

(3) that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) Filing of claims

No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and unless such claim is filed within the time prescribed by law and in accordance with regulations prescribed by the Secretary. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

(c) Application of section

This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

- (1) any claim for drawback, and
- (2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed.

(d) Meaning of terms

For purposes of this section—

(1) Alcohol or tobacco tax

The term “alcohol or tobacco tax” means—
 (A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) Tax

The term “tax” includes a tax and an excation denominated a “tax”, and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) Ultimate burden

The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary may require to insure faithful compliance with his agreement.

(Added Pub. L. 85-323, §1, Feb. 11, 1958, 72 Stat. 9; amended Pub. L. 94-455, title XIX, §1906(a)(29), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1828, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (b). Pub. L. 94-455, §1906(a)(29)(A), among other changes, struck out provisions allowing any claimant who has on or before Apr. 30, 1958, filed a claim for any amount to which subsec. (a) applies, may file a superseding claim after Apr. 30, 1958, conforming to the requirements of this section and covering the amount claimed in such prior claim.

Subsec. (c). Pub. L. 94-455, §1906(a)(29)(B), (C), redesignated subsec. (d) as (c) and struck out par. (3) relating to any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957. Former subsec. (c), relating to disallowance of any suit or proceeding which was barred on Apr. 30, 1958, was struck out.

Subsecs. (d), (e). Pub. L. 94-455, §1906(a)(29)(B), (b)(13)(A), redesignated subsec. (e) as (d) and struck out “or his delegate” after “Secretary”. Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 85-323, §3, Feb. 11, 1958, 72 Stat. 10, provided that this section shall not apply to any credit or refund allowed or made before May 1, 1958.

[§ 6424. Repealed. Pub. L. 97-424, title V, § 515(b)(5), Jan. 6, 1983, 96 Stat. 2181]

Section, added Pub. L. 89-44, title II, §202(b), June 21, 1965, 79 Stat. 137; amended Pub. L. 91-258, title II, §207(b), May 21, 1970, 84 Stat. 248; Pub. L. 94-455, title XIX, §1906(a)(30), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1828, 1834; Pub. L. 95-618, title II, §§222(a)(3), 233(b)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3187, 3191; Pub. L. 97-473, title II, §202(b)(13), Jan. 14, 1983, 96 Stat. 2610, had provided for payments by the Secretary of an amount equal to 6 cents for each gallon of lubricating oil used in a qualified business use or in a qualified bus to certain ultimate purchasers of the lubricating oil.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as an Effective Date of 1983 Amendment note under section 34 of this title.

§ 6425. Adjustment of overpayment of estimated income tax by corporation

(a) Application of adjustment

(1) Time for filing

A corporation may, after the close of the taxable year and on or before the 15th day of the third month thereafter, and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this subsection shall not constitute a claim for credit or refund.

(2) Form of application, etc.

An application under this subsection shall be verified in the manner prescribed by section

6065 in the case of a return of the taxpayer, and shall be filed in the manner and form required by regulations prescribed by the Secretary. The application shall set forth—

(A) the estimated income tax paid by the corporation during the taxable year,

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year,

(C) the amount of the adjustment, and

(D) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

(b) Allowance of adjustment

(1) Limited examination of application

Within a period of 45 days from the date on which an application for an adjustment is filed under subsection (a), the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application to discover omissions and errors therein, and shall determine the amount of the adjustment upon the basis of the application and the examination; except that the Secretary may disallow, without further action, any application which he finds contains material omissions or errors which he deems cannot be corrected within such 45 days.

(2) Adjustment credited or refunded

The Secretary, within the 45-day period referred to in paragraph (1), may credit the amount of the adjustment against any liability in respect of an internal revenue tax on the part of the corporation and shall refund the remainder to the corporation.

(3) Limitation

No application under this section shall be allowed unless the amount of the adjustment equals or exceeds (A) 10 percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year, and (B) \$500.

(4) Effect of adjustment

For purposes of this title (other than section 6655), any adjustment under this section shall be treated as a reduction, in the estimated income tax paid, made on the day the credit is allowed or the refund is paid.

(c) Definitions

For purposes of this section and section 6655(h) (relating to excessive adjustment)—

(1) The term “income tax liability” means the excess of—

(A) The¹ sum of—

(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable,

(ii) the tax imposed by section 55, plus

(iii) the tax imposed by section 59A, over

(B) the credits against tax provided by part IV of subchapter A of chapter 1.

(2) The amount of an adjustment under this section is equal to the excess of—

(A) the estimated income tax paid by the corporation during the taxable year, over

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

(d) Consolidated returns

If the corporation seeking an adjustment under this section paid its estimated income tax on a consolidated basis or expects to make a consolidated return for the taxable year, this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(Added Pub. L. 90-364, title I, §103(d)(1), June 28, 1968, 82 Stat. 262; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-499, title V, §516(b)(4)(C), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99-514, title VII, §701(d)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100-203, title X, §10301(b)(4), Dec. 22, 1987, 101 Stat. 1330-429.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-203 substituted “section 6655(h)” for “section 6655(g)”.

1986—Subsec. (c)(1)(A). Pub. L. 99-514 amended subpar. (A) generally, restating existing provisions as cl. (i) and adding cl. (ii).

Pub. L. 99-499 amended subsec. (c)(1)(A), as amended by the Tax Reform Act of 1986 (Pub. L. 99-514), by striking out “plus” at end of cl. (i), substituting “plus” for “over” at end of cl. (ii), and adding cl. (iii).

1976—Subsecs. (a), (b), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100-203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99-499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99-499, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 6154 and 51 of this title, see section 103(f) of Pub. L. 90-364, set out as an Effective Date of 1968 Amendment note under section 6154 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 6426. Credit for alcohol fuel, biodiesel, and alternative fuel mixtures

(a) Allowance of credits

There shall be allowed as a credit—

¹ So in original. Probably should not be capitalized.