

## EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-223 applicable to qualified investment for taxable years beginning after Dec. 31, 1979, see section 223(b)(3) of Pub. L. 96-223, set out as a note under section 46 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600, to the extent amendment relates to chapter 1 or 5 of this title, applicable to taxable years ending on or after Dec. 31, 1975, and, to the extent amendment relates to wage withholding under chapter 24 of this title, applicable to remuneration paid on or after the first day of the first month which begins more than 90 days after Nov. 6, 1978, see section 701(u)(15)(E) of Pub. L. 95-600, set out as a note under section 6013 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94-455, set out as a note under section 667 of this title.

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94-12, as amended, set out as a note under section 32 of this title.

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91-172, set out as a note under section 665 of this title.

## EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

**§ 6402. Authority to make credits or refunds****(a) General rule**

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f)<sup>1</sup> refund any balance to such person.

**(b) Credits against estimated tax**

The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

**(c) Offset of past-due support against overpayments**

The amount of any overpayment to be refunded to the person making the overpayment

shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of of<sup>2</sup> such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

**(d) Collection of debts owed to Federal agencies****(1) In general**

Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

**(2) Priorities for offset**

Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26)<sup>3</sup> of the Social Security Act and before such overpayment is reduced pursuant to subsections (e) and (f) and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

**(3) Treatment of OASDI overpayments****(A) Requirements**

Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

**(B) Notice; protection of other persons filing joint return****(i) Notice**

In the case of a debt consisting of an OASDI overpayment, if the Secretary de-

<sup>1</sup> So in original. Probably should be followed by a comma.

<sup>2</sup> So in original.

<sup>3</sup> See References in Text note below.

termines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

**(ii) Adjustments based on protections given to other taxpayers on joint return**

If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

**(C) Deposit of amount of reduction into appropriate trust fund**

In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Commissioner of Social Security, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Commissioner of Social Security.

**(D) OASDI overpayment**

For purposes of this paragraph, the term “OASDI overpayment” means any overpayment of benefits made to an individual under title II of the Social Security Act.

**(e) Collection of past-due, legally enforceable State income tax obligations**

**(1) In general**

Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person’s name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a past-due, legally enforceable State income tax obligation.

If an offset is made pursuant to a joint return, the notice under subparagraph (B) shall in-

clude the names, taxpayer identification numbers, and addresses of each person filing such return.

**(2) Offset permitted only against residents of State seeking offset**

Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset.

**(3) Priorities for offset**

Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from one or more agencies of the State of more than one debt subject to paragraph (1) or subsection (f) that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

**(4) Notice; consideration of evidence**

No State may take action under this subsection until such State—

(A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section;

(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable;

(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable; and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

**(5) Past-due, legally enforceable State income tax obligation**

For purposes of this subsection, the term “past-due, legally enforceable State income tax obligation” means a debt—

(A)(i) which resulted from—

(I) a judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due; or

(II) a determination after an administrative hearing which has determined an amount of State income tax to be due; and

(ii) which is no longer subject to judicial review; or

(B) which resulted from a State income tax which has been assessed but not collected, the time for redetermination of which has expired, and which has not been delinquent for more than 10 years.

For purposes of this paragraph, the term "State income tax" includes any local income tax administered by the chief tax administration agency of the State.

**(6) Regulations**

The Secretary shall issue regulations prescribing the time and manner in which States must submit notices of past-due, legally enforceable State income tax obligations and the necessary information that must be contained in or accompany such notices. The regulations shall specify the types of State income taxes and the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied. The regulations may require States to pay a fee to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

**(7) Erroneous payment to State**

Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).

**(f) Collection of unemployment compensation debts**

**(1) In general**

Upon receiving notice from any State that a named person owes a covered unemployment compensation debt to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

(A) reduce the amount of any overpayment payable to such person by the amount of such covered unemployment compensation debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a covered unemployment compensation debt.

If an offset is made pursuant to a joint return, the notice under subparagraph (C) shall include information related to the rights of a spouse of a person subject to such an offset.

