subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section.

(d) *Disallowance of deficiency by reviewing court.* If the amount of the deficiency determined by the Tax Court (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor, subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section. (See section 7481, relating to date Tax Court decision becomes final.)

(e) *Collection in excess of amount determined by Tax Court.* Where the amount collected is in excess of the amount computed in accordance with the decision of the Tax Court which has become final, the excess payment shall be credited or refunded within the period of limitation provided in section 6511.

(f) *Collection after expiration of statutory period.* Where an amount is collected after the statutory period of limitation upon the beginning of levy or a proceeding in court for collection has expired (see section 6502, relating to collection after assessment), the taxpayer may file a claim for refund of the amount so collected within the period of limitation provided in section 6511. In any such case, the decision of the Tax Court as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6513–1 Time return deemed filed and tax considered paid.

(a) *Early return or advance payment of tax.* For purposes of section 6511, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax, or an election to pay any tax in installments, shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(b) *Prepaid income tax.* For purposes of section 6511 (relating to limitations on credit or refund) or section 6512 (relating to limitations in case of petition to Tax Court)—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 of the Code (relating to collection of income tax at source on wages) shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31 (relating to tax withheld on wages),

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the income tax return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return), and

(3) Any tax withheld at the source on or after November 13, 1966, under chapter 3 of the Code (relating to tax withheld on nonresident aliens and foreign corporations and tax-free covenant bonds) shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing his income tax return under section 6012 for the taxable year (determined without regard to any extension of time for filing such return) with respect to which such tax is allowable as a credit under section 1462 (relating to withheld tax as credit to recipient of income).

Subparagraph (3) of this paragraph (b), shall apply even though the recipient of the income has been granted under section 6012 and the regulations thereunder an exemption from the requirement of making an income tax return for the taxable year.

(c) *Return and payment of social security taxes and income tax withholding.* Notwithstanding paragraph (a) of this section, if a return (or payment) on or after November 13, 1966, of tax imposed

by chapter 3 of the Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), or if a return (or payment) of tax imposed by chapter 21 of the Code (relating to the Federal Insurance Contributions Act) or by chapter 24 of the Code (relating to the collection of income tax at source on wages), for any period ending with or within a calendar year is filed or paid before April 15 of the succeeding calendar year, for purposes of section 6511 (relating to limitations on credit or refund) the return shall be considered filed, or the tax considered paid, on April 15 of such succeeding calendar year.

(d) *Overpayment of income tax credited to estimated tax*. If a taxpayer elects under the provisions of section 6402(b) to credit an overpayment of income tax for a taxable year against estimated tax for the succeeding taxable year, the amount so credited shall be considered a payment of income tax for such succeeding taxable year (whether or not claimed as a credit on the estimated tax return for such succeeding taxable year). If the treatment of such amount as a payment of income tax for the succeeding taxable year results in an overpayment for such succeeding taxable year, the period of limitations applicable to such overpayment is determined by reference to that taxable year. An election so to credit an overpayment of income tax precludes the allowance of a claim for credit or refund of such overpayment for the taxable year in which the overpayment arises.

§ 301.6514(a)–1 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405.

§ 301.6514(b)–1 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

MITIGATION OF EFFECT OF PERIOD OF LIMITATIONS

§ 301.6521–1 Mitigation of effect of limitation in case of related employee social security tax and self-employment tax.

(a) Section 6521 may be applied in the correction of a certain type of error involving both the tax on self-employment income under section 1401 and the employee tax under section 3101 if the correction of the error as to one tax is, on the date the correction is authorized, prevented in whole or in part by the operation of any law or rule of law other than section 7122, relating to compromises. Examples of such law are sections 6212(c), 6401(a), 6501, 6511, 6512(a), 6514, 6532, 6901 (c), (d) and (e), 7121, and 7459(e).

(b) If the liability for either tax with respect to which the error was made has been compromised under section 7122, the provisions of section 6521 limiting the correction with respect to the other tax do not apply.

(c) Section 6521 is not applicable if, on the date of the authorization, correction of the effect of the error is permissible as to both taxes without recourse to such section.

(d) If, because an amount of wages, as defined in section 3121(a), is erroneously treated as self-employment income, as defined in section 1402(b), or an amount of self-employment income is erroneously treated as wages, it is necessary in correcting the error to assess the correct tax and give a credit or refund for the amount of the tax erroneously paid, and if either, but not both, of such adjustments is prevented by any law or rule of law (other than