

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, special fuels, and, lubricating oil), 43 (relating to earned income credit), and 667(b) (relating to taxes paid by certain trusts) which exceeds the tax imposed by subtitle A of the Code (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1 of the Code, other than the credits allowable under sections 31, 39, and 43) for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

[T.D. 7204, 37 FR 17158, Aug. 25, 1972, as amended by T.D. 7537, 43 FR 13878, Apr. 3, 1978]

**§ 301.6402-1 Authority to make credits or refunds.**

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

[T.D. 8053, 50 FR 39662, Sept. 30, 1985]

**§ 301.6402-2 Claims for credit or refund.**

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) In the case of a claim filed prior to April 15, 1968, the claim together

with appropriate supporting evidence shall be filed in the office of the internal revenue officer to whom the tax was paid or with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer. 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, together with appropriate supporting evidence, shall be filed (i) with the Director of International Operations if the tax was paid to him or (ii) with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer; otherwise, the claim with appropriate supporting evidence must be filed with the service center serving the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) Neither the district director nor the director of the regional service center has authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Except for claims filed after June 30, 1976 for the

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refunding of overpayment of income taxes, all claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 843. For special rules applicable to income tax, see § 301.6402-3. For other provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.

(d) *Separate claims for separate taxable periods.* In the case of income, gift, and Federal unemployment taxes, a separate claim shall be made for each type of tax for each taxable year or period.

(e) *Proof of representative capacity.* If a return is filed by an individual and, after his death, a refund claim is filed by his legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in subparagraph (2) of this paragraph (f), the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see section 3477 of the Revised Statutes (31 U.S.C. 203).

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7008, 34 FR 3673, Mar. 1, 1969; T.D. 7188, 37 FR 12794, June 29, 1972; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. ATF-33, 41 FR 44038, Oct. 6, 1976; T.D. 7484, 42 FR 22143, May 2, 1977]

#### § 301.6402-3 Special rules applicable to income tax.

(a) In the case of a claim for credit or refund filed after June 30, 1976—

(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

(2) In the case of an overpayment of income taxes for a taxable year of an individual for which a Form 1040 or 1040A has been filed, a claim for refund shall be made on Form 1040X (“Amended U.S. Individual Income Tax Return”).

(3) In the case of an overpayment of income taxes for a taxable year of a corporation for which a Form 1120 has been filed, a claim for refund shall be made on Form 1120X (“Amended U.S. Corporation Income Tax Return”).

(4) In the case of an overpayment of income taxes for a taxable year for which a form other than Form 1040, 1040A, or 1120 was filed (such as Form 1041 (U.S. Fiduciary Income Tax Return) or Form 990T (Exempt Organization Business Income Tax Return)), a claim for credit or refund shall be made on the appropriate amended income tax return.

(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or