

from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(4) of Pub. L. 94-455 applicable to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1307(d)(2)(E), (F)(i) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(4) of Pub. L. 94-455, see section 1608(d)(1) of Pub. L. 94-455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

§ 6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter

even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for

purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 85-866, title I, §§ 76, 89(b), Sept. 2, 1958, 72 Stat. 1661, 1665; Pub. L. 88-272, title I, § 112(d)(1), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91-172, title I, § 101(f)(2), (j)(40), (41), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 91-614, title I, § 102(d)(5), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93-406, title II, § 1016(a)(10), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94-455, title II, § 214(b), title XII, §§ 1204(c)(5), 1206(c)(3), title XIII, § 1307(d)(2)(F)(ii), (G), title XVI, § 1605(b)(5), title XIX, §§ 1901(b)(31)(C), (37)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1698, 1704, 1728, 1754, 1800, 1803, 1834; Pub. L. 95-30, title I, § 101(d)(15), May 23, 1977, 91 Stat. 134; Pub. L. 95-600, title IV, § 405(c)(5), title VII, § 701(t)(3)(C), Nov. 6, 1978, 92 Stat. 2871, 2912; Pub. L. 96-223, title I, § 101(f)(1)(C), (4), (5), Apr. 2, 1980, 94 Stat. 252, 253; Pub. L. 96-589, § 6(d)(2), Dec. 24, 1980, 94 Stat. 3408; Pub. L. 97-34, title IV, § 442(d)(4), Aug. 13, 1981, 95 Stat. 323; Pub. L. 99-514, title I, § 104(b)(17), title XV, § 1562(a), Oct. 22, 1986, 100 Stat. 2106, 2761; Pub. L. 100-203, title X, § 10713(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-418, title I, § 1941(b)(2)(B)(iii), (E), (F), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title I, § 1015(m), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105-34, title III, § 312(d)(12), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105-206, title I, § 1102(b), July 22, 1998, 112 Stat. 703.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206 inserted at end “Such notice shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”

1997—Subsec. (c)(2)(C) to (E). Pub. L. 105-34, which directed the amendment of par. (2) by striking out subpar. (C) and redesignating succeeding subpars. accordingly, was executed by redesignating subpar. (E) as (C) and striking out former subpar. (C). Prior to amendment, subpar. (C) read as follows: “Deficiency attributable to gain on sale or exchange of principal residence, see section 1034(j).” Former subpar. (D) was repealed previously.

1988—Subsec. (a). Pub. L. 100-418, § 1941(b)(2)(B)(iii), substituted “or 44” for “44, or 45”.

Subsec. (b)(1). Pub. L. 100-418, § 1941(b)(2)(E), substituted “or chapter 44” for “chapter 44, or chapter 45” and “chapter 44, and this chapter” for “chapter 44, chapter 45, and this chapter”.

Subsec. (c)(1). Pub. L. 100-418, § 1941(b)(2)(F), substituted “or of chapter 42 tax” for “of chapter 42 tax” and struck out “, or of chapter 45 tax for the same taxable period” after “such petition relates”.

Subsec. (d). Pub. L. 100-647 inserted sentence at end that nothing in this subsection shall affect suspension of running of period of limitations during period during which rescinded notice was outstanding.

1987—Subsec. (c)(1). Pub. L. 100-203 inserted reference to section 6852.

1986—Subsec. (c)(2)(A). Pub. L. 99-514, § 104(b)(17), amended subpar. (A) generally, substituting “, see sec-

tion 63(e)(3)” for “and zero bracket amount, see section 63(g)(5)”.

Subsec. (d). Pub. L. 99-514, § 1562(a), added subsec. (d). 1981—Subsec. (c)(1). Pub. L. 97-34 substituted “calendar year” for “calendar quarter”.

1980—Subsec. (a). Pub. L. 96-223, § 101(f)(1)(C), inserted reference to chapter 45.

Subsec. (b)(1). Pub. L. 96-223, § 101(f)(4), substituted “and certain excise taxes” for “taxes imposed by chapter 42” in section catchline and inserted references to chapter 45 in two places in text.

Subsec. (c)(1). Pub. L. 96-223, § 101(f)(5), substituted “of chapter 42 tax” for “or of chapter 42 tax” and inserted “, or of chapter 45 tax for the same taxable period” after “to which such petition relates”.

Subsec. (c)(2). Pub. L. 96-589 inserted cross reference to section 505(a) of title 11 for provisions allowing determination of tax in title 11 cases.

1978—Subsec. (c)(1). Pub. L. 95-600, § 701(t)(3)(C), substituted “same taxable year” for “same taxable years” in two places.

Subsec. (c)(2)(C). Pub. L. 95-600, § 405(c)(5), substituted “principal residence” for “personal residence”.

1977—Subsec. (c)(2)(A). Pub. L. 95-30 substituted “change of treatment with respect to itemized deductions and zero bracket amount, see section 63(g)(5)” for “change of election with respect to the standard deduction where taxpayer and his spouse made separate returns, see section 144(b)”.

