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

(a) * * * (1) * * *

(2) *Limitations.* For purposes of paragraph (a)(1) of this section, if a payor or broker withholds because the payor or broker has not received a taxpayer identification number or required certification and the payee subsequently provides a taxpayer identification number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) * * *

(2) *Adjustment after the deposit of the tax.* For purposes of paragraph (b)(1) 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.

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§ 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.

Example 2. Employee E in the calendar year 1968 performs services for employers F and G, for which E is entitled to wages of $7,800 from each employer, or a total of $15,600. On account of such services, E in 1967 received an advance payment of $1,800 of wages from F; and in 1968, receives wages in the amount of $6,000 from F and $7,800 from G. Employee tax was deducted as follows: In 1967, $79.20 ($1,800 × 4.4 percent, the aggregate employee

tax rate in effect in 1967) by employer F; and in 1968, $264.00 ($6,000 × 4.4 percent, the aggregate employee tax rate in effect in 1968) by employer F, and $343.20 ($7,800 × 4.4 percent) by employer G. Thus, E in the calendar year 1968 received $13,800 in wages from which $607.20 of employee tax was deducted. The amount of employee tax with respect to the first $7,800 of such wages received in 1968 is $343.20. E is entitled to a special refund of $264.00 ($607.20 minus $343.20). The $1,800 advance of wages received in 1967 from F, and the $79.20 of employee tax with respect thereto, have no bearing in computing E's special refund for 1968, because the wages were not received in 1968. Such amounts could not form the basis for a special refund unless E during 1967 received from F and at least one more employer wages totaling more than $6,600.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instrumentality who makes a return pursuant to such section) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) *(a)* through *(h)* of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of $13,200 the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(3) *State employees.* For purposes of special refunds of employee tax, the term ''wages'' includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act, relating to voluntary agreements for coverage of employees of State and local governments, as would be wages if such services constituted employment (see §31.3121(a)–1, relating to wages); the term ''employer'' includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; and the term ''tax'' or ''tax imposed by section 3101'' includes an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of paragraph (a)(1) of this section are applicable whether or not any amount deducted from an employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid pursuant to such agreement. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by States, political subdivisions, or instrumentalities by reason of agreements made under section 218 of the Social Security Act. Moreover, if during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages from one or more other employers, either private or governmental, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions.

(4) *Employees of certain foreign corporations.* For purposes of special refunds of employee tax, the term ''wages'' includes such remuneration for services covered by an agreement made pursuant to section 3121(l), relating to agreements for coverage of employees of certain foreign corporations, as would be wages if such services constituted employment (see §31.3121(a)–1, relating to wages); the term ''employer'' includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); and the term ''tax'' or ''tax imposed by section 3101'' includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the employee tax

which would be imposed by section 3101 if such services constituted employment. The provisions of paragraph (a)(1) of this section are applicable whether or not any amount deducted from the employee's remuneration by reason of such agreement has been paid to the district director. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by reason of agreements made under section 3121(l). A domestic corporation which enters into an agreement pursuant to section 3121(l) shall, for purposes of this paragraph, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as an employer employing individuals on its own account (see section 3121(l)(9)). If during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages for services in employment, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions. For provisions relating to agreements entered into under section 3121(l), see the regulations in part 36 of this chapter (Regulations on Contract Coverage of Employees of Foreign Subsidiaries).

(5) *Governmental employees in American Samoa.* For purposes of special refunds of employee tax, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) (see §31.3125) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which the Governor (or any agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) *(a)* through *(h)* of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents pursuant to section 3125(b) and the total amount of such wages is in excess of $13,200, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from the Government of American Samoa, from a political subdivision thereof, or from any wholly-owned instrumentality of such government or political subdivision and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(6) *Governmental employees in the District of Columbia.* For purposes of special refunds of employee tax, the Commissioner of the District of Columbia (or, prior to the transfer of functions pursuant to Reorganization Plan No. 3 of 1967 (81 Stat. 948), the Commissioners of the District of Columbia) and each agent designated by him who makes a return pursuant to section 3125(c) (see §31.3125) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which the Commissioner (or any agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) *(a)* through *(h)* of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents pursuant to section 3125(c) and the total amount of such wages is in excess of $13,200 the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from the Government of the District of Columbia or from a wholly-owned instrumentality thereof and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(b) *Claims for special refund*—(1) *In general.* An employee who is entitled to a special refund under section 6413(c)

may claim such refund under the provisions of this section only if the employee is not entitled to claim the amount thereof as a credit against income tax as provided in §1.31–2 of this chapter (Income Tax Regulations). Each claim under this section shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services were performed for which such wages are received), and shall be filed after the close of such year.