**(2) Priorities for offset**

Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from a State or States of more than one debt subject to paragraph (1) or subsection (e) that is owed by a person to such State or States, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

**(3) Notice; consideration of evidence**

No State may take action under this subsection until such State—

(A) notifies the person owing the covered unemployment compensation debt that the State proposes to take action pursuant to this section;

(B) provides such person at least 60 days to present evidence that all or part of such liability is not legally enforceable or is not a covered unemployment compensation debt;

(C) considers any evidence presented by such person and determines that an amount of such debt is legally enforceable and is a covered unemployment compensation debt; and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such covered unemployment compensation debt.

**(4) Covered unemployment compensation debt**

For purposes of this subsection, the term "covered unemployment compensation debt" means—

(A) a past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to section 3304 and which remains uncollected;

(B) contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(C) any penalties and interest assessed on such debt.

**(5) Regulations**

**(A) In general**

The Secretary may issue regulations prescribing the time and manner in which States must submit notices of covered unemployment compensation debt and the necessary information that must be contained

in or accompany such notices. The regulations may specify the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied.

**(B) Fee payable to Secretary**

The regulations may require States to pay a fee to the Secretary, which may be deducted from amounts collected, to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

**(C) Submission of notices through Secretary of Labor**

The regulations may include a requirement that States submit notices of covered unemployment compensation debt to the Secretary via the Secretary of Labor in accordance with procedures established by the Secretary of Labor. Such procedures may require States to pay a fee to the Secretary of Labor to reimburse the Secretary of Labor for the costs of applying this subsection. Any such fee shall be established in consultation with the Secretary of the Treasury. Any fee paid to the Secretary of Labor may be deducted from amounts collected and shall be used to reimburse the appropriation account which bore all or part of the cost of applying this subsection.

**(6) Erroneous payment to State**

Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).

**(g) Review of reductions**

No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), (e), or (f). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act.

**(h) Federal agency**

For purposes of this section, the term “Federal agency” means a department, agency, or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

**(i) Treatment of payments to States**

The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c), (e), or (f) to a State shall be treated as a payment to the person or persons making the overpayment.

**(j) Cross reference**

For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

**(k) Refunds to certain fiduciaries of insolvent members of affiliated groups**

Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.

**(l) Explanation of reason for refund disallowance**

In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.

(Aug. 6, 1954, ch. 736, 68A Stat. 791; Pub. L. 94-455, title XIX, §1906(b)(13) (A), (K), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub. L. 97-35, title XXIII, §2331(c), Aug. 13, 1981, 95 Stat. 861; Pub. L. 98-369, div. B, title VI, §2653(b)(1), (2), July 18, 1984, 98 Stat. 1154, 1155; Pub. L. 98-378, §21(e), Aug. 16, 1984, 98 Stat. 1325; Pub. L. 100-647, title VI, §6276, Nov. 10, 1988, 102 Stat. 3753; Pub. L. 101-508, title V, §5129(c), Nov. 5, 1990, 104 Stat. 1388-288; Pub. L. 103-296, title I, §108(h)(7), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 104-134, title III, §31001(u)(2), Apr. 26, 1996, 110 Stat. 1321-375; Pub. L. 104-193, title I, §110(l)(7), Aug. 22, 1996, 110 Stat. 2173; Pub. L. 105-33, title V, §5514(a)(1), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105-206, title III, §§3505(a), 3711(a), (c), July 22, 1998, 112 Stat. 771, 779, 781; Pub. L. 109-171, title VII, §7301(d), Feb. 8, 2006, 120 Stat. 144; Pub. L. 110-328, §3(a), (d), Sept. 30, 2008, 122 Stat. 3570, 3573; Pub. L. 111-291, title VIII, §801(a), Dec. 8, 2010, 124 Stat. 3157; Pub. L. 111-312, title V, §503(a), Dec. 17, 2010, 124 Stat. 3308.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c), (d)(2), (3)(D), and (g), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 204, 464, and 471(a)(17) of the Act are classified to sections 404, 664, and 671(a)(17) of Title 42. Section 402 of the Act, which was classified to section 602 of Title 42, was repealed and a new section 402 enacted by Pub. L. 104-193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112. As so enacted section 402 does not contain a subsec. (a)(26). For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111-291, §801(a)(1), struck out “resulting from fraud” after “debts” in heading.

