SEC 2. BACKGROUND

.01 On November 29, 1977, in *Commissioner v. Kowalski,* 434 U.S. 77 (1977), Ct. D. 1987, 1978-1 C.B. 15, the Supreme Court of the United States held that cash meal allowance payments received by a state trooper are includible in gross income under section 61 of the Internal Revenue Code. The Court also held that the payments are not subject to exclusion from gross income under section 119 of the Code.

.02 Congress, believing that the decision of the Supreme Court should not be applied to certain cash meal allowance payments received prior to 1978, enacted Pub. L. 95-427, as amended by Pub. L. 96-605. Section 3 of Pub. L. 95-427 prescribes the treatment to be accorded certain statutory subsistence allowances or subsistence allowances negotiated in accordance with state law, received by state police officers before January 1, 1978.

.03 Section 3 of Pub. L. 95-427 provides that if an individual who was employed as a state police officer received, while so employed, a statutory subsistence allowance or a subsistence allowance negotiated in accordance with state law, and elects in the manner prescribed by the Secretary of the Treasury, to have Section 3 apply to the allowance, and that section does apply, then, for purposes of the Code, the allowance will not be included in the individual's gross income.

.04 Section 2.04.1 of Rev. Proc. 79-13 provides that with respect to allowances received in 1970-1976, section 3 of Pub. L. 95-427 applies, and the election may therefore be made, with respect to any statutory subsistence allowance or subsistence allowance negotiated in accordance with state law that was received after January 31, 1969, and before January 1, 1977, to the extent the allowance either (i) was not included in the recipient's gross income on the recipient's federal income tax returns, or (ii) was included in gross income but offset by deductions for expenses of which the allowance was received.

.05 Section 2.04.2 of Rev. Proc. 79-13 provides that the election and the benefits of section 3 of Pub. L. 95-427, are not available for statutory subsistence allowances or subsistence allowances negotiated in accordance with state law received during the years 1970-1976, to the extent such allowance was included in gross income on the officer's federal income tax return and was not offset by deductions for expenses in respect of which the allowance was received.

.06 Section 2.05 of Rev. Proc. 79-13 provides that with respect to allowances received in 1977 section 3 of Pub. L. 95-427 applies, and the election may therefore be made, with respect to any statutory subsistence allowance or subsistence allowance negotiated in accordance with state law received during the calendar year 1977, whether or not the allowance was included in gross income on the recipient's federal income tax return or was offset by deductions for expenses in respect of which the allowance was received.

.07 Pub. L. 96-605 amended Pub. L. 95-427 to allow a credit or refund of taxes paid by state police officers with respect to subsistence allowances received in 1974 through 1977, whether or not the allowances were included in gross income.

SEC. 3. SCOPE

.01 The effect of section 107 of Pub. L. 96-605, is to extend the tax treatment accorded allowances received in 1977 under section 3 of Pub. L. 95-427, to allowances received in calendar years 1974 through 1976, provided a claim for refund or credit is filed on or before December 28, 1981. Section 107 of Pub. L. 96-605 did not change the tax treatment of allowances received in calendar years 1970-1973, as provided in section 3 of Pub. L. 95-427.

.02 Rev. Proc. 79-13 is modified to provide that with respect to allowances received in 1974-1977, section 3 of Pub. L. 95-427, as amended, applies, and the election may therefore be made, with respect to any statutory subsistence allowance or subsistence allowance negotiated in accordance with state law received during the calendar years 1974 through 1977, whether or not the allowance was included in gross income on the recipient's federal income tax return or was offset by deductions for expenses in respect of which the allowance was received.

.03 Rev. Proc. 79-13 is further modified to provide that pursuant to section 3 of Pub. L. 95-427, as amended, a refund or credit of any overpayment of tax for the years 1974 through 1977 resulting from the operation of section 3 of Pub. L. 95-427, as amended, is allowed if a claim is filed on or before December 28, 1981, notwithstanding that a refund or credit is prevented at any time on or before December 28, 1981, by operation of any law or rule of law, including res judicata.

.04 Rev. Proc. 79-13, section 7, entitled "Effect of Prior Audits," is modified, so that examples 1 through 4 dealing with the effect of audits prior to the enactment of Pub. L. 95-427 for allowances received during 1974 and 1975 will now apply to allowances received during 1970-1973. Example 5 of section 7 dealing with the effect of an audit on an allowance received in 1977 will now apply to allowances received during 1974-1977.

EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 79-13, 1979-1 C.B. 493, is modified.

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, Sections 2053, 6166, 6166A; 20.2053-3, 20.6166-1, 20.6166A-1)

Rev. Proc. 81-27

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth the procedure to be followed by an estate when installment payments due under sections 6166 or 6166A of the Internal Revenue Code are recomputed because of a reduction in the estate tax caused by the payment of interest on the tax due.

