

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows:

(1) Although Canadian Airworthiness Directive CF-2010-38R2, dated March 17, 2011, has a compliance time of “No later than 01 June 2011,” for Part II—Terminating Action, this AD has a compliance time of “Within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first.” We have coordinated this difference with Transport Canada Civil Aviation (TCCA).

(2) Although Canadian Airworthiness Directive CF-2010-38R2, dated March 17, 2011, has an initial compliance time of “within 50 flight cycles after the effective date of this AD” for identifying the type of rivet installed, this AD has a compliance time of “within 50 flight cycles or 30 days after the effective date of this AD, whichever occurs first.” In addition, the follow-on inspections in paragraph (i) of this AD for airplanes on which flush rivets are determined to be installed, is “within 100 flight cycles or 60 days after the effective date of this AD, whichever occurs first.” We have coordinated this difference with TCCA.

**Other FAA AD Provisions**

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**Related Information**

(m) Refer to MCAI Canadian Airworthiness Directive CF-2010-38R2, dated March 17, 2011; Bombardier Service Bulletin 215-A543, Revision 1, dated June 23, 2010; and Bombardier Service Bulletin 215-A4424, Revision 2, dated June 23, 2010; for related information.

Issued in Renton, Washington, on June 2, 2011.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

**[REG-137128-08]**

**RIN 1545-BI36**

**Claims for Credit or Refund**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations for filing a claim for credit or refund. The regulations provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund. The regulations are updated to reflect changes made by the enactment of the Tax Reform Act of 1976, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000. The regulations further are updated to reflect that the IRS may prescribe additional claim forms.

**DATES:** Written or electronic comments and requests for a public hearing must be received by *September 8, 2011*.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-137128-08), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-137128-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-137128-08).

**FOR FURTHER INFORMATION CONTACT:** Concerning submission of comments or request for a hearing, *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622-7180 (not a toll-free number); concerning the proposed regulations, Micah A. Levy, (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to 26 CFR part 301 under

section 6402 of the Internal Revenue Code (Code). Section 6402 of the Code authorizes the Secretary to make credits or refunds. Section 6511 provides the limitations period within which a taxpayer must file a claim for credit or refund and restricts the ability of the Secretary to issue a credit or refund unless the claim is filed by the taxpayer within that period. Section 7422 prohibits the maintenance of a suit for refund until a claim has been duly filed with the Secretary. Currently, § 301.6402-2(a)(2) provides generally that a claim for credit or refund needs to be filed with the service center serving the internal revenue district in which the tax was paid. The proposed regulations clarify that, unless otherwise directed, the proper place to file a claim for credit or refund is with the service center at which the taxpayer currently would be required to file a tax return for the type of tax to which the claim relates, irrespective of where the tax was paid or was required to have been paid.

This document also removes outdated portions of §§ 301.6402-2 and 301.6402-3 and revises the reference in § 301.6402-4 to the Joint Committee on Taxation threshold referral amount under section 6405.

**Explanation of Provisions***I. The Proper Place To File a Claim for Credit or Refund*

If a taxpayer is required to file a claim for credit or refund on a particular form, then the claim must be filed in a manner consistent with that form and the related instructions. For example, to correct an amount reported on a Form 1040, “U.S. Individual Income Tax Return,” Treasury regulation § 301.6402-3(a)(2) requires that the taxpayer file the claim on a Form 1040X, “Amended U.S. Individual Income Tax Return.” Accordingly, a claim for refund of an overpayment of individual income taxes would need to be filed on a Form 1040X at the location specified in the instructions provided for the form. If filing instructions are not otherwise provided, a claim for credit or refund must be filed with the service center at which the taxpayer would be required to file a current tax return for the type of tax to which the claim relates. Section 301.6402-2(a)(2) is revised to clarify that claims should not be filed at a different location based upon where the tax either was paid or was required to have been paid. Nor would it be relevant if the tax was properly paid at a different location in a prior year because the taxpayer had a change in residence.

