**Statute of Limitations on Credits or Refunds**

**Requirements to File Claim and Limitations on Filing – Section 6511 and Related Regulations**

1. Claim Requirements
   1. Treas. Reg. § 301.6402-2(b)(1)
      1. Writing signed by claimant under penalties of perjury
      2. Detail the grounds for the each credit or refund claimed
      3. Include sufficient facts to establish the basis of each claim
   2. Informal Claims – *United States v. Kales*, 314 U.S. 186, 194 (1941)
      1. A taxpayer may request a credit or refund using an improper form and the IRS may treat the claim as an informal claim for refund. However, the taxpayer must file an amendment to correct any formal defects and provide specifics
      2. The taxpayer may file the amendment after the statute of limitations lapses
2. Where to File Claims
   1. With the service center where the taxpayer filed the original return –   
      Treas. Reg. § 301.6402-2(a)(2); Treas. Reg. § 1.6091-2(e)
   2. By mail – the postmark date is the claim date – See IRC § 7502 for types of documentation required for proof of mailing, such as U.S. certified mail receipt, U.S. postmark, or approved private delivery service documentation
   3. An individual my hand deliver an income tax return by filing it with any person assigned the responsibility to receive returns at the local IRS office that serves the local residence – Treas. Reg. § 1.6091-2(d)
3. Limitations on Filing a Credit or Refund Claim – IRC § 6511
   1. Statute of Limitations for Filing a Refund Claim – IRC § 6511(a)
      1. Return filed – taxpayer must file claim by later of:
         1. Three years from date the return is filed; or
         2. Two years from the payment date of the tax claimed as a refund

**Note:** The IRS will treat a return filed before the due date (without extensions) as if it was filed on the due date – IRC § 6513(b)(1)

* + 1. No return filed – taxpayer must file claim within two years from the payment date of the tax claimed as a refund
  1. Special limitations – the following taxes have special time limitations – IRC § 6511(d)
     1. Bad debts and worthless securities
     2. Carrybacks of net operating losses, capital losses, and certain credits
     3. Other misc. taxes – see IRC § 6511(d)(3)-(8)
  2. Limitations on the Amount of Credit or Refund Allowed – IRC § 6511(b)
     1. Even if a taxpayer files a timely refund claim, the law limits the amount of the refund allowed
     2. “Three-Year Look Back” Rule – IRC § 6511(b)(2)(A) – for claims filed within three years of the return’s filing date, the allowable claims include:
        1. Taxes paid within the three years prior to the claim, plus
        2. Taxes paid during granted extension periods (for timely filed returns)
     3. For claims not made within three years of the return’s filing date, the allowable claim is limited to the taxes paid during the two years preceding the filing date of the claim – IRC § 6511(b)(2)(B)
  3. Effect of Extending Period of Assessment on Refund Claims – IRC § 6511(c)
     1. Time to file claim – claim period extends to six months after the new assessment period ends
     2. Limits on claim amounts – limited to the tax paid between the execution date of the extension agreement and date of the claim plus the amount paid within limits of   
        IRC § 6511(b)(2)
     3. Claims filed or allowed prior to the agreement or six months after the extended assessment period expires are not subject to the limitation

**Section 6532. Periods of Limitations on Suits**

1. Refund Suits Filed by Taxpayers
   1. General Rule – The period for a taxpayer to file suit begins six months after the date of filing the claim for refund with the IRS, and ends two years after the IRS mails a notice of disallowance to the taxpayer – IRC § 6532(a)(1)
   2. Extensions and Waivers
      1. The taxpayer and the IRS can agree in writing to extend the two-year period in   
         IRC § 6532(a)(1) – IRC § 6532(a)(2)
      2. The taxpayer can waive the requirement of a notice of disallowance, in which case, the two-year period begins when the waiver is filed with the Service –   
         IRC § 6532(a)(3)
      3. Any subsequent consideration, reconsideration, or action taken by the IRS after mailing the notice of disallowance does not extend the two-year period –   
         IRC § 6532(a)(4)
   3. If the IRS Takes No Action on the Refund Claim
      1. Although the two-year period is tied to the mailing of the notice of disallowance, the IRS could decide to take no action on a refund claim
      2. In those instances, does the statute of limitations ever run? – Possibly
         1. There is a general six year statute of limitations on claims against the United States under the Tucker Act, 28 U.S.C. §§ 2401, 2501
         2. The “outside limit” on filing a refund suit may be 6.5 years after filing the claim for refund (i.e., six months for the claim to accrue and then six years to bring suit)
         3. It is unclear whether this statute of limitations applies to tax refund suits
2. Suits by the United States to Recover Erroneous Refunds
   1. General Rule – The United States has two years from the date of making an erroneous refund to bring suit for the recovery of that refund – IRC § 6532(b)
   2. Fraud Exception – If any part of the refund was induced by fraud or misrepresentation of a material fact, the two-year period is extended to a five-year period

**28 USC 2401 Federal Six Year Limitation Period**

1. 28 USC 2401(a)’s six year rule
   1. “Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues”
   2. Must be evaluated in context of IRC§ 6532(a)
      1. Suit is permitted six months after a claim is filed
      2. Provides a two-year limitations period after the IRS denies the claim
      3. When the IRS does not deny the claim, but six years and six months accrue following the filing of the claim, 28 USC 2401(a)’s six-year rule could be interpreted as an overarching bar
2. Court Interpretation
   1. *Wagenet v. U.S.*, 104 AFTR 2d 2009-7804 (DC CA 2009) – District Court of California held that taxpayer’s refund complaint was untimely because taxpayer filed the claim more than six years earlier, but the IRS did not formally disallow the claim
      1. Although the two-years-from-disallowance period for filing refund suits under   
         IRC § 6532(a)(1) didn't apply, the general six-year period on any civil suit against the Government under 28 USC 2401(a) barred the suit
   2. See also
      1. *Breland v. United States*, 2011 U.S. Dist. LEXIS 104499, 2011 WL 4345300 (N.D.N.Y Sept. 15, 2011);
      2. *Finkelstein v. United States*, 943 F. Supp. 425 (D. N.J. 1996)
3. Chief Counsel Notice 2012-12 (available at 2012 CCN LEXIS 8) – IRS rejected the position taken in *Wagenet* and similar cases and does not to take the position that the general six year statute applies
   1. “Although favorable to the government, the holdings regarding the application of 28 U.S.C. § 2401 to refund suits brought under section 7422 are inconsistent with Rev. Rul. 56-381 and the decisions cited therein that reject the argument that six-year periods of limitation in either 28 U.S.C. § 2401 or 2501 apply to bar tax refund suits. . . .

Chief Counsel attorneys must continue to follow Rev. Rul. 56-381 and should advise the Service or the Department of Justice that the general six-year period of limitation for bringing claims against the government in 28 U.S.C. §§ 2401 and 2501 does not apply to tax refund suits.”