

Legislative Recommendation #46**Extend the Deadline for Taxpayers to File a Refund Suit When They Request Appeals Reconsideration of a Notice of Claim Disallowance But the IRS Has Not Timely Decided Their Claim****SUMMARY**

- *Problem:* Taxpayers have two years to file a refund suit after the IRS mails a notice of claim disallowance denying a claim for credit or refund. Taxpayers may request reconsideration of a disallowance by the IRS's Independent Office of Appeals (Appeals), but the two-year period is not suspended during Appeals' consideration of the case unless both parties agree to an extension. If Appeals does not resolve the claim timely, the taxpayer may miss the deadline for filing a refund suit and thereby forfeit their refund while waiting for Appeals to act.
- *Solution:* Extend the two-year period for taxpayers to file a refund suit if they have timely requested Appeals' reconsideration of a notice of claim disallowance and Appeals has not made its 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, the taxpayer may bring a suit for refund in a U.S. district court or the U.S. Court of Federal Claims.¹ IRC § 6532(a)(1) requires that a refund suit be initiated within two years from the date 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.

The taxpayer and the IRS may extend the period for bringing a refund suit if an extension is executed by both parties before the two-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.

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 taxpayers alike. They may assume that because they are actively pursuing resolution of their claim with Appeals, their rights to file suit and receive a refund are protected. However, reconsideration of a disallowed claim does not extend the period to file suit under IRC § 6532 or the period in which the IRS is permitted to issue a refund under IRC § 6514. Therefore, if Appeals fails to complete consideration of a claim within two years after the IRS mails a notice of claim disallowance,

1 A taxpayer may not bring a suit for refund in the U.S. Tax Court. The Tax Court is a prepayment forum for challenging federal tax disputes. Its judges possess specialized tax expertise, and it is often a less formal, less expensive, and more accessible forum for *pro se* and low-income taxpayers. For a related recommendation to allow taxpayers to bring refund suits in the U.S. Tax Court, see Legislative Recommendation: *Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases*, *supra*.

2 IRC § 6532(a)(2); Rev. Rul. 71-57, 1971-1 C.B. 405. *But see Kaffenberger v. United States*, 314 F.3d 944, 953 (8th Cir. 2003) (holding that the two-year period under IRC § 6532(a)(1) can be extended after the two-year period has expired); *nonacq. on this issue*, IRS Notice 2004-57, 2004-35 I.R.B. 350. IRS, Form 907, Agreement to Extend the Time to Bring Suit, is used to extend the period for bringing a refund suit. However, 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. 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>.

the IRS is prohibited by IRC § 6514(a)(2) from issuing a refund, even if the IRS agrees that a refund is owed. IRC § 6514(a)(2) even prohibits the IRS from issuing a refund where Appeals has made a determination within the two-year period but the IRS did not issue the payment or allow the credit during that period.

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 taxpayers' ability to seek judicial review. By allowing the administrative appeal process to conclude, all parties may avoid the challenges and costs of a lawsuit, and the federal courts may avoid hearing a case the parties can resolve without judicial involvement.

Statutes of limitation are important to prevent open-ended claims. But where taxpayers are working with the IRS to reach an administrative resolution, the period of limitations should not jeopardize the taxpayers' ability to receive a refund or credit or to obtain judicial review of an adverse Appeals determination if the IRS does not act timely. This is particularly true where taxpayers timely pursue their appeal rights, but Appeals is simply behind on its case inventories or a case gets lost in transit between different IRS functions.

To prevent these inequities, we recommend IRC § 6532 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. We further recommend that IRC § 6532 be amended to ensure that where taxpayers timely request Appeals' review of a disallowed claim, the period to file a refund suit will not expire for at least six months after the date Appeals makes a final determination with respect to the claim. This will allow sufficient time for taxpayers to decide whether to pursue judicial review if Appeals denies their claim and for the IRS to issue the refund or allow the credit if Appeals allows their claim.³

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.⁴

³ 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.

⁴ Under current law, the IRS is not required to process a taxpayer's claim for credit or refund or even respond to the claim. Theoretically, the IRS can simply ignore a refund claim. For a legislative recommendation that would require the IRS to timely process claims for credit or refund, see Legislative Recommendation: *Require the IRS to Timely Process Claims for Credit or Refund*, *supra*.