

show his tax on such form (see section 6014 and the regulations thereunder), be treated as a claim for refund (or for claims filed before July 1, 1976, constitute an election by the taxpayer to have the return treated as a claim for refund), and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the computation of the tax made by the district director or the director of the regional service center on the basis of the return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502-1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(d) In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Code, a copy of the Form 1042-S required to be provided to the beneficial owner pursuant to § 1.1461-1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042-S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to § 1.1461-2(a)(2) of this chapter, that was subject to a set-off pursuant to § 1.1461-2(a)(3) of this chapter, or in

accordance with the provisions of an agreement that a qualified intermediary described in § 1.1441-1(e)(5)(ii) has in effect with the Internal Revenue Service. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International), may require establishing that the taxpayer is the beneficial owner of the income for which a claim of refund or credit is being made.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7102, 36 FR 5498, Mar. 24, 1971; T.D. 7234, 37 FR 28163, Dec. 21, 1972; T.D. 7293, 38 FR 32804, Nov. 28, 1973; T.D. 7298, 38 FR 35234, Dec. 26, 1973; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. 7808, 47 FR 5714, Feb. 8, 1982; T.D. 8053, 50 FR 39662, Sept. 30, 1985; T.D. 8734, 62 FR 53495, Oct. 14, 1997]

**§ 301.6402-4 Payments in excess of amounts shown on return.**

In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director or the director of the regional service center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402-2 and 301.6402-3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402-3) to protect themselves in the event the district director or the director of the regional service center

fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds of more than \$100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.

**§ 301.6402-5 Offset of past-due support against overpayment.**

(a) *Introduction*—(1) *Scope*. Section 6402(c) requires the Secretary of the Treasury or his delegate to reduce the amount of any overpayment to be refunded to a person making an overpayment by the amount of past-due support owed by that person of which the Secretary has been notified in accordance with section 464 of the Social Security Act. Past-due support shall be collected by offset under section 6402(c) and this section in the same manner as if it were a liability for tax imposed by the Internal Revenue Code of 1954 (except that a liability for tax shall be given priority with respect to offset arising under section 6402(a)). Collection by offset under section 6402(c) of this section is a collection procedure separate from the collection procedures provided by section 6305 and § 301.6305-1, relating to assessment and collection of certain child and spousal support liabilities. The sole collection procedure provided by section 6402(c) and this section is that of offset against overpayment. Section 6305 and § 301.6305-1, by contrast, provide for other collection procedures in addition to collection by offset against overpayment. Sections 6305 and 6402(c) have differing procedural requirements and may be used separately or in conjunction with each other.

(2) *General rule*. An amount of past-due support qualifies for offset under this section if it satisfies the requirements of paragraph (b) of this section. A State shall submit to the Department of Health and Human Services a notification of liability for qualifying past-due support containing the information described in paragraph (c) of this section. A qualifying amount of past-due support owed by a taxpayer who has made an overpayment shall be

collected in accordance with the procedures set forth in paragraph (d) of this section. Under paragraph (d), the balance of any overpayment remaining after crediting of the overpayment under section 6402(a) to any liability for an internal revenue tax on the part of the taxpayer shall be offset by the amount of past-due support of which the Internal Revenue Service has been notified. The amount of the overpayment not subject to offset for any liability for an internal revenue tax or for past-due support shall be promptly refunded to the taxpayer. Paragraph (e) of this section requires that the Internal Revenue Service notify the taxpayer of the amount of the offset and of the State to which it has been paid. Under procedures set forth in paragraph (f) of this section, amounts collected by offset shall be transferred to a special account maintained by the Bureau of Government Financial Operations for distribution to the States. The Internal Revenue Service shall make monthly collection reports to the Secretary of Health and Human Services or his delegate. The States shall reimburse the Secretary of the Treasury for the full cost of the refund offset under paragraph (g) of this section.

(b) *Past-due support*—(1) *Definition*. For purposes of this section, the term “past-due support” means the amount of a delinquent obligation, which amount was determined under a court order, or an order pursuant to an administrative process established under State law, for support and maintenance of a child or of a child and the parent with whom the child is living.

(2) *Past-due support qualifying for offset*. Past-due support qualifies for offset under section 6402(c) and this section if—

(i) There has been an assignment of the support obligation to a State pursuant to section 402(a)(26) of the Social Security Act (relating to aid and service to needy families with children) and that State has made reasonable efforts to collect the amount of the obligation;

(ii) The amount of past-due support is not less than \$150.00;

(iii) The past-due support has been delinquent for three months or longer; and