

Legislative Recommendation #2

Require the IRS to Timely Process Claims for Credit or Refund

SUMMARY

- *Problem:* When taxpayers file claims for credit or refund with the IRS, they expect the IRS to promptly process their claims and pay, deny, or audit them. However, there is no statutory requirement for the IRS to act on these claims, which can lead to extended processing delays and leave taxpayers with no recourse but to file suit in a U.S. district court or the U.S. Court of Federal Claims.
- *Solution:* Require the IRS to act on taxpayers' claims for credit or refund within three years of filing. If the IRS fails to take timely action, require the IRS to pay additional interest and, in the event of litigation, shift the burden of proof to the government.

PRESENT LAW

Taxpayers can generally file a claim for credit or refund within the later of three years from the date the return was filed or two years from the date the tax was paid.¹ After taxpayers file a valid claim for credit or refund of an overpayment of tax, the IRS generally has 45 days to provide the refund before it must pay interest.² IRC § 6621 sets forth the applicable interest rates. Once a taxpayer files a refund claim, they can seek recovery in a U.S. district court or the U.S. Court of Federal Claims when the IRS disallows the claim or when six months have elapsed, whichever occurs first.³ The burden of proof in these judicial proceedings generally rests with the taxpayer.⁴

The IRC prescribes various filing dates for tax returns and sets forth periods of limitation (*i.e.*, deadlines) by which the IRS can assess or collect tax.⁵ The IRC also prescribes periods of limitation within which taxpayers may timely file claims for credit or refund, but it does not contain a reciprocal provision requiring the IRS to act on those claims.

REASONS FOR CHANGE

Taxpayers filing claims for credit or refund with the IRS are seeking money to which they believe they are entitled. In the case of refunds, taxpayers may need timely access to the funds to cover basic living expenses or finance essential business operations. Taxpayers want and have a right to expect quick review and processing of their claims.

Surprisingly, the IRC does not require the IRS to process a claim for credit or refund or even to respond to the taxpayer. The IRS can simply ignore the claim. This odd result is a poster child for non-responsive government. It fails to meet the basic expectations expressed in the Taxpayer Bill of Rights, including the *rights to be informed, to quality service, to pay no more than the correct amount of tax, and to finality.*⁶

1 IRC § 6511.

2 IRC § 6611(e)(1), (e)(2).

3 IRC § 6532(a).

4 IRC § 7491.

5 See, e.g., IRC §§ 6072 (deadline for filing income tax returns); 6501 (statute of limitations on assessment); and 6502 (statute of limitations on collection).

6 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in IRC § 7803(a)(3).

Currently, claims for credit or refund can, and sometimes do, spend months, and even years, in administrative limbo within the IRS. Other than having to pay interest on the refund, no legal or economic incentive exists for the IRS to expeditiously review and process the claims.

If the IRS has taken no action on a refund claim within six months from the date of filing, the taxpayer may file an action for recovery in a U.S. district court or the U.S. Court of Federal Claims. However, litigation in these venues is time-consuming, complex, and costly. Taxpayers who have filed refund claims do not want to litigate; they simply want their money.

The National Taxpayer Advocate believes the IRC should require the IRS to process refund claims timely. This can be accomplished by requiring the IRS to act on claims for credit or refund consistent with the general assessment statute, which is within three years from the date of filing.⁷ Permissible actions within three years would include:

- Allowing the claim (in whole or in part);
- Disallowing the claim (in whole or in part); or
- Auditing the claim and extending the three-year statute by mutual consent.

To ensure the IRS meets this requirement, there should be consequences for failing to do so. If the IRS fails to perform one of the above actions within three years from the filing of the claim, the IRC should require it to pay an additional five percent interest charge, in addition to the rate specified in IRC § 6621, on the portion of a claim ultimately allowed. Additionally, if the IRS fails to take one of the above actions within prescribed timeframes, the burden of proof in the event of litigation should shift to the Secretary as a further deterrent to delayed processing. The statute should also provide the IRS with the ability to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.⁸ Regardless of whether the IRS timely acts on a claim for credit or refund, the claim should be valid beyond the three-year window, as is currently the case.

The combination of an explicit statutory requirement to process refund claims within a three-year period and corresponding negative consequences for failing to do so would protect taxpayers' rights. If the IRS is doing its job properly, these consequences should not come into play. It is hard to imagine why the IRS should ever need more than three years to process a claim (or extend the statute of limitations by mutual consent).

RECOMMENDATIONS

- Amend IRC § 6402 to require the IRS to act on claims for credit or refund within three years by, among other things, allowing the claim (in whole or in part), disallowing the claim (in whole or in part), or auditing the claim and extending the three-year statute of limitations by mutual consent within three years from the date of the claim.
- Amend IRC § 6402 to give the IRS the authority to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.
- Provide that if the IRS fails to act on a refund claim within three years, it must pay an additional five percent interest beyond the rate set forth in IRC § 6621 on the portion of a claim ultimately allowed and, in the event of litigation, the burden of proof will shift to the Secretary.

⁷ This three-year period for responding would essentially mirror the three-year statute of limitations for assessment established under IRC § 6501. As a legal matter, we think this is an appropriate fit. As a practical matter, we believe the IRS should process claims for refund or credit much more quickly, ideally within weeks. We recommend that expectation be set forth in legislative history.

⁸ See, e.g., IRC § 6212(d) (rescission of a statutory notice of deficiency).