

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 fil-

ing 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

section 7122), the amount of the assessment, or the amount of the credit or refund, authorized shall reflect the adjustment which would be made in respect of the other tax (either the tax on self-employment income under section 1401 or the employee tax under section 3101) but for the operation of such law or rule of law. For example, assume that during 1955 A paid \$10 as tax on an amount erroneously treated as "wages", when such amount was actually self-employment income, and that credit or refund of the \$10 is not barred. A should have paid a self-employment tax of \$15 on the amount. If the assessment of the correct tax, that is, \$15, is barred by the statute of limitations, no credit or refund of the \$10 shall be made without offsetting against such \$10 the \$15, assessment of which is barred. Thus, no credit or refund in respect of the \$10 can be made.

(e) As another example, assume that during 1955 a taxpayer reports wages of \$4,200 and net earnings from self-employment of \$900. By reason of the limitations of section 1402(b) he shows no self-employment income. Assume further that by reason of a final decision by the Tax Court of the United States, further adjustments to the taxpayer's income tax liability are barred. The question of the amount of his wages, as defined in section 3121, was not in issue in the Tax Court litigation, but it is subsequently determined (within the period of limitations applicable under the Federal Insurance Contributions Act) that \$700 of the \$4,200 reported as wages was not for employment as defined in section 3121(b). Therefore, the taxpayer is entitled to the allowance of a refund of the \$14 tax paid on such remuneration under section 3101. The reduction of his wages from \$4,200 to \$3,500 would result in the determination of \$700 self-employment income, the tax on which is \$21 for the year. Under section 6521, the overpayment of \$14 would be offset by the barred deficiency of \$21, thus eliminating the refund otherwise allowable. If the facts were changed so that the taxpayer erroneously paid tax on self-employment

income of \$700, having been taxed on only \$3,500 as wages, and within the period of limitations applicable under the Federal Insurance Contributions Act, it is determined that his wages were \$4,200, the tax of \$14 under section 3101, otherwise collectible, would be eliminated by offsetting under section 6521 the barred overpayment of \$21. The balance of the barred overpayment, \$7, cannot be credited or refunded.

(f) Another illustration of the operation of section 6521 is the case of a taxpayer who, for 1955, is erroneously taxed on \$2,500 as wages, the tax on which is \$50, and who reports no self-employment income. After the period of limitations has run on the refund of the tax under the Federal Insurance Contributions Act, it is determined that the amount treated as wages should have been reported as net earnings from self-employment. The taxpayer's self-employment income would then be \$2,500 and the tax thereon would be \$75. Assume that the period of limitations applicable to subtitle A of the Code has not expired, and that a notice of deficiency may properly be issued. Under section 6521, the amount of the deficiency of \$75 must be reduced by the barred overpayment of \$50.

**§ 301.6521-2 Law applicable in determination of error.**

The question of whether there was an erroneous treatment of self-employment income or of wages is determined under the provisions of law and regulations applicable with respect to the year or other taxable period as to which the error was made. The fact that the error was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of law and regulations at the time the action involved was taken is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action is contrary to the applicable provisions of the law and regulations as later interpreted, the error comes within the scope of section 6521.