

§ 6512. Limitations in case of petition to Tax Court

(a) Effect of petition to Tax Court

If the Secretary has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and certain excise taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a) (or 7481(c) with respect to a determination of statutory interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final, and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final, and

(3) As to any amount collected after the period of limitation upon the making of levy or beginning a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive, and

(4) As to overpayments attributable to partnership items, in accordance with subchapter C of chapter 63, and

(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b).

(b) Overpayment determined by Tax Court

(1) Jurisdiction to determine

Except as provided by paragraph (3) and by section 7463, if the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when

the decision of the Tax Court has become final, be credited or refunded to the taxpayer. If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

(2) Jurisdiction to enforce

If, after 120 days after a decision of the Tax Court has become final, the Secretary has failed to refund the overpayment determined by the Tax Court, together with the interest thereon as provided in subchapter B of chapter 67, then the Tax Court, upon motion by the taxpayer, shall have jurisdiction to order the refund of such overpayment and interest. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(3) Limit on amount of credit or refund

No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) after the mailing of the notice of deficiency,

(B) within the period which would be applicable under section 6511(b)(2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

(C) within the period which would be applicable under section 6511(b)(2), (c), or (d), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

(i) which had not been disallowed before that date,

(ii) which had been disallowed before that date and in respect of which a timely suit for refund could have been commenced as of that date, or

(iii) in respect of which a suit for refund had been commenced before that date and within the period specified in section 6532.

In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years.

(4) Denial of jurisdiction regarding certain credits and reductions

The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402.

(c) Cross references

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

(2) For provision giving the Tax Court jurisdiction to award reasonable litigation costs in proceedings to enforce an overpayment determined by such court, see section 7430.

(Aug. 16, 1954, ch. 736, 68A Stat. 811; Pub. L. 87-870, §4, Oct. 23, 1962, 76 Stat. 1161; Pub. L. 91-172, title I, §101(j)(47), (48), title IX, §960(b), Dec. 30, 1969, 83 Stat. 531, 734; Pub. L. 91-614, title I, §102(d)(9), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93-406, title II, §1016(a)(16), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94-455, title XIII, §1307(d)(2)(F)(vii), title XVI, §1605(b)(9), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1834; Pub. L. 95-600, title II, §212(b)(2), Nov. 6, 1978, 92 Stat. 2819; Pub. L. 96-223, title I, §101(f)(6), Apr. 2, 1980, 94 Stat. 253; Pub. L. 96-589, §6(d)(3), Dec. 24, 1980, 94 Stat. 3408; Pub. L. 97-248, title IV, §402(c)(8), (9), Sept. 3, 1982, 96 Stat. 668; Pub. L. 100-418, title I, §1941(b)(2)(J), (K), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title VI, §§6244(a), (b)(2), 6246(b)(1), 6247(b)(1), Nov. 10, 1988, 102 Stat. 3750-3752; Pub. L. 105-34, title XII, §§1239(c)(2), 1282(a), title XIV, §1451(a), (b), Aug. 5, 1997, 111 Stat. 1028, 1037, 1054; Pub. L. 105-206, title III, §3464(b), (c), July 22, 1998, 112 Stat. 767; Pub. L. 106-554, §1(a)(7) [title III, §319(19)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647; Pub. L. 114-74, title XI, §1101(f)(7), Nov. 2, 2015, 129 Stat. 638.)

Editorial Notes

AMENDMENTS

2015—Subsec. (b)(3). Pub. L. 114-74 struck out first set of concluding provisions “In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d).” before “In a case described in subparagraph (B).”

2000—Subsec. (a)(1), (2), (5). Pub. L. 106-554 substituted a comma for a semicolon before “and” at end.

1998—Subsec. (a)(5), (6). Pub. L. 105-206, §3464(b), added pars. (5) and (6).

Subsec. (b)(1). Pub. L. 105-206, §3464(c), inserted at end “If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.”

1997—Subsec. (b)(2). Pub. L. 105-34, §1451(a), inserted at end “An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.”

Subsec. (b)(3). Pub. L. 105-34, §1282(a), inserted concluding provisions “In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years.”

Pub. L. 105-34, §1239(c)(2), inserted concluding provisions “In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d).”

Subsec. (b)(4). Pub. L. 105-34, §1451(b), added par. (4). 1988—Subsec. (a). Pub. L. 100-647, §6247(b)(1), substituted “interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court” for “interest”.

Pub. L. 100-647, §6246(b)(1), inserted “(or 7481(c) with respect to a determination of statutory interest)” after “section 6213(a).”

