

making of the agreement not applicable to payment of depositors will be assumed to be applicable for collection of any tax due prior or subsequent to execution of the agreement. Earnings of subsequent fiscal periods from unsegregated assets not applicable to depositors' claims will be assumed to be applicable to payment of taxes as to which immunity under the section has not previously attached. Earnings from segregated assets are available for collection of tax, whether previously uncollectible under the section or not, after depositors' claims against such assets have been paid in full. See paragraph (a) of § 301.7507-3 and paragraph (a) of § 301.7507-9.

(b) *Tax computation.* The fact that earnings of a given year may be wholly or partly unavailable under section 7507 for collection of taxes does not exempt the income for that year, or any part thereof, from tax liability. The section affects collectibility only, and is not concerned with taxability. Accordingly, the taxpayer's income tax return shall correctly compute the tax liability, even though in the opinion of the taxpayer it is immune from tax collection under the section. The tax shall be determined with respect to the entire gross income and not merely with respect to the portion of the earnings out of which tax may be collected. As to establishment of immunity from tax collection see § 301.7507-7.

Example. (1) An agreement, executed in the year 1954 between a bank and its depositors, provides (i) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of the deposits; (ii) that 40 percent of the bank's net earnings, for years beginning with 1954, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (iii) that the unsegregated assets shall not be subject to depositors' claims. The net income of the bank for the calendar year 1954 is \$10,000, \$4,000 produced by the segregated, and \$6,000 produced by the unsegregated assets. Such amount shall be considered the net earnings for the purpose of section 7507 in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of \$7,000. The income tax liability of the bank for 1954 is 30 percent of \$10,000, or \$3,000, making a total out-

standing tax liability of \$10,000. The portion of the earnings of the bank for 1954 remaining after provision for depositors is \$3,600 (\$6,000 less 40 percent thereof, or \$2,400). It will be assumed that of the total outstanding tax liability of \$10,000, \$3,600 may be assessed and collected, leaving \$6,400 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the \$6,400 immune from collection from 1954 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the \$6,400 is uncollectible.

(2) In the year 1955, the earnings are again \$10,000, \$4,000 from segregated and \$6,000 from unsegregated assets, as in 1954. However, the return filed shows income of \$5,000 and a tax liability of \$1,500. An investigation shows the true income to be \$10,000, on which the tax is \$3,000. The full \$3,000 will be assumed to be collectible. The \$600 difference between \$3,600 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the \$3,000 tax for 1955, is not available for collection of the tax for prior years, which became immune as described above, but may be available for collection of tax for subsequent years.

(c) No significance attaches to the selection of the years 1954 and 1955 in the example set forth in paragraph (b) of this section. The rules indicated by the example are equally applicable to subsequent or prior years not excluded by limitations.

§ 301.7507-6 Abatement and refund.

(a) An assessment or collection, no matter when made, if contrary to section 7507, is subject to abatement or refund within the applicable statutory period of limitations.

(b) Collection from a bank within section 7507(b) which diminishes assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the section, and affords no ground for refund.

(c) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by section 7507. In order to secure a refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.