

Internal Revenue Service, Treasury

§ 301.6402-2

§ 301.6363-3 with respect to transition-year rules.

[T.D. 7577, 43 FR 59375, Dec. 20, 1978]

ABATEMENTS, CREDITS, AND REFUNDS

Procedure in General

§ 301.6401-1 Amounts treated as overpayments.

(a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, special fuels, and, lubricating oil), 43 (relating to earned income credit), and 667(b) (relating to taxes paid by certain trusts) which exceeds the tax imposed by subtitle A of the Code (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1 of the Code, other than the credits allowable under sections 31, 39, and 43) for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

[T.D. 7204, 37 FR 17158, Aug. 25, 1972, as amended by T.D. 7537, 43 FR 13878, Apr. 3, 1978]

§ 301.6402-1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

[T.D. 8053, 50 FR 39662, Sept. 30, 1985]

§ 301.6402-2 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) In the case of a claim filed prior to April 15, 1968, the claim together with appropriate supporting evidence shall be filed in the office of the internal revenue officer to whom the tax was paid or with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer. Except as provided in paragraph (b) of § 301.6091-1 (relating to hand-carried documents), in the case of a claim filed after April 14, 1968, the claim, together with appropriate supporting evidence, shall be filed (i) with the Director of International Operations if the tax was paid to him or (ii) with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer; otherwise, the claim with appropriate supporting evidence must be filed with the service center serving the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts