

Legislative Recommendation #46**Extend the Deadline for Taxpayers to Bring a Refund Suit When They Have Requested Appeals Reconsideration of a Notice of Claim Disallowance But the IRS Has Not Acted Timely to Decide Their Claims****SUMMARY**

- *Problem:* When a taxpayer files a claim for credit or refund and the IRS denies it by sending a notice of claim disallowance, the taxpayer may request reconsideration of that disallowance by the IRS's Independent Office of Appeals (Appeals). If Appeals sustains the denial or does not take action, the taxpayer may bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims but must do so within two years of the date on which the notice of claim disallowance was mailed, unless the taxpayer and the IRS both execute an agreement to extend the time to bring a refund suit. *There is no designated method for taxpayers to get the IRS to execute such an agreement, and consideration of the claim by Appeals does not extend this limitation period.*

If the taxpayer doesn't bring a timely refund suit while waiting for the outcome of Appeals' reconsideration of the claim, any refund issued after the period for bringing suit is an erroneous refund, and any credit is considered void. If there are delays in getting a claim to Appeals or in Appeals' reconsideration of the claim, the unsophisticated taxpayer who chooses to wait for the outcome of Appeals' reconsideration may lose out on the refund because the deadline for the taxpayer to bring suit and the deadline for the IRS to pay the refund (or apply the credit) has passed.

- *Solution:* Extend the two-year period within which the taxpayer must bring suit if the taxpayer has timely requested Appeals' reconsideration of a notice of claim disallowance and Appeals has not rendered a decision within two years of the denial of the refund claim.

PRESENT LAW

If the IRS denies a taxpayer's claim for refund by issuing a notice of claim disallowance,¹ the taxpayer may bring a suit for refund in a U.S. district court or the U.S. Court of Federal Claims. IRC § 6532(a)(1) requires that a refund suit must be initiated within two years from the date on which the IRS mailed the notice of claim disallowance. IRC § 6514(a)(2) prohibits the IRS from issuing a refund after the two-year period for filing a refund suit expires, unless the taxpayer has brought a timely suit.

IRC § 6532(a)(2) provides that the period for bringing a refund suit may be extended by written agreement between the taxpayer and the IRS. Any extension must be executed by the taxpayer and the IRS before the 2-year period has expired.² While a taxpayer may request Appeals' reconsideration of a claim after the IRS has issued a notice of claim disallowance, IRC § 6532(a)(4) specifically provides that such reconsideration does not extend the period to bring a refund suit.

¹ The letters that the IRS most commonly uses to notify a taxpayer that a claim has been disallowed are Letter 105C, Claim Disallowed, and Letter 106C, Claim Partially Disallowed.

² Rev. Rul. 71-57, 1971-1 C.B. 405.

REASONS FOR CHANGE

The strict two-year limitation on bringing a refund suit and the requirement that any refund must be paid within that period poses hazards for tax professionals and unsophisticated taxpayers alike. They may assume that because they are actively pursuing resolution of their claim by Appeals, their rights to file suit and to receive a refund are protected. Many taxpayers are unaware that, under current law, reconsideration of a disallowed claim does not extend the period to file suit under IRC § 6532 or the period within which the IRS is permitted to issue a refund under IRC § 6514. They do not know that if Appeals doesn't complete consideration of their claim within the two-year period after the mailing of the notice of claim disallowance, the IRS is prohibited by IRC § 6514(a)(2) from issuing a refund. This is true even if the IRS agrees that a refund is owed. IRC § 6514(a)(2) even prohibits the IRS from issuing a refund in cases where Appeals has made a determination within the period to file suit but the IRS did not issue the payment or allow the credit during that period.

The IRS created Form 907, Agreement to Extend the Time to Bring Suit, for use in extending the period to bring a refund suit. However, the Form 907 must be countersigned by the IRS, and there is no designated method for taxpayers to submit the form to the IRS to be countersigned.³

Current law may inadvertently discourage taxpayers from seeking administrative resolution of disputed issues because of the risk that their refund claims could become time-barred while an appeal is pending. Conversely, it may encourage unnecessary litigation to protect the refund statute of limitations. It is in the interest of all parties to allow the administrative process to play out without jeopardizing the taxpayer's ability to seek judicial review. By allowing the administrative appeal process to reach a conclusion, the taxpayer may avoid the challenges and costs of bringing a lawsuit; the U.S. Department of Justice (which represents the government in refund litigation) may avoid the challenges and costs of defending against a lawsuit; and the federal courts may avoid hearing a case that the taxpayer and the IRS can resolve without judicial involvement.

The National Taxpayer Advocate appreciates the value of statutes of limitations to prevent open-ended claims. But where a taxpayer is working with the IRS to reach an administrative resolution, the period of limitations should not jeopardize the taxpayer's ability to receive a refund or credit or to obtain judicial review of an adverse Appeals determination when the IRS does not act timely. This is particularly true where a taxpayer is timely in requesting review and responding to all document requests, but where Appeals is simply behind on its case inventories or where a case gets lost in transit between different IRS functions. To prevent these inequities, IRC § 6532 should be amended to remove paragraph (a)(4), which provides that any administrative reconsideration of a disallowed claim does not extend the period to file a refund suit. It should be further amended to ensure that where a taxpayer makes a timely request for Appeals' review of a disallowed claim, the period to file a refund suit will not expire for at least six months after the date when Appeals makes a final determination with respect to the taxpayer's claim. If Appeals ultimately denies the taxpayer's claim, this change will give the taxpayer a full six months to decide whether to pursue judicial review and to prepare and file a complaint. If Appeals ultimately allows the taxpayer's claim, this change will give the IRS a full six months to issue the refund or allow the credit.⁴

3 See Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 6, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake>.

4 IRC § 6514(a)(2) prohibits the issuance of a refund after the expiration of the period for filing a refund suit. By amending IRC § 6532(a) to extend the period to file suit, the period within which the IRS may pay a refund or issue a credit under IRC § 6514(a)(2) would similarly be extended.

RECOMMENDATION

- Amend IRC § 6532(a) to remove subsection (a)(4) and to provide that, where a taxpayer has submitted a written request for reconsideration of a disallowed claim by the IRS's Independent Office of Appeals within two years of the mailing of a notice of claim disallowance, the time to bring a suit for refund shall not expire before the later of (1) the standard two-year period provided in IRC § 6532(a)(1) or (2) six months after the date of the Appeals closing letter.⁵

⁵ On occasion, taxpayers have sought to refresh time-barred claims by filing later claims that are identical or substantially identical. We do not recommend Congress permit such end-runs around the rule, and the courts generally have not allowed them. See *Peretz v. United States*, 148 Fed. Cl. 586, 607 (2020) ("This court and its predecessor courts, as well as courts in other circuits, have long held that repetitively filed claims do not extend the time for which a plaintiff can file suit under 26 U.S.C. § 6532.") (and cases cited therein). If Congress is concerned about potential abuse, our recommendation could be modified to provide that an extension beyond two years will only be permitted for the first refund claim filed for a tax period.