

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

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AMENDMENTS

1969—Pub. L. 91-172, title I, §101(j)(62), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in subchapter heading.

§ 6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term “deficiency” means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term “rebate” means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a)—

(A) any excess of the sum of the credits allowable under sections 24(d), 25A by reason of subsection (i)(6) thereof, 32, 34, 35, 36, 36A, 36B, 53(e), 168(k)(4), 6428, and 6431 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over

the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 89-44, title VIII, §809(d)(5)(A), June 21, 1965, 79 Stat. 168; Pub. L. 89-368, title I, §102(b)(4), Mar. 15, 1966, 80 Stat. 64; Pub. L. 91-172, title I, §101(f)(1), (j)(39), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 93-406, title II, §1016(a)(9), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94-455, title XII, §1204(c)(4), title XIII, §1307(d)(2)(E), (F)(i), title XVI, §1605(b)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1728, 1754, 1834; Pub. L. 96-223, title I, §101(f)(1)(A), (B), (2), (3), Apr. 2, 1980, 94 Stat. 252; Pub. L. 98-369, div. A, title IV, §474(r)(33), July 18, 1984, 98 Stat. 845; Pub. L. 100-203, title X, §10713(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-418, title I, §1941(b)(2)(B)(i), (ii), (C), (D), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100-647, title I, §1015(r)(2), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105-34, title XII, §1231(b), Aug. 5, 1997, 111 Stat. 1023; Pub. L. 105-206, title VI, §6012(f), July 22, 1998, 112 Stat. 819; Pub. L. 106-554, §1(a)(7) [title III, §314(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643; Pub. L. 109-432, div. A, title IV, §402(b)(1), Dec. 20, 2006, 120 Stat. 2954; Pub. L. 110-172, §11(a)(35), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110-185, title I, §101(b)(1), Feb. 13, 2008, 122 Stat. 615; Pub. L. 110-289, div. C, title I, §3011(b)(2), July 30, 2008, 122 Stat. 2891; Pub. L. 111-5, div. B, title I, §§1001(e)(1), 1004(b)(7), 1201(a)(3)(B), (b)(2), 1531(c)(4), Feb. 17, 2009, 123 Stat. 312, 314, 334, 360; Pub. L. 111-148, title I, §1401(d)(3), as added title X, §§10105(d), 10909(b)(2)(N), (c), Mar. 23, 2010, 124 Stat. 906, 1023; Pub. L. 111-312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENTS

2010—Subsec. (b)(4)(A). Pub. L. 111-148, §10909(b)(2)(N), (c), as amended by Pub. L. 111-312, temporarily inserted “36C,” before “53(e)”. See Effective and Termination Dates of 2010 Amendment note below.

Pub. L. 111-148, §1401(d)(3), as added by Pub. L. 111-148, §10105(d), inserted “36B,” after “36A.”.

2009—Subsec. (b)(4)(A). Pub. L. 111-5, §1531(c)(4), substituted “6428, and 6431” for “and 6428”.

Pub. L. 111-5, §1201(a)(3)(B), (b)(2), amended subpar. (A) identically, inserting “168(k)(4),” after “53(e).”.

Pub. L. 111-5, §1004(b)(7), inserted “25A by reason of subsection (i)(6) thereof,” after “24(d).”.

Pub. L. 111-5, §1001(e)(1), inserted “36A,” after “36.”.

2008—Subsec. (b)(4)(A). Pub. L. 110-289 substituted “34, 35, 36, 53(e), and 6428” for “34, 35, 53(e), and 6428”.

Pub. L. 110-185 substituted “53(e), and 6428” for “and 53(e)”.

2007—Subsec. (b)(4)(A). Pub. L. 110-172, which directed amendment of subpar. (A) by substituting “34, and 35” for “and 34”, was executed by inserting “35,” after “34.”, to reflect the probable intent of Congress and the amendment of subpar. (A) by section 402(b)(1) of Pub. L. 109-432. See 2006 Amendment note below.

2006—Subsec. (b)(4)(A). Pub. L. 109-432 substituted “34, and 53(e)” for “and 34”.

2000—Subsec. (b)(4)(A). Pub. L. 106-554 substituted “sections 24(d), 32, and 34” for “sections 32 and 34”.

1998—Subsec. (c). Pub. L. 105-206 substituted “subchapters C and D” for “subchapter C” in heading and in text.

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100-418, § 1941(b)(2)(B)(i), (C), in introductory provisions, substituted “and 44” for “44, and 45” and “or 44” for “44, or 45”.

Subsec. (b)(2). Pub. L. 100-418, § 1941(b)(2)(B)(ii), substituted “or 44” for “44, or 45”.