Pub. L. 100-418, §1941(b)(2)(J), substituted “or of tax imposed by chapter 41” for “of tax imposed by chapter 41” and struck out “, or of tax imposed by chapter 45 for the same taxable period” after “to which such petition relates”.

Subsec. (b)(1). Pub. L. 100-647, §6244(a), substituted “paragraph (3)” for “paragraph (2).”

Pub. L. 100-418, §1941(b)(2)(K), substituted “or of tax imposed by chapter 41” for “of tax imposed by chapter 41” and struck out “, or of tax imposed by chapter 45 for the same taxable period” after “to which such petition relates”.

Subsec. (b)(2), (3). Pub. L. 100-647, §6244(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 100-647, §6244(b)(2), substituted “references” for “reference” in heading, designated existing provisions as par. (1), and added par. (2).

1982—Subsec. (a)(4). Pub. L. 97-248, §402(c)(8), added par. (4).

Subsec. (b)(2). Pub. L. 97-248, §402(c)(9), substituted “(c), or (d)” for “(c), (d), or (g)” wherever appearing.

1980—Subsec. (a). Pub. L. 96-223, §101(f)(6)(A), substituted “certain excise taxes” for “chapter 41, 42, 43, or 44 taxes” and “decendent, of tax imposed” for “decendent, or of tax imposed” and inserted “, or of tax imposed by chapter 45 for the same taxable period” after “to which such petition relates” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 96-223, §101(f)(6)(B), substituted “of tax imposed by chapter 41” for “or of tax imposed by chapter 41” and inserted “, or of tax imposed by chapter 45 for the same taxable period” after “to which such petition relates”.

Subsec. (c). Pub. L. 96-589 added subsec. (c).

1978—Subsec. (b)(2). Pub. L. 95-600 substituted “(c), (d), or (g)” for “(c), or (d)” wherever appearing.

1976—Subsecs. (a), (b)(1). Pub. L. 94-455 substituted reference to chapter 41, 42, 43, or 44 for reference to chapter 42 or 43 and reference to Secretary for reference to Secretary or his delegate.

1974—Subsec. (a). Pub. L. 93-406 inserted reference to chapter 43 in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 93-406 inserted reference to chapter 43.

1970—Pub. L. 91-614 substituted “the same calendar year or calendar quarter” for “the same calendar year” in two places.

1969—Subsec. (a). Pub. L. 91-172, §101(j)(47), inserted references to chapter 42 taxes.

Subsec. (b)(1). Pub. L. 91-172, §§101(j)(48), 960(b), inserted reference to chapter 42 taxes and inserted reference to the exception to the Tax Court’s jurisdiction provided for in par. (2) and in section 7463 of this title.

1962—Subsec. (b)(2)(C). Pub. L. 87-870 added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-74 applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1239(c)(2) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6501 of this title.

Pub. L. 105-34, title XII, §1282(b), Aug. 5, 1997, 111 Stat. 1038, provided that: “The amendment made by subsection (a) [amending this section] shall apply to claims for credit or refund for taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XIV, §1451(c), Aug. 5, 1997, 111 Stat. 1054, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 6244(a), (b)(2) of Pub. L. 100-647 applicable to overpayments determined by the Tax Court which have not been refunded by the 90th day after Nov. 10, 1988, see section 6244(c) of Pub. L. 100-647, set out as a note under section 6214 of this title.

Pub. L. 100-647, title VI, §6246(c), Nov. 10, 1988, 102 Stat. 3751, provided that: "The amendments made by this section [amending this section and section 7481 of this title] shall apply to assessments of deficiencies re-determined by the Tax Court made after the date of the enactment of this Act [Nov. 10, 1988]."

Pub. L. 100-647, title VI, §6247(c), Nov. 10, 1988, 102 Stat. 3752, provided that: "The amendments made by this section [amending this section and section 7481 of this title] shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act [Nov. 10, 1988]."

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 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as a note under section 702 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 Pub. L. 95-600 applicable to partnership items arising in partnership taxable years beginning after Dec. 31, 1978, see section 212(c) of Pub. L. 95-600, set out as a note under section 6501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(vii) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94-455, set out as a note under section 501 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 section 101(j)(47), (48) of 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.

Amendment by section 960(b) of Pub. L. 91-172 effective one year after Dec. 30, 1969, see section 962(e) of

Pub. L. 91-172, set out as an Effective Date note under section 7463 of this title.

§ 6513. Time return deemed filed and tax considered paid**(a) Early return or advance payment of tax**

For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) Prepaid income tax

For purposes of section 6511 or 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 or 4 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462 or 1474(b). For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(c) Return and payment of social security taxes and income tax withholding

Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 4, 21, or 24—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration or other amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) Overpayment of income tax credited to estimated tax

If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a