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treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a 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 credit or refund is claimed and facts sufficient to apprise the regional director (compliance) or the Chief, Tax Processing Center 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 the refund or credit.

(2) The regional director (compliance) and the Chief, Tax Processing Center do not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2635 (5620.8).

(d) *Proof of representative capacity*. If a return is filed by an individual and, after the individuals death, a refund claim is filed by a 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.

(e) *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 paragraph (e)(2) of this section, 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 the attorney or agent 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 31 U.S.C. 3727.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47615, Nov. 14, 1990]

§ 70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) or the Chief, Tax Processing Center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) or the Chief, Tax Processing Center may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.123 of

this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) or the Chief, Tax Processing Center fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

§ 70.125 Abatements.

(a) The regional director (compliance) or the Chief, Tax Processing Center may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to ATF, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims shall be filed with the ATF official who made demand for the amount assessed.

(c) The Director may issue uniform instructions to regional directors (compliance) and the Chief, Tax Processing Center authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

§ 70.126 Date of allowance of refund or credit.

The date on which the regional director (compliance) or the Chief, Tax Processing Center, or an authorized certifying officer designated by the regional director (compliance) or the Chief, Tax Processing Center, first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

§ 70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in §§ 70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

RULE OF SPECIAL APPLICATION

§ 70.131 Conditions to allowance.

(a) For regulations under section 6416 of the Internal Revenue Code, see part 53 of this chapter, relating to manufacturers excise taxes on firearms and ammunition.

(b) For regulations under section 6423 of the Internal Revenue Code, see part 170 of this chapter, relating to distilled spirits, wine, and beer; and part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

(26 U.S.C. 6416 and 6423)

[T.D. ATF–331, 57 FR 40328, Sept. 3, 1992]

LIEN FOR TAXES

SOURCE: Sections 70.141 through 70.151 added by T.D. ATF–301, 55 FR 47616, Nov. 14, 1990, unless otherwise noted.

§ 70.141 Lien for taxes.

If any person liable to pay any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property