Subsec. (f)(3). Pub. L. 111-291, §801(a)(2), redesignated par. (4) as (3) and struck out former par. (3). Prior to

amendment, text of par. (3) read as follows: "Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset."

Subsec. (f)(3)(A). Pub. L. 111-291, §801(a)(3)(A), struck out "by certified mail with return receipt" after "notifies".

Subsec. (f)(3)(B). Pub. L. 111-291, §801(a)(3)(B), substituted "is not a covered unemployment compensation debt" for "due to fraud".

Subsec. (f)(3)(C). Pub. L. 111-312 substituted "is a covered unemployment compensation debt" for "is not a covered unemployment compensation debt".

Pub. L. 111-291, §801(a)(3)(C), substituted "is not a covered unemployment compensation debt" for "due to fraud".

Subsec. (f)(4). Pub. L. 111-291, §801(a)(2), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(4)(A). Pub. L. 111-291, §801(a)(4)(A), inserted "or the person's failure to report earnings" after "due to fraud" and struck out "for not more than 10 years" after "remains uncollected".

Subsec. (f)(4)(B). Pub. L. 111-291, §801(a)(4)(B), struck out "due to fraud" after "to be liable" and "for not more than 10 years" after "remain uncollected".

Subsec. (f)(5) to (8). Pub. L. 111-291, §801(a)(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out par. (8). Prior to amendment, text of par. (8) read as follows: "This section shall not apply to refunds payable after the date which is 10 years after the date of the enactment of this subsection."

2008—Subsec. (a). Pub. L. 110-328, §3(d)(1), substituted "(c), (d), (e), and (f)" for "(c), (d), and (e)".

Subsec. (d)(2). Pub. L. 110-328, §3(d)(2), substituted "and before such overpayment is reduced pursuant to subsections (e) and (f)" for "and before such overpayment is reduced pursuant to subsection (e)".

Subsec. (e)(3). Pub. L. 110-328, §3(d)(3), inserted "or subsection (f)" after "paragraph (1)" in concluding provisions.

Subsec. (f). Pub. L. 110-328, §3(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110-328, §3(a), (d)(4), redesignated subsec. (f) as (g) and substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)". Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 110-328, §3(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 110-328, §3(a), (d)(5), redesignated subsec. (h) as (i) and substituted "subsection (c), (e), or (f)" for "subsection (c) or (e)". Former subsec. (i) redesignated (j).

Subsecs. (j) to (l). Pub. L. 110-328, §3(a), redesignated subsecs. (i) to (k) as (j) to (l), respectively.

2006—Subsec. (c). Pub. L. 109-171 substituted "of such Act." for "the Social Security Act." in first sentence and "The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law." for "A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made." in third sentence.

1998—Subsec. (a). Pub. L. 105-206, §3711(c)(1), substituted "(c), (d), and (e)" for "(c) and (d)".

Subsec. (d)(2). Pub. L. 105-206, §3711(c)(2), substituted "and before such overpayment is reduced pursuant to subsection (e) and before such overpayment" for "and before such overpayment".

Subsec. (e). Pub. L. 105-206, §3711(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-206, §3711(a), (c)(3), redesignated subsec. (e) as (f) and substituted "(c), (d), or (e)" for "(c) or (d)" and "Federal agency or State" for "Federal agency". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-206, §3711(a), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 105-206, §3711(a), (c)(4), redesignated subsec. (g) as (h) and substituted "subsection (c) or (e)" for "subsection (c)". Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 105-206, §3711(a), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105-206, §3711(a), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Pub. L. 105-206, §3505(a), added subsec. (j).

Subsec. (k). Pub. L. 105-206, §3711(a), redesignated subsec. (j) as (k).

1997—Subsecs. (a), (e) to (j). Pub. L. 105-33 repealed Pub. L. 104-193, §110(l)(7). See 1996 Amendment notes below.

1996—Subsec. (a). Pub. L. 104-193, §110(l)(7)(A), which directed substitution of "(c), (d), and (e)" for "(c) and (d)", was repealed by Pub. L. 105-33.

