, the taxes due per the returns. Approximately 7 years after the returns were filed, petitioner received a Final Notice (Notice of Intent to Levy) from the Service. Petitioner paid the employment taxes but did not pay the interest attributable to the taxes. Petitioners filed a petition with the Tax Court requesting the abatement of penalties and interest attributable to the employment taxes. Petitioners argued that the Service should not have waited 7 years to notify petitioner that there was an outstanding employment tax liability. They contended that as a result of the delay, the interest assessed was excessive. They did not assert that the interest was calculated incorrectly.

The Service argued that the legislative history underlying section 6404(g) (now 6404(i)) and the amendment to section 6404(e) suggested that the Court's jurisdiction was limited to reviewing the Service's denial of a claim brought under section 6404(e). The Service also argued that the Court lacked jurisdiction over the claim for an abatement of penalties. The Court held that it was unnecessary to look to the legislative history because the language of section 6404(g) clearly granted the Tax Court jurisdiction to review the Service's failure to abate interest under section 6404, not just subsection 6404(e). The Court then concluded that the evidence failed to establish that the interest on the employment taxes was excessive in amount, assessed after the expiration of the period of limitations, or erroneously or illegally assessed. Thus, no abatement was warranted under section 6404(a). Further, the Court affirmed the Service's position that the Service had no authority to abate interest on employment tax where the claim was based on section 6404(e)(1). Finally, although the Court held that it had jurisdiction to review the Service's failure to abate interest on employment taxes, it agreed with the Service's position that it did not have jurisdiction to review the Service's failure to abate an assessment of employment taxes or penalties.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname							

We will continue to seek to dismiss cases for lack of jurisdiction where the taxpayer is actually questioning the underlying employment tax liability. Similarly, we will seek to dismiss requests for abatement of penalties for lack of jurisdiction. The correct course of action for a taxpayer in those situations is to pursue a refund claim in a district court or the Court of Federal Claims. We accept, however, the Tax Court's determination that it has jurisdiction to review the Service's determination not to abate interest on employment taxes (or on any other tax) under section 6404 when the requirements of section 6404(i) (formerly section 6404(g)) are met.

**Recommendation:** Acquiescence.

**Reviewers:**

\_\_\_\_\_  
Pamela Wilson Fuller  
Senior Attorney

Approved:

STUART L. BROWN  
Chief Counsel

By: \_\_\_\_\_  
Judith C. Dunn  
Associate Chief Counsel  
(Domestic)