

provides (i) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of the deposits; (ii) that 40 percent of the bank's net earnings, for years beginning with 1954, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (iii) that the unsegregated assets shall not be subject to depositors' claims. The net income of the bank for the calendar year 1954 is \$10,000, \$4,000 produced by the segregated, and \$6,000 produced by the unsegregated assets. Such amount shall be considered the net earnings for the purpose of section 7507 in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of \$7,000. The income tax liability of the bank for 1954 is 30 percent of \$10,000, or \$3,000, making a total outstanding tax liability of \$10,000. The portion of the earnings of the bank for 1954 remaining after provision for depositors is \$3,600 (\$6,000 less 40 percent thereof, or \$2,400). It will be assumed that of the total outstanding tax liability of \$10,000, \$3,600 may be assessed and collected, leaving \$6,400 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the \$6,400 immune from collection from 1954 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the \$6,400 is uncollectible.

(2) In the year 1955, the earnings are again \$10,000, \$4,000 from segregated and \$6,000 from unsegregated assets, as in 1954. However, the return filed shows income of \$5,000 and a tax liability of \$1,500. An investigation shows the true income to be \$10,000, on which the tax is \$3,000. The full \$3,000 will be assumed to be collectible. The \$600 difference between \$3,600 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the \$3,000 tax for 1955, is not available for collection of the tax for prior years, which became immune as described above, but may be available for collection of tax for subsequent years.

(c) No significance attaches to the selection of the years 1954 and 1955 in the example set forth in paragraph (b) of this section. The rules indicated by the example are equally applicable to subsequent or prior years not excluded by limitations.

#### § 301.7507-6 Abatement and refund.

(a) An assessment or collection, no matter when made, if contrary to section 7507, is subject to abatement or re-

fund within the applicable statutory period of limitations.

(b) Collection from a bank within section 7507(b) which diminishes assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the section, and affords no ground for refund.

(c) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by section 7507. In order to secure a refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.

#### § 301.7507-7 Establishment of immunity.

(a) The mere allegation of insolvency, or that depositors have claims against segregated or other assets or earnings, will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the district director that collection of tax will be contrary to section 7507. See also § 301.7507-8.

(b) Any claim, by a bank, of immunity under section 7507(b), shall be supported by a statement, under oath or affirmation, which shall show: (1) The total of depositors' claims outstanding, and (2) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable against each: (i) Segregated or transferred assets; (ii) unsegregated assets; (iii) estimated future average annual earnings and profits; (iv) amount collectible from shareholders; and (v) any other resources available for payment of depositors' claims. The detail shall show the full amount of depositors' claims chargeable against each of the items in subdivisions (i) to (v), inclusive, of this subparagraph even though part or all of the amount chargeable against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement or document bearing on the claim of immunity. The statement shall show the basis, as "book," "market," etc., of valuation of the assets.