## II. The Proper Form for Filing a Claim for Credit or Refund

The IRS has prescribed various forms that must be used to file a claim for credit or refund for a particular tax. For example, as explained in this preamble, an individual taxpayer must use a Form 1040X to file a claim for refund of income tax. The proposed regulations would revise § 301.6402-2(c) to provide that taxpayers must use the form prescribed for filing a particular claim for credit or refund. When there is no alternative form prescribed, a claim for credit or refund is to be filed on a Form 843, "Claim for Refund and Request for Abatement."

## III. Claims for Employment Taxes

On July 1, 2008, final regulations (TD 9405) relating to employment tax adjustments and employment tax refund claims were published in the **Federal Register** (73 FR 37371). Those final regulations modify the process for making claims for refund of overpayments of employment taxes under section 6402. To file a claim to correct errors discovered on or after January 1, 2009, an employer now uses the form that corresponds to the return being corrected. The new forms correspond with Form 941, "Employer's QUARTERLY Federal Tax Return"; Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"; Form 944, "Employer's ANNUAL Federal Tax Return"; Form 945, "Annual Return of Withheld Federal Income Tax"; and Form CT-1, "Employer's Annual Railroad Retirement Tax Return." For example, Form 941-X, "Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund," is used by employers instead of Form 843, "Claim for Refund and Request for Abatement." The new "X" forms are used to claim refunds, make adjustments, and request abatements of employment taxes. In addition, § 301.6402-2(d) is revised to provide that when filing a claim for employment taxes, a separate claim must be made for each taxable period. For example, if an employer overpaid social security taxes on Forms 941 filed for the third and fourth quarters in 2009, then the employer must file a separate Form 941-X for each quarter.

## IV. Internal Revenue Districts

The proposed regulations make technical revisions that remove the reference to "internal revenue districts" in § 301.6402-2(a)(2), because such reference has been made obsolete by the enactment of the Internal Revenue Service Restructuring and Reform Act of

1998, Public Law 105-206, 112 Stat. 685. The technical revisions also remove the references to a district director or director of the regional service center in §§ 301.6402-3 and 301.6402-4, as those positions no longer exist within the IRS.

## V. Outdated Provisions

Treasury Decision 6950, 1968-1 CB 528 (33 FR 5354) (Aug. 4, 1968), revised paragraph (a)(2) of § 301.6402-2 to distinguish between claims filed before and claims filed on or after April 15, 1968. Those revisions provided that claims filed before April 15, 1968 must be filed in the office of the internal revenue officer to whom the tax was paid. For claims filed on or after April 15, 1968, claims were directed to be filed with the service center serving the internal revenue district in which the tax was paid.

Treasury Decision 7410, 1976-1 CB 384 (41 FR 11019) (Mar. 16, 1976), revised paragraph (c) of § 301.6402-2 to distinguish between claims filed before and claims filed on or after July 1, 1976. Those revisions provided that, except for claims for the refund of overpayments of income taxes filed on or after July 1, 1976, all refund claims for taxes, interest, penalties, and additions to tax needed to be filed on Form 843, "Claim for Refund and Request for Abatement." Treasury Decision 7410 also revised paragraphs (a) and (b) of § 301.6402-3 to prescribe different form requirements for claims for the refund of overpayments of income taxes depending on whether the claim was filed before July 1, 1976, or would be filed on or after July 1, 1976.

The regulations are revised to remove the outdated guidance regarding the varying requirements based on these dates.

## VI. Section 6405

Section 6405 requires the advance referral of a report to the Joint Committee on Taxation regarding specified types of refunds or credits in excess of a threshold amount (currently \$2,000,000). Section 1907(a)(1) of the Tax Reform Act of 1976, Public Law 94-455, 90 Stat. 1520, 1835, amended section 6405 to reference the "Joint Committee on Taxation," instead of the "Joint Committee on Internal Revenue Taxation." The proposed regulations would update the reference to the "Joint Committee on Internal Revenue Taxation" in § 301.6402-4 with a reference to the "Joint Committee on Taxation." Section 305(a) of the Community Renewal Tax Relief Act of 2000, Public Law 106-554, 114 Stat. 2763, 2763A-634, section 11834(a) of

the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388, 1388-560, and section 1210(a) of the Tax Reform Act of 1976, 90 Stat. 1520, 1522, revised the threshold referral amount in section 6405 by replacing \$100,000 with \$2,000,000. To avoid the need to revise this regulation again to reflect any future change in the threshold amount, the parenthetical reference to the specific amount required for the section 6405 threshold referral is removed.