Subsec. (b)(4). Pub. L. 100-647, § 1015(r)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section 34, unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection (a)(1) over the amount specified in subsection (a)(2).”

Subsec. (b)(5), (6). Pub. L. 100-418, § 1941(b)(2)(D), struck out pars. (5) and (6) which read as follows:

“(5) The amount withheld under section 4995(a) from amounts payable to any producer for crude oil removed during any taxable period (as defined in section 4996(b)(7)) which is not otherwise shown on a return by such producer shall be treated as tax shown by the producer on a return for the taxable period.

“(6) Any liability to pay amounts required to be withheld under section 4995(a) shall not be treated as a tax imposed by chapter 45.”

1987—Subsec. (b)(1). Pub. L. 100-203 inserted reference to section 6852.

1984—Subsec. (b)(1). Pub. L. 98-369, § 474(r)(33)(A), substituted “without regard to the credit under section 33” for “without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451”.

Subsec. (b)(4). Pub. L. 98-369, § 474(r)(33)(B), substituted “section 34” for “section 39”.

1980—Subsec. (a). Pub. L. 96-223, § 101(f)(1)(A), (2), inserted references to chapter 45 in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 96-223, § 101(f)(1)(B), inserted reference to chapter 45.

Subsec. (b)(5), (6). Pub. L. 96-223, § 101(f)(3), added pars. (5) and (6).

1976—Subsec. (a). Pub. L. 94-455, §§ 1307(d)(2)(E), (F)(i), 1605(b)(4)(A), (B), substituted “chapters 41, 42, 43, and 44” for “chapters 42 and 43” after “taxes imposed by” and “chapter 41, 42, 43, or 44” for “chapter 42 or 43” after “A or B, or”.

Subsec. (b)(1). Pub. L. 94-455, § 1204(c)(4), struck out “and” after “31” and inserted “, and without regard to any credits resulting from the collection of amounts assessed under section 6851 (relating to termination assessments)” after “section 1451”.

Subsec. (b)(2). Pub. L. 94-455, § 1307(d)(2)(F)(i), 1605(b)(4)(C), substituted “chapter 41, 42, 43, or 44” for “chapter 42 or 43” after “A or B or”.

Subsec. (b)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (a). Pub. L. 93-406, § 1016(a)(9)(A), inserted reference in introductory provisions to taxes imposed by chapter 43.

Subsec. (b)(2). Pub. L. 93-406, § 1016(a)(9)(B), inserted reference to taxes imposed by chapter 43.

1969—Subsec. (a). Pub. L. 91-172, § 101(f)(1), inserted references to excise taxes and chapter 42.

Subsec. (b)(2). Pub. L. 91-172, § 101(j)(39), inserted reference to chapter 42.

1966—Subsec. (b)(1). Pub. L. 89-368 substituted “sub-title A” for “chapter 1”.

1965—Subsec. (b)(4). Pub. L. 89-44 added par. (4).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 1401(d)(3) of Pub. L. 111-148, as added by section 10105(d) of Pub. L. 111-148, applicable to taxable years ending after Dec. 31, 2013, see section 1401(e) of Pub. L. 111-148, set out as an Effective Date note under section 36B of this title.

Amendment by section 10909(b)(2)(N) of Pub. L. 111-148 terminated applicable to taxable years begin-

ning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111-148, set out as a note under section 1 of this title.

Amendment by section 10909(b)(2)(N) of Pub. L. 111-148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111-148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1001(e)(1) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1001(f) of Pub. L. 111-5, set out as an Effective Date note under section 36A of this title.

Amendment by section 1004(b)(7) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1201(a)(3)(B), (b)(2) of Pub. L. 111-5 applicable to taxable years ending after Mar. 31, 2008, see section 1201(c)(2) of Pub. L. 111-5, set out as a note under section 168 of this title.

Amendment by section 1531(c)(4) of Pub. L. 111-5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111-5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-289 applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110-289, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to taxable years beginning after Dec. 20, 2006, see section 402(c) of Pub. L. 109-432, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, § 314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XII, § 1231(d), Aug. 5, 1997, 111 Stat. 1023, provided that: “The amendments made by this section [enacting section 6234 of this title and amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-647 applicable to notices of deficiencies mailed after Nov. 10, 1988, see section 1015(r)(4) of Pub. L. 100-647, set out as a note under section 6201 of this title.

Amendment by Pub. L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96-223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(4) of Pub. L. 94-455 applicable to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94-455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1307(d)(2)(E), (F)(i) of Pub. L. 94-455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94-455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(4) of Pub. L. 94-455, see section 1608(d)(1) of Pub. L. 94-455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 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.

§ 6212. Notice of deficiency**(a) In general**

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency**(1) Income and gift taxes and certain excise taxes**

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted**(1) General rule**

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (re-