

Internal Revenue Service, Treasury

§ 301.6401-1

of §301.6365-2 for special rules with respect to withholding in the case of fiscal-year taxpayers.

(e) *Expeditious treatment of judicial proceedings.* Under section 6363(d)(4), any judicial proceedings to which a State and the United States are parties, and which are brought pursuant to section 6363, are entitled to receive a preference, and to be heard and determined as expeditiously as possible, upon request of the Secretary or the State.

[T.D. 7577, 43 FR 59375, Dec. 20, 1978]

§ 301.6365-1 Definitions.

(a) *State.* For purposes of subchapter E and the regulations thereunder, the term "State" shall include the District of Columbia, but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(b) *Governor.* For purposes of subchapter E and the regulations thereunder, the term "Governor" shall include the Mayor of the District of Columbia.

[T.D. 7577, 43 FR 59375, Dec. 20, 1978]

§ 301.6365-2 Commencement and cessation of applicability of subchapter E to individual taxpayers.

(a) *General rule.* Except for purposes of chapter 24 (relating to the collection of income tax at source on wages), whenever subchapter E begins or ceases to apply to any State (*i.e.*, a State agreement begins or ceases to be effective) as of any January 1, such commencement or cessation of applicability shall apply to taxable years of individuals beginning on or after such date. For example, if subchapter E begins to apply to a particular State on January 1, 1980, it would become applicable for calendar year 1980 for calendar-year taxpayers in that State; but if a taxpayer in the State is using a fiscal year running from July 1 to June 30, the subchapter would begin to apply (except for purposes of chapter 24) to that taxpayer on July 1, 1980, for his taxable year ending June 30, 1981. Similarly, if the subchapter ceases to apply to such State on January 1, 1982, it would cease to apply to calendar-year taxpayers after the end of calendar year 1981; but it would cease to apply

(except for purposes of chapter 24) to fiscal-year taxpayers at the end of their fiscal years which are in progress on January 1, 1982. The cessation of applicability of subchapter E to a State does not affect rights, duties, and liabilities with respect to any taxable year for which subchapter E does apply with respect to any taxpayer (or his employer).

(b) *Special rules pertaining to withholding—(1) Subchapter E beginning to apply.* The Federal withholding system provided in chapter 24 shall go into effect for State individual income tax purposes with respect to wages paid on or after the January 1 as of which subchapter E begins to apply to a State. If an employee is subject to a qualified tax imposed by the State, such withholding system shall apply to his wages paid on or after that January 1, without regard to whether he is a calendar-year or fiscal-year taxpayer. See §301.6363-3 with respect to transition-year rules.

(2) *Subchapter E ceasing to apply.* The Federal withholding system provided in chapter 24 shall cease to be effective for State tax purposes with respect to wages paid on or after the January 1 as of which subchapter E ceases to apply to the State, although fiscal-year taxpayers of that State continue to be subject to the other provisions of subchapter E for the remainder of their fiscal years then in progress. See §301.6363-3 with respect to transition-year rules.

[T.D. 7577, 43 FR 59375, Dec. 20, 1978]

Abatements, Credits, and Refunds

PROCEDURE IN GENERAL

§ 301.6401-1 Amounts treated as overpayments.

(a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, special fuels, and, lubricating oil), 43 (relating to earned income credit), and

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667(b) (relating to taxes paid by certain trusts) which exceeds the tax imposed by subtitle A of the Code (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1 of the Code, other than the credits allowable under sections 31, 39, and 43) for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

[T.D. 7204, 37 FR 17158, Aug. 25, 1972, as amended by T.D. 7537, 43 FR 13878, Apr. 3, 1978]

§ 301.6402-1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

[T.D. 8053, 50 FR 39662, Sept. 30, 1985]

§ 301.6402-2 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) In the case of a claim filed prior to April 15, 1968, the claim together with appropriate supporting evidence shall be filed in the office of the internal revenue officer to whom the tax was paid or with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer. Except as provided in paragraph (b) of

§ 301.6091-1 (relating to hand-carried documents), in the case of a claim filed after April 14, 1968, the claim, together with appropriate supporting evidence, shall be filed (i) with the Director of International Operations if the tax was paid to him or (ii) with the assistant regional Commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer; otherwise, the claim with appropriate supporting evidence must be filed with the service center serving the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on 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 a credit or refund is claimed and facts sufficient to apprise the Commissioner 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 refund or credit.

(2) Neither the district director nor the director of the regional service center has authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Except for claims filed after June 30, 1976 for the refunding of overpayment of income taxes, all claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 843. For special rules applicable to income tax, see § 301.6402-3. For other provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.