

the tax liability (not including the net operating loss deduction or capital loss carryback (or the effect of such deduction or carryback)) for a given taxable year has previously been litigated before the Tax Court, credit or refund of an overpayment may be allowed or made despite the provisions of section 6512(a), if claim for such credit or refund is filed within the period provided in section 6511(d)(2)(A) and paragraph (a) of this section. In the case of a claim for credit or refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, or with respect to the determination of a short-term capital loss, and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not in issue in such proceeding.

(2) For purposes of the special period of limitation for filing a claim for credit or refund of an overpayment of tax with respect to a computation year (as defined in section 1302(c)(1)) by an individual who has chosen to compute his tax under sections 1301 through 1305 (relating to income averaging), such claim is determined to relate to an overpayment attributable to a net operating loss carryback when such carryback relates to any base period year (as defined in section 1302(c)(3)). Thus, if (i) an individual has a net operating loss for a taxable year subsequent to a taxable year for which he had chosen the benefits of income averaging, and (ii) such net operating loss carryback is wholly utilized in any one or more of his base period years (which would result in an increased amount of averageable income for such computation year), the special period of limitation with respect to such individual's computation year applies and a timely claim for credit or refund with respect to the computation year may be filed.

[T.D. 7196, 37 FR 13691, July 13, 1972, and T.D. 7301, 39 FR 976, Jan. 4, 1974]

**§ 301.6511(d)-3 Special rules applicable to credit against income tax for foreign taxes.**

(a) *Period in which claim may be filed.* In the case of an overpayment of income tax resulting from a credit, allowed under the provisions of section 901 or under the provisions of any treaty to which the United States is a party, for taxes paid or accrued to a foreign country or possession of the United States, a claim for credit or refund must be filed by the taxpayer within 10 years from the last date prescribed for filing the return (determined without regard to any extension of time for filing such return) for the taxable year with respect to which the claim is made. Such 10-year period shall be applied in lieu of the 3-year period prescribed in section 6511(a).

(b) *Limit on amount to be credited or refunded.* In the case of a claim described in paragraph (a) of this section, the amount of the credit or refund allowed or made may exceed the portion of the tax paid within the period prescribed in section 6511 (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit against income tax referred to in paragraph (a) of this section.

**§ 301.6511(d)-4 Overpayment of income tax on account of investment credit carryback.**

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to an investment credit carryback, provided in section 46(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which resulted in the carryback (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss

carryback from a subsequent taxable year, the period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of such subsequent taxable year); or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the unused investment credit which resulted in the carryback.

(2) In the case of a claim for credit or refund involving an investment credit carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph (a), but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the investment credit carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph (a), but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever

is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(4)(B) if a claim therefor is filed within the period provided by section 6511(d)(4)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. In the case of a claim for credit or refund of an overpayment attributable to a carryback, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7301, 39 FR 977, Jan. 4, 1974]

**§ 301.6511(d)-7 Overpayment of income tax on account of work incentive program credit carryback.**

(a) *Special period of limitation.* (1) If the claim for credit or refund related to an overpayment of income tax attributable to a work incentive program (WIN) credit carryback, provided in section 50A, then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month, in the case of a corporation) following