

ity for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS**

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**Subchapter A—Procedure in General**

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**AMENDMENTS**

2010—Pub. L. 111-312, title VII, §728(b), Dec. 17, 2010, 124 Stat. 3317, added item 6409.  
 1987—Pub. L. 100-203, title X, §10621(b), Dec. 22, 1987, 101 Stat. 1330-452, added item 6408.

**§ 6401. Amounts treated as overpayments**

**(a) Assessment and collection after limitation period.**

The term “overpayment” includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

**(b) Excessive credits**

**(1) In general**

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, and G of such part IV), the amount of such excess shall be considered an overpayment.

**(2) Special rule for credit under section 33**

For purposes of paragraph (1), any credit allowed under section 33 (relating to withholding of tax on nonresident aliens and on foreign corporations) for any taxable year shall be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 only if an election under subsection (g) or (h) of section 6013 is in effect for such taxable year. The preceding sentence shall not apply to any credit so allowed by reason of section 1446.

**(c) Rule where no tax liability**

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(Aug. 16, 1954, ch. 736, 68A Stat. 791; Pub. L. 89-44, title VIII, §809(d)(6), June 21, 1965, 79 Stat. 168; Pub. L. 91-172, title III, §331(c), Dec. 30, 1969, 83

Stat. 598; Pub. L. 91-258, title II, §207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94-12, title II, §204(b)(1), Mar. 29, 1975, 89 Stat. 31; Pub. L. 94-455, title VII, §701(f)(2), (3), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95-600, title VII, §701(u)(15)(D), Nov. 6, 1978, 92 Stat. 2919; Pub. L. 95-618, title III, §301(c)(2), Nov. 9, 1978, 92 Stat. 3199; Pub. L. 96-222, title I, §103(a)(2)(B)(iv), Apr. 1, 1980, 94 Stat. 209; Pub. L. 96-223, title II, §223(b)(2), Apr. 2, 1980, 94 Stat. 266; Pub. L. 97-248, title III, §§307(a)(9), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title IV, §474(r)(36), title VII, §735(c)(16), July 18, 1984, 98 Stat. 846, 985; Pub. L. 99-514, title XII, §1246(b), Oct. 22, 1986, 100 Stat. 2582; Pub. L. 100-647, title I, §1012(s)(1)(B), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 105-206, title VI, §6022(a), July 22, 1998, 112 Stat. 824; Pub. L. 109-58, title XIII, §1303(c)(4), Aug. 8, 2005, 119 Stat. 997; Pub. L. 110-234, title XV, §15316(c)(3), May 22, 2008, 122 Stat. 1511; Pub. L. 110-246, §4(a), title XV, §15316(c)(3), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 111-5, div. B, title I, §1531(c)(5), Feb. 17, 2009, 123 Stat. 360; Pub. L. 115-97, title I, §13404(c)(4), Dec. 22, 2017, 131 Stat. 2138.)

**CODIFICATION**

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

**AMENDMENTS**

2017—Subsec. (b)(1). Pub. L. 115-97 substituted “and G” for “G, H, I, and J”.  
 2009—Subsec. (b)(1). Pub. L. 111-5 substituted “I, and J” for “and I”.  
 2008—Subsec. (b)(1). Pub. L. 110-246, §15316(c)(3), substituted “H, and I” for “and H”.  
 2005—Subsec. (b)(1). Pub. L. 109-58 substituted “G, and H” for “and G”.  
 1998—Subsec. (b)(1). Pub. L. 105-206 substituted “D, and G” for “and D”.  
 1988—Subsec. (b)(2). Pub. L. 100-647 amended last sentence generally, substituting “credit so allowed by reason of section 1446” for “amount deducted and withheld under section 1446”.  
 1986—Subsec. (b)(2). Pub. L. 99-514 inserted last sentence.  
 1984—Subsec. (b). Pub. L. 98-369, §474(r)(36), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the amount allowable as credits under sections 31 (relating to tax withheld on wages) and 39 (relating to certain uses of gasoline and special fuels), and 43 (relating to earned income credit), exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39, and 43), the amount of such excess shall be considered an overpayment. For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31.”  
 Pub. L. 98-369, §735(c)(16), substituted “and special fuels” for “, special fuels, and lubricating oil”.  
 1983—Subsec. (b). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.  
 1982—Subsec. (b). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b)

<sup>1</sup> Section numbers editorially supplied.