

prior to the expiration of the applicable period of limitation on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this subparagraph.

(iv) For purposes of this subparagraph, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(v) For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

(2) *Income tax withheld from wages.* (i) If, in any return period in a calendar year, an employer collects from any employee more than the correct amount of tax under section 3402, and the employer pays the amount of such overcollection to the district director, the employer may repay or reimburse the employee in the amount thereof in any subsequent return period in such calendar year.

(ii) If the amount of the overcollection is repaid to the employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If the employer does not repay the amount of the overcollection, the employer may reimburse the employee by applying the amount of the overcollection against the tax under section 3402 which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made.

§ 31.6413(a)-2 Adjustment of overpayments.

(a) *Taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act—(1) Employee tax.* After an employer repays or reimburses an employee in the amount of an overcollection, as provided in paragraph (b)(1) of § 31.6413(a)-1, the employer may claim credit for such amount in the manner,

and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on a return for a period ending on or before the last day of the return period following the return period in which the error was ascertained. No credit or adjustment in respect of an overpayment shall be entered on a return after the filing of a claim for refund of such overpayment.

(2) *Employer tax.* If an employer pays more than the correct amount of employer tax under section 3111 or section 3221, or a corresponding provision of prior law, the employer may claim credit for the amount of the overpayment in the manner, and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on the same return on which the employer adjusts, pursuant to paragraph (a)(1) of this section, a corresponding overpayment of employee tax.

(b) *Income tax withheld from wages.* If, pursuant to paragraph (b)(2) of § 31.6413(a)-1, an employer repays or reimburses an employee in the amount of an overcollection of tax under section 3402, the employer may adjust the overcollection, without interest, by entering the amount thereof as a deduction on a return of tax under section 3402, filed by the employer for any return period in the calendar year in which the employer repays or reimburses the employee. The return on which the adjustment is entered as a deduction shall have attached thereto a statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations in this subpart and by the instructions relating to the return.

§ 31.6413(a)-3 Repayment by payor of tax erroneously collected from payee.

(a) *In general—(1) Erroneous withholding under section 3406 of the Internal Revenue Code.* If a payor or broker withholds under section 3406 from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may

refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker will be considered to have withheld erroneously under section 3406 only if the amount is withheld because of an error by the payor or broker (e.g., an error in flagging or identifying an account that is subject to withholding under section 3406). The payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee if—

(i) The payor or broker requires a payee described in § 31.3406(g)-1(a) or described in a provision of the Internal Revenue Code requiring the reporting of a payment subject to withholding under section 3406 to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds under section 3406 from a payment to the payee;

(ii) The payor or broker does not require the payee to certify concerning its exempt status and the payor or broker withholds under section 3406;

(iii) The payor or broker withholds under section 3406 from a payee after the payee provides a taxpayer identification number or required certification (including the documentation described in § 1.1441-1(e)(1)(ii), 1.6045-1(g)(3), or 1.6049-5(c) of this chapter) to the payor, but before the payor or broker treats the number or required certification as having been received under § 31.3406(e)-1(b); or

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the documentation described in § 1.1441-1(e)(1)(ii) of this chapter and the payee subsequently furnishes, completes, or corrects the documentation. The documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph

(a)(1)(iv) of this section), if a payor or broker withholds because the payor or broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) *Refunding amounts erroneously withheld*—(1) *Time and manner.* If a payor or broker withholds under section 3406 from a payee in error (including withholding more than the correct amount, as described in paragraph (a) of this section), the payor or broker may refund the amount erroneously withheld to the payee if the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker must—

(i) Keep as part of its records a receipt showing the date and amount of refund and must provide a copy of the receipt to the payee (a canceled check or an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld);

(ii) Not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee; and

(iii) Not deposit the amount erroneously withheld if the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee.

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person,

as described in paragraph (a)(1)(iv) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code and the regulations under that chapter. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code (and the regulations thereunder), returns must be made in accordance with the requirements of § 1.1461-1 (b) and (c) of this chapter.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53494, Oct. 14, 1997]

§ 31.6413(b)-1 Overpayments of certain employment taxes.

For provisions relating to the adjustment of overpayments of tax imposed by section 3101, 3111, 3201, 3221, or 3402, see § 31.6413(a)-2. For provisions relating to refunds of tax imposed by section 3101, 3111, 3201, or 3221, see §§ 31.6402(a)-1 and 31.6402(a)-2. For provisions relating to refunds of tax imposed by section 3402, see §§ 31.6402(a)-1 and 31.6414-1.

§ 31.6413(c)-1 Special refunds.

(a) *Who may make claims*—(1) *In general.* (i) If an employee receives wages, as defined in section 3121(a), from two or more employers in any calendar year:

(a) After 1954 and before 1959 in excess of \$4,200,

(b) After 1958 and before 1966 in excess of \$4,800,

(c) After 1965 and before 1968 in excess of \$6,600,

(d) After 1967 and before 1972 in excess of \$7,800,

(e) After 1971 and before 1973 in excess of \$9,000,

(f) After 1972 and before 1974 in excess of \$10,800,

(g) After 1973 and before 1975 in excess of \$13,200, or

(h) After 1974 in excess of the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective with respect to such year,

the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid) exceeds the employee tax with respect to the amount specified in (a) through (h) of this subdivision for the calendar year in question. Employee tax imposed by section 3101 with respect to tips reported by an employee to his employer and collected by the employer from funds turned over by the employee to the employer (see section 3102(c)) shall be treated, for purposes of this paragraph, as employee tax deducted from wages received by the employee. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in § 1.21-2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

Example 1. Employee A in the calendar year 1968 receives taxable wages in the amount of \$5,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of \$15,000. Employee tax (computed at 4.4 percent, the aggregate employee tax rate in effect in 1968) is deducted from A's wages in the amount of \$220 by B and \$220 by C, or a total of \$440. Employer D pays employee tax in the amount of \$220 without deducting such tax from A's wages. The employee tax with respect to the first \$7,800 of such wages is \$343.20. A is entitled to a special refund of \$96.80 (\$440 minus \$343.20). The \$5,000 of wages received from employer D and the \$220 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.