

or errors of computation, the Commissioner may disallow the application in whole or in part without further action. If the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. The Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer may, however, file a claim for credit or refund under section 6402, and may maintain a suit based on the claim if the claim is disallowed or if the Commissioner does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax that is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. The unpaid amount of tax may include one or more of the following:

(i) An amount with respect to which the taxpayer is delinquent;

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner may determine against which amount or amounts, and in what proportion, the decrease is to

be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease that is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

(e) *Effective/applicability date.* These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

[T.D. 6950, 33 FR 5358, Apr. 4, 1968, as amended by T.D. 7301, 39 FR 973, Jan. 4, 1974; T.D. 9355, 72 FR 48934, 48934, Aug. 27, 2007; 72 FR 56619, Oct. 4, 2007; T.D. 9499, 75 FR 51934, Aug. 24, 2010]

§ 1.6411-4 Consolidated groups.

For further rules applicable to consolidated groups, see § 1.1502-78. For further rules applicable to consolidated groups that include insolvent financial

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institutions, see § 301.6402-7 of this chapter.

[T.D. 8446, 57 FR 53034, Nov. 6, 1992]

§ 1.6414-1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) *In general.* Any withholding agent who for the calendar year pays more than the correct amount of:

(1) Tax required to be withheld under chapter 3 of the Code, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for credit or refund of the overpayment in the manner and subject to the conditions stated in the Procedure and Administration Regulations (Part 301 of this chapter) under section 6402, or may claim credit for the overpayment as provided in paragraph (b) of this section. With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446-4. See § 1.1446-3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446.

(b) *Claim for credit on Form 1042.* The withholding agent may claim credit of an overpayment described in paragraph (a) of this section for any calendar year by showing the amount of overpayment on the return on Form 1042 for such calendar year, which shall constitute a claim for credit under this paragraph. The claim for credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and showing such other information as may be required by the instructions relating to the return. The amount claimed as a credit may be applied, to the extent it has not been applied under § 1.1461-2(b), by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461-1 or § 1.6302-2(a) for any payment period occurring in the calendar year following the calendar year of overwithholding. The amount so claimed as a credit shall also be entered on the annual return on Form 1042 for the calendar year following the calendar year of overwithholding and shall be applied as a payment on ac-

count of the tax shown on such form. If the withholding agent files a claim for credit or refund of the overpayment on Form 843 in accordance with § 301.6402-2 of this chapter (Procedure and Administration Regulations), or a claim for refund of the overpayment on Form 1042 in accordance with § 301.6402-3 of such chapter, he may not claim credit for the overpayment under this paragraph.

(c) *Overpayment of amounts actually withheld.* No credit or refund to the withholding agent shall be allowed for the amount of any overpayment of tax which, after taking into account paragraph (b) of § 1.1464-1, the withholding agent has actually withheld from an item of income under chapter 3 of the Code.

(d) *Effective/Applicability date.* The last two sentences of paragraph (a) of this section shall apply to partnership taxable years beginning after April 29, 2008.

[T.D. 6922, 32 FR 8714, June 17, 1967, as amended by T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6425-1 Adjustment of overpayment of estimated income tax by corporation.

(a) *In general.* Any corporation which has made an overpayment of estimated income tax for a taxable year beginning after December 31, 1967, may file an application for an adjustment of such overpayment. The right to file an application for an adjustment of overpayment of estimated income tax is limited to corporations.

(b) *Contents of application.* (1) The application for an adjustment of overpayment of estimated income tax shall be filed on Form 4466. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and instructions must be furnished by the corporation. The application shall be verified in the manner prescribed by section 6065 as in the case of a return of the corporation.

(2) An application for an adjustment of overpayment of estimated income tax does not constitute a claim for credit or refund. If such application is disallowed by the district director, or director of a service center, in whole or