Subsec. (e). Pub. L. 104-193, §110(l)(7)(C), which directed amendment by adding subsec. (e), reading as follows: "COLLECTION OF OVERPAYMENTS UNDER TITLE IV—A OF THE SOCIAL SECURITY ACT.—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced (after reductions pursuant to subsections (c) and (d), but before a credit against future liability for an internal revenue tax) in accordance with section 405(e) of the Social Security Act (concerning recovery of overpayments to individuals under State plans approved under part A of title IV of such Act).", was repealed by Pub. L. 105-33.

Subsec. (f). Pub. L. 104-193, §110(l)(7)(B), which directed amendment by redesignating subsec. (e) as (f), was repealed by Pub. L. 105-33.

Pub. L. 104-134 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of this section, the term 'Federal agency' means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code)."

Subsecs. (g) to (j). Pub. L. 104-193, §110(l)(7)(B), which directed amendment by redesignating subsecs. (f) to (i) as (g) to (j), respectively, was repealed by Pub. L. 105-33.

1994—Subsecs. (d)(3)(C), (e). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services" wherever appearing.

1990—Subsec. (d)(1). Pub. L. 101-508, §5129(c)(1)(A), struck out "any OASDI overpayment and" after "(other than)".

Subsec. (d)(3). Pub. L. 101-508, §5129(c)(1)(B), added par. (3) and struck out former par. (3) which read as follows: "For purposes of this subsection the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act."

Subsec. (e). Pub. L. 101-508, §5129(c)(2), inserted before period at end "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act".

1988—Subsec. (i). Pub. L. 100-647 added subsec. (i).

1984—Subsec. (a). Pub. L. 98-369, §2653(b)(2), substituted "subsections (c) and (d)" for "subsection (c)".

Subsec. (c). Pub. L. 98-378, §21(e)(1), substituted "collecting such support" for "to which such support has been assigned" and inserted provision that a reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made.

Subsecs. (d) to (f). Pub. L. 98-369, §2653(b)(1), added subsecs. (d) to (f).

Subsec. (g). Pub. L. 98-378, §21(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98-369, §2653(b)(1), added subsec. (g).

Subsec. (h). Pub. L. 98-378, §21(e)(2), redesignated former subsec. (g) as (h).

1981—Subsec. (a). Pub. L. 97-35, §2331(c)(1), inserted reference to subsec. (c) of this section.

Subsec. (c). Pub. L. 97-35, §2331(c)(2), added subsec. (c).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title V, §503(b), Dec. 17, 2010, 124 Stat. 3308, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in section 801 of the Claims Resolution Act of 2010 [Pub. L. 111-291].”

Pub. L. 111-291, title VIII, §801(b), Dec. 8, 2010, 124 Stat. 3157, provided that: “The amendments made by this section [amending this section] shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of the enactment of this Act [Dec. 8, 2010].”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-328 applicable to refunds payable under section 6402 of this title on or after Sept. 30, 2008, see section 3(e) of Pub. L. 110-328, set out as a note under section 3304 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-171 effective Oct. 1, 2009, and applicable to payments under parts A and D of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare, for calendar quarters beginning on or after such date, subject to certain State options, see section 7301(e) of Pub. L. 109-171, set out as a note under section 608 of Title 42.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3505(b), July 22, 1998, 112 Stat. 771, provided that: “The amendment made by this section [amending this section] shall apply to disallowances after the 180th day after the date of the enactment of this Act [July 22, 1998].”

Amendment by section 3711 of Pub. L. 105-206 applicable to refunds payable under this section after Dec. 31, 1999, see section 3711(d) of Pub. L. 105-206, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, at the time such section 110 became law, see section 5518(c) of Pub. L. 105-33, set out as a note under section 51 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 5129(d) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this sec-

tion, section 3720A of Title 31, Money and Finance, and section 404 of Title 42, The Public Health and Welfare]—

“(1) shall take effect January 1, 1991, and

“(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) [enacting section 3720A of Title 31 and amending this section and sections 6103 and 7213 of this title] do not apply.”

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-378 applicable with respect to refunds payable under this section after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of this title.