1976—Subsec. (a). Pub. L. 94-455, §§ 1307(d)(2)(F)(ii), 1605(b)(5)(A), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, and substituted “chapter 41, 42, 43, or 44” for “chapter 42 or 43”.

Subsec. (b)(1). Pub. L. 94-455, §§ 1307(d)(2)(G)(i), 1605(b)(5)(B), (C), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, and substituted “chapter 41, chapter 42, chapter 43, or chapter 44” for “chapter 42, or chapter 43”, and “chapter 41, chapter 42, chapter 43, chapter 44, and this chapter” for “chapter 42, chapter 43, and this chapter”.

Subsec. (c)(1). Pub. L. 94-455, §§ 1204(c)(5), 1206(c)(3), 1307(d)(2)(G)(ii), 1605(b)(5)(D), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing, substituted “of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable years, of chapter 44 tax for the same taxable years” for “of chapter 43 tax for the same taxable years”, and “(relating to mathematical or clerical errors), in section 6851 (relating to termination assessments)” for “(relating to mathematical errors)”.

Subsec. (c)(2)(B). Pub. L. 94-455, § 1901(b)(31)(C), substituted “1033(a)(2)(C) and (D)” for “1033(a)(3)(C) and (D)”.

Subsec. (c)(2)(D). Pub. L. 94-455, § 1901(b)(37)(C), struck out subsec. (c)(2)(D) which set forth a cross reference to section 1335 of this title relating to a deficiency attributable to war loss recoveries where prior benefit rule is elected.

Subsec. (c)(2)(E). Pub. L. 94-455, § 214(b), added subpar. (E).

1974—Subsec. (a). Pub. L. 93-406, § 1016(a)(10)(A), inserted reference to taxes imposed by chapter 43.

Subsec. (b)(1). Pub. L. 93-406, § 1016(a)(10)(B), (C), inserted reference to chapter 43 in two places.

Subsec. (c)(1). Pub. L. 93-406, § 1016(a)(10)(D), substituted “of the same decedent, of chapter 43 tax for the same taxable years,” for “of the same decedent,”.

1970—Subsec. (c)(1). Pub. L. 91-614 substituted “calendar quarter” for “calendar year”.

1969—Subsec. (a). Pub. L. 91-172, § 101(j)(40), inserted reference to chapter 42.

Subsec. (b)(1). Pub. L. 91-172, § 101(j)(41), inserted reference to chapter 42 taxes in heading and text.

Subsec. (c)(1). Pub. L. 91-172, § 101(f)(2), included section 4940 tax and chapter 42 tax (other than under section 4940), among the classes of taxes with respect to which the Secretary cannot determine additional deficiencies after the taxpayer has filed a petition for determination of any deficiency about which he has been notified.

1964—Subsec. (c)(2)(A). Pub. L. 88-272 substituted “with respect to the” for “to take”.

1958—Subsec. (a). Pub. L. 85-866, §89(b), inserted “certified mail or” before “registered mail”.

Subsec. (b)(1). Pub. L. 85-866, §76, substituted “sub-title A or chapter 12” for “chapter 1 or 12” and “sub-title A, chapter 12,” for “such chapter”.

Subsec. (b)(2). Pub. L. 85-866, §89(b), inserted “certified mail or” before “registered mail”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(17) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Section 1562(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall apply to notices of deficiency issued on or after January 1, 1986.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 405(c)(5) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as a note under section 1038 of this title.

Amendment by section 701(t)(3)(C) of Pub. L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95-600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 214(b) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1969, except that such amendments shall not apply to any taxable year ending before Oct. 4, 1976 with respect to which the period for assessing a deficiency has expired before Oct. 4, 1976, see section 214(c) of Pub. L. 94-455, set out as a note under section 183 of this title.

Amendment by section 1204(c)(5) of Pub. L. 94-455 applicable with respect to action taken under section

6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1206(c)(3) of Pub. L. 94-455 applicable to returns filed after Dec. 31, 1976, see section 1206(d) of Pub. L. 94-455, set out as a note under section 6213 of this title.

Amendment by section 1307(d)(2)(F)(ii), (G) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(5) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Amendment by section 1901(b)(31)(C), (37)(C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 76 of Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85-866, set out as a note under section 165 of this title.

Amendment by section 89(b) of Pub. L. 85-866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION

Pub. L. 105-206, title III, §3463(a), July 22, 1998, 112 Stat. 767, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court.”

[Section 3463(a) of Pub. L. 105-206, set out above, applicable to notices mailed after Dec. 31, 1998, see section 3463(c) of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 6213 of this title.]

EXPLANATIONS OF APPEALS AND COLLECTION PROCESS

Pub. L. 105-206, title III, §3504, July 22, 1998, 112 Stat. 771, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], include with any first

letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.”

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor

shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) Assessments arising out of tentative carry-back or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) Assessment of amount paid

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(5) Certain orders of criminal restitution

If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4)—

(A) such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and

(B) subsection (a) shall not apply with respect to the amount of such assessment.

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in sub-