(2) *Form of claim.* Each claim for special refund under this section shall be made on Form 843, in accordance with the regulations in this subpart and the instructions relating to such form. In the case of a claim filed prior to April 15, 1968, the claim shall be filed with the district director for the internal revenue district in which the employee resides or, if the employee does not reside in any internal revenue district, with the District Director, Baltimore, Md. 21202. Except as provided in paragraph (b) of §301.6091–1 (relating to hand-carried documents), in the case of a claim filed after April 14, 1968, the claim shall be filed with the service center serving such internal revenue district. However, in the case of an employee who does not reside in any internal revenue district and who is outside the United States, the claim shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Washington, D.C. 20225, unless the employee resides in Puerto Rico or the Virgin Islands, in which case the claim shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, P.R. 00917. The claim shall include the employee's account number and the following information with respect to each employer from whom he received wages during the calendar year: (i) The name and address of such employer, (ii) the amount of wages received during the calendar year to which the claim relates, and (iii) the amount of employee tax collected by the employer from the employee with respect to such wages. Other information may be required but should be submitted only upon request.

(3) *Period of limitation.* For the period of limitation upon special refund of employee tax imposed by section 3101, see §301.6511(a)–1 of this chapter (Regulations on Procedure and Administration).

(c) *Special refunds with respect to compensation as defined in the Railroad Retirement Tax Act*—(1) *In general.* In the case of any individual who, during any calendar year after 1967, receives wages (as defined by section 3121(a)) from one or more employers and also receives compensation (as defined by section 3231(e)) which is subject to the tax imposed on employees by section 3201 or the tax imposed on employee representatives by section 3211 such compensation shall, solely for purposes of applying section 6413(c)(1) and this section with respect to the hospital insurance tax imposed by section 3101(b), be treated as wages (as defined by section 3121(a)) received from an employer with respect to which the hospital insurance tax imposed by section 3101(b) was deducted. For purposes of this section, compensation received shall be determined under the principles provided in chapter 22 of the Code and the regulations thereunder (see section 3231(e) and §31.3231(e)–1). Therefore, compensation paid for time lost shall be deemed earned and received for purposes of this section in the month in which such time is lost, and compensation which is earned during the period for which a return of taxes under chapter 22 is required to be made and which is payable during the calendar month following such period shall be deemed to have been received for purposes of this section during such period only. Further, compensation is deemed to have been earned and received when an employee or employee representative performs services for which he is paid, or for which there is a present or future obligation to pay, regardless of the time at which payment is made or deemed to be made.

(2) *Example.* The application of this paragraph may be illustrated by the following example.

Example. Employee A rendered services to X during 1973 for which he was paid compensation at the monthly rate of $650 which was taxable under the Railroad Retirement Tax Act. A was paid $550 by X in January

1973 which was earned and deemed received in December 1972 and $650 in January of 1974 which was earned and deemed received in December of 1973. A also earned and received wages in 1973 from employer Y, which were subject to the employee tax under the Federal Insurance Contributions Act, in the amount of $6,000. A paid hospital insurance tax on $13,800 ($7,800 compensation from X including $650 earned and deemed received in December 1973 but paid in January 1974 and not including $550 paid in January 1973 but earned and deemed received in December 1972, $6,000 compensation from Y) received or deemed received or earned in 1973. For purposes of the hospital insurance tax imposed by section 3101(b), these amounts are all wages received from an employer in 1973. Therefore, A is entitled to a special refund for 1973 under section 6413(c) and this section of $30 (1.0%×$13,800—1.0%×$10,800).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5359, Apr. 4, 1968; T.D. 6983, 33 FR 18020, Dec. 4, 1968; T.D. 7374, 40 FR 30954, July 24, 1975]

§ 31.6414–1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

(1) Tax under section 3402 or a corresponding provision of prior law, or

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

may file a claim for refund of the overpayment 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 of tax under section 3402 filed by the employer. 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, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(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.

§ 31.6652(c)–1 Failure of employee to report tips for purposes of the Federal Insurance Contributions Act.

(a) *In general.* In the case of failure by an employee to furnish, pursuant to the provisions of section 6053(a), to his employer a report of tips received by him in the course of his employment, which constitute wages (as defined in section 3121(a)), there shall be paid by the employee, in addition to the tax imposed by section 3101 with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax. The additional amount imposed for such failure shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* Payment of an amount equal to 50 percent of the tax imposed by section 3101 with respect to the tips which the employee failed to report will not be required if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. An employee's reluctance to disclose to his employer the amount of tips received by him will not establish that the employee's failure to report tips to his employer was due to reasonable cause and not due to willful neglect.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969]