SEC. 2. BACKGROUND

.01 Estates that have elected to pay estate tax in installments under section 6166 or 6166A of the Code may, under certain circumstances, deduct the amount of interest accruing on the installment payments as an expense of administration under section 2053 (a)(2). See *Estate of Bahr v. Commissioner,* 68 T.C. 74 (1977), *acq.* 1978-1 C.B. 1; Rev. Rul. 78-125, 1978-1 C.B. 292.

.02 Rev. Rul. 80-250, 1980-2 C.B. 278, holds that such interest is deductible only when accrued. When the interest becomes deductible and the estate claims the deduction, the estate tax is recomputed. Installments due will be computed accordingly.

.03 Claims for refund are not allowed until the underlying tax is paid in full. Claims for abatement are barred by section 6404(b) of the Code.

SEC. 3. PROCEDURE

.01 An executor of an estate that deducts interest on an estate tax return after it is filed may file supplemental information on a Form 706, U.S. Estate Tax Return, as provided in section 20.6081-1(c) of the Estate Tax Regulations. The Form 706 should have the words "Supplemental Information" placed on the top.

.02 The supplemental Form 706 can be filed with the annual installment payment or be filed at a later date. However, the supplemental Form 706 cannot be filed before the payment of the interest for which the deduction is claimed.

.03 The supplemental Form 706 will not be considered a claim for refund or abatement. However, if the Service and the estate's representative agree to the amount of the overassessment as shown on the supplemental Form 706, or as adjusted by the Service, the amount of the overassessment will be abated. Thus, both the unpaid tax liability and the amount of interest accrued thereon will be reduced. Future installments due will be recalculated and any overpayment of an installment of either tax or interest will be applied to the next installment in accordance with section 6403 of the Code.

.04 If the final total of the installment payments made exceeds the estate tax liability, a claim for refund or credit can be filed. Such claim must be filed on Form 843, Claim, within the applicable period of limitations set forth in section 6511 of the Code.

SEC. 4. EFFECTIVE DATE

This revenue procedure is effective July 6, 1981, the date of its publication. However, estates may file supplemental Forms 706 with respect to interest payments made prior to that date.

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26 CFR 601.201: Forms and instrucutions. (Also Part I, Sections 1441, 1442, 1461; 1.1441-1, 1.1442-1, 1.1461-2.)

Rev. Proc. 81-28

PART A. GENERAL

SECTION 1. PURPOSE

.01 The purpose of this revenue procedure is to state the requirements for reproducing paper substitutes of Form 1042S, Income Subject to Withholding Under Chapter 3, Internal Revenue Code, Copy A only.

.02 For the purpose of this revenue procedure, a *substitute* form is one which does not *totally* conform to the official Internal Revenue Service form. Payee copies are not to be considered substitute forms.

SEC. 2. PAPER SUBSTITUTES FOR FORM 1042S

.01 Paper substitutes for Forms 1042S which *totally* conform to the specifications contained in this procedure may be privately printed without prior approval from the Internal Revenue Service. Proposed substitutes, not conforming to these specifications, must be submitted by withholding agents for consideration to:

Internal Revenue Service
Attn: TX:R:I Substitute Forms
Program
1111 Constitution Ave. NW
Washington, DC 20224

The request should be submitted by November 15 of the year prior to the year the form is to be used. This is to allow the Service adequate time to respond and the submitter adequate time to make any corrections. These requests should contain a copy of the proposed form, the need for the specific deviation(s), and the volume of information returns affected.

.02 Form 1042S is subject to annual review and possible change. Withholding agents and form suppliers are cautioned therefore against overstocking supplies of the privately printed substitutes.

.03 Copies of the official form for the reporting year may be obtained from most Internal Revenue District offices. The Service provides only cut sheets (no carbon interleaves) of these forms. The Service does not supply continuous fan-fold/pin-fed forms.

SEC. 3. INSTRUCTIONS FOR WITHHOLDING AGENTS

.01 Only original copies may be filed with the Internal Revenue Service. Carbon copies and reproduced copies are not acceptable.

.02 The term "Recipient's U.S. tax identifying no." for an individual means the social security number (SSN). The SSN consists of nine digits separated by hyphens as follows: 000-00-0000. For all other recipients, the term means employer identification number (EIN). The EIN consists of nine digits separated by one hyphen as follows: 00-0000000. The tax identifying number must be in one of these formats.

.03 The Service requests that withholding agents type or machine print whenever possible, provide quality data entries on the forms (i.e., use black ribbon, insert data in the middle of blocks well separated from other printing and guidelines), and take other measures to guarantee a clear sharp image. Withholding agents are not required, however, to acquire special equipment solely for the purpose of