## Proposed Effective Date

These rules, when they are promulgated as final regulations, will apply to claims for credit or refund filed on or after the date that the final regulations are published in the **Federal Register**. The rules in these proposed regulations may be relied upon by taxpayers making claims for credit or refund before publication of the Treasury decision.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to the regulations, and, therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of the proposed regulations is Micah A. Levy, Office of the Associate Chief Counsel (Procedure & Administration).

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

**Paragraph 1.** The authority citation for part 301 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 301.6402–2 is amended by revising paragraphs (a)(2), (b)(2), (c), and (d) and adding paragraph (g) to read as follows:

**§ 301.6402–2 Claims for credit or refund.**

(a) \* \* \*

(2) Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), the claim, together with appropriate supporting evidence, generally must be filed with the service center at which the taxpayer currently would be required to file a tax return for the type of tax to which the claim relates. Notwithstanding the preceding sentence, if a taxpayer is required to file a claim for credit or refund on a particular form, then the claim must be filed in a manner consistent with such form and form instructions. If a taxpayer is filing a claim in response to an IRS notice or correspondence, then the claim must be filed in accordance with the specific instructions contained in the notice or correspondence regarding the proper address for filing. 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 the time for filing a claim when the last day falls on Saturday, Sunday, or a legal holiday.

(b) \* \* \*

(2) The IRS does not have the authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Unless the IRS otherwise has prescribed a particular form on which the claim must be filed, in which case the claim shall be made on such other form, all claims by taxpayers for the refunding of taxes,

interest, penalties, and additions to tax shall be made on Form 843, “Claim for Refund and Request for Abatement.” For special rules applicable to income taxes, see § 301.6402–3. For provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.

(d) *Separate claims for separate taxable periods.* In the case of income and gift taxes, income tax withheld, taxes under the Federal Insurance Contributions Act, taxes under the Railroad Retirement Tax Act, and taxes under the Federal Unemployment Tax Act, a separate claim shall be made for each return for each taxable period.

\* \* \* \* \*

(g) *Effective/Applicability date.* This section is applicable on the date that the final regulations are published in the **Federal Register**.

**Par. 3.** Section 301.6402–3 is amended by revising paragraph (a) introductory text, removing paragraph (b), redesignating paragraphs (c), (d), (e) and (f), as (b), (c), (d) and (e), respectively, and revising paragraphs (b) and (e) to read as follows:

**§ 301.6402–3 Special rules applicable to income tax.**

(a) In the case of a claim for credit or refund of income tax—

\* \* \* \* \*

(b) The filing of a properly executed income tax return shall, in any case in which the taxpayer is not required to show the tax on the form (see section 6014 and the regulations), be treated as a claim for refund and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the computation of the tax made by the Secretary on the basis of the return. Whether such claim is timely filed within the limitations period prescribed by section 6511 will be governed by the date on which the return is considered filed, except that if the requirements of § 301.7502–1 (relating to timely mailing treated as timely filing) are met, the claim shall be considered to have been filed on the date of the postmark stamped on the cover in which the return was mailed.

\* \* \* \* \*

(e) *Effective/Applicability date.* This section is applicable on the date that the final regulations are published in the **Federal Register**, except that references in paragraph (d) of this section to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

**Par. 4.** Section 301.6402–4 is revised to read as follows:

**§ 301.6402–4 Payments in excess of amounts shown on return.**

In certain cases, a taxpayer's payments in respect of a tax liability, made before the filing of the return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of income tax if the estimated tax payments or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or if the installment payments based on a corporation's estimate of its tax liability on an application for an extension of time to file its return exceeds the tax liability shown on the return subsequently filed. In any case in which the Secretary 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 Secretary may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. The provisions of §§ 301.6402–2 and 301.6402–3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402–3) to protect themselves in the event the Secretary fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds in excess of the statutorily prescribed threshold referral amount to the Joint Committee on Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely filed return.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–101352–11]

RIN 1545–BK00

**Requirements for Taxpayers Filing Form 5472**

**AGENCY:** Internal Revenue Service (IRS), Treasury.