Section 2653(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-203, title IX, §9402(a), Dec. 22, 1987, 101 Stat. 1330-376; Pub. L. 100-485, title VII, §701(a), Oct. 13, 1988, 102 Stat. 2425; Pub. L. 102-164, title IV, §401(a), Nov. 15, 1991, 105 Stat. 1061, provided that: “The amendments made by this section [enacting section 3720A of Title 31, Money and Finance, and amending this section and sections 6103 and 7213 of this title] shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after December 31, 1985.”

[Pub. L. 102-164, title IV, §401(b), Nov. 15, 1991, 105 Stat. 1061, provided that: “The amendment made by this section [amending section 2653(c) of Pub. L. 98-369, set out above] shall take effect on October 1, 1991.”]

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective, except as otherwise specifically provided, on Oct. 1, 1981, see section 2336 of Pub. L. 97-35, set out as a note under section 651 of Title 42, The Public Health and Welfare.

#### ORGAN AND TISSUE DONATION INFORMATION INCLUDED WITH INCOME TAX REFUND PAYMENTS

Pub. L. 104-191, title III, §371, Aug. 21, 1996, 110 Stat. 2072, provided that:

“(a) IN GENERAL.—The Secretary of the Treasury shall, to the extent practicable, include with the mailing of any payment of a refund of individual income tax made during the period beginning on February 1, 1997, and ending on June 30, 1997, a copy of the document described in subsection (b).

“(b) TEXT OF DOCUMENT.—The Secretary of the Treasury shall, after consultation with the Secretary of Health and Human Services and organizations promoting organ and tissue (including eye) donation, prepare a document suitable for inclusion with individual income tax refund payments which—

“(1) encourages organ and tissue donation;

“(2) includes a detachable organ and tissue donor card; and

“(3) urges recipients to—

“(A) sign the organ and tissue donor card;

“(B) discuss organ and tissue donation with family members and tell family members about the recipient’s desire to be an organ and tissue donor if the occasion arises; and

“(C) encourage family members to request or authorize organ and tissue donation if the occasion arises.”

#### CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98-369

Pub. L. 100-203, title IX, §9402(b), Dec. 22, 1987, 101 Stat. 1330-376, provided that:

“(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 [enacting section 3720A of Title 31, Money and Finance, and amending this section and sections 6103 and 7213 of this title] shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

“(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653

of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

“(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.”

STUDY BY GENERAL ACCOUNTING OFFICE OF OPERATION AND EFFECTIVENESS OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98-369

Pub. L. 100-203, title IX, §9402(c), Dec. 22, 1987, 101 Stat. 1330-376, required the Comptroller General of the United States, in consultation with the Secretary of the Treasury, to conduct a study of the operation and effectiveness of amendments by section 2653 of Pub. L. 98-369 on voluntary compliance with the income tax laws and, by Apr. 1, 1989, submit a report and recommendations to Congress.

#### § 6403. Overpayment of installment

In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

(Aug. 16, 1954, ch. 736, 68A Stat. 791.)

#### § 6404. Abatements

##### (a) General rule

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

- (1) is excessive in amount, or
- (2) is assessed after the expiration of the period of limitation properly applicable thereto, or
- (3) is erroneously or illegally assessed.

##### (b) No claim for abatement of income, estate, and gift taxes

No claim for abatement shall be filed by a taxpayer in respect of any assessment of any tax imposed under subtitle A or B.

##### (c) Small tax balances

The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

##### (d) Assessments attributable to certain mathematical errors by Internal Revenue Service

In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

##### (e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service

###### (1) In general

In the case of any assessment of interest on—

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

###### (2) Interest abated with respect to erroneous refund check

The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless—

- (A) the taxpayer (or a related party) has in any way caused such erroneous refund, or
- (B) such erroneous refund exceeds \$50,000.

##### (f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service

###### (1) In general

The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

###### (2) Limitations

Paragraph (1) shall apply only if—

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

###### (3) Initial regulations

Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.

##### (g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer

###### (1) Suspension

###### (A) In general

In the case of an individual who files a return of tax imposed by subtitle A for a tax-