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falls on Saturday, Sunday, or a legal holiday, see the provisions of §301.7503–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960. Redesignated by T.D. 7037, 35 FR 6709, Apr. 28, 1970]

§31.6361–1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§301.6361–1 to 301.6385–2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F or chapter 24 of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6362 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1 of chapter 24.

(86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7577, 43 FR 59360, Dec. 20, 1978]

§31.6402(a)–1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§31.6402(a)–2, 31.6402(a)–3, and 31.6414–1, for regulations under section 6402 of general application to credits or refunds, see §§301.6402–1 and 301.6402–2 of this chapter (Regulations on Procedure and Administration). For provisions relating to credits of employment taxes which constitute adjustments without interest, see §§31.6413(a)–1 and 31.6413(a)–2.

(b) *Period of limitation.* 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.

§31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to district director*—(1) *In general.* Any person who pays to the district director more than the correct amount of—

(i) Employee tax under section 3101, or employer tax under section 3111, of the Federal Insurance Contributions Act,

(ii) Employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221, of the Railroad Retirement Tax Act,

(iii) Any such tax under a corresponding provision of prior law, or

(iv) Interest, addition to the tax, additional amount, or penalty with respect to any such tax,

may file a claim for refund of the overpayment (except to the extent that the overpayment must be credited pursuant to §31.3503–1, or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and §301.6402–2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return filed by the person making the claim. The return on which the credit is claimed must be on a form which is prescribed for use, at the time of the claim, in reporting tax which corresponds to the tax overpaid. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the return period in which the error was ascertained, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return. No refund or credit of employee tax under the Federal Insurance Contributions Act shall be allowed if for any reason (for example, an overcollection of employee tax having been

inadvertently included by the employee in computing a special refund—see §31.6413(c)–1 the employee has taken the amount of such tax into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected.

(2) *Statements supporting employers' claims for employee tax.* (i) Every claim filed by an employer for refund or credit of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to allowance of the refund or credit. The employer shall retain as part of his records the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim filed by an employer for refund or credit of employee tax under section 3101, or a corresponding provision of prior law, collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also shall include a statement that the employer has obtained from the employee a written statement *(a)* that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and *(b)* that the employee will not claim refund or credit of such amount. The employer shall retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* If more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, is collected by an employer from an employee and paid to the district director, the employee may file a claim for refund of the overpayment if (i) the employee does not receive reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit, (ii) the overcollection cannot be corrected under §31.3503–1, and (iii) in the case of employee tax under section 3101 or a corresponding provision of prior law, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected. See §31.6413(c)–1.

(2) *Statements supporting employee's claim.* (i) Each employee who makes a claim under subparagraph (1) of this paragraph shall submit with such claim a statement setting forth *(a)* the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, and *(b)* the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see §31.6413(c)–1).

(c) *Statements to accompany employers' and employees' claims under the Federal Insurance Contributions Act.* Whenever a claim for credit or refund of employee tax under section 3101, employer tax under section 3111, or either such tax under a corresponding provision of prior law, is made with respect to remuneration which was erroneously reported on a return or schedule as wages paid to an employee, such claim shall include a statement showing (1) the identification number of the employer, if he was required to make application therefor, (2) the name and account

number of such employee, (3) the period covered by such return or schedule, (4) the amount of remuneration actually reported as wages for such employee, and (5) the amount of wages which should have been reported for such employee. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

§ 31.6402(a)–3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in §301.6402–2 of this chapter (Regulations on Procedure and Administration). See §31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

§ 31.6404(a)–1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see §301.6404–1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a) (2) and (c) of §31.6402(a)–2, as if the claim for abatement were a claim for refund.

§ 31.6413(a)–1 Repayment by employer of tax erroneously collected from employee.

(a) *Before employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer—

(a) During any return period collects from an employee more than the correct amount of tax under section 3101 or section 3201, or a corresponding provision of prior law,

(b) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director, and

(c) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the district director with the return for the return period in which the overcollection was made. Such return shall be accompanied by a statement explaining the overcollection, setting forth the account number (if known) and name of the individual from whom the overcollection was made, and showing the total amount overcollected from and not repaid to the individual. If the employer is not required to make a return for such period, the employer nevertheless shall furnish to the district director a statement as described in the preceding sentence, on or before the date fixed for filing a return for such period, and shall pay the amount of the overcollection with such statement.

(2) *Income tax withheld from wages.* (i) If an employer—

(a) During any return period collects from an employee more than the correct amount of tax under section 3402,

(b) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director and before the end of the calendar year in which the overcollection was made, and

(c) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as