

1) Definitions

- a) **Deficiency** is defined as excess of tax due over the amount actually paid for any year¹ plus previous assessments².
- i) Form 870 waives all restrictions and allows assessment and collection to take place – waiver
 (1) if an 870 is filed, the interest stops running 30 days after the filing of the 870, if the service has not sent demand letter³

- ii) IRS has to be specific in its notices of deficiencies to protect its interests⁴
- b) **Assessment** is defined as recording of tax liability together with taxpayer name address, and date of assessment in office of district director⁵
- i) Right to assess is in 6201⁶

¹ § 6211
²

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| § 6211a | <p>(a) In general. For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44, the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44, exceeds the excess of--</p> <p>(1) The sum of</p> <p>(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus</p> <p>(B) the amounts previously assessed (or collected without assessment) as a deficiency, over--</p> <p>(2) the amount of rebates, as defined in subsection (b)(2), made.</p> |
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6601c

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|---|
| <p>(c) Suspension of interest in certain income, estate, gift, and certain excise tax cases. In the case of a deficiency as defined in section 6211 (relating to income, estate, gift and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period. In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence.</p> |
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⁴ Scar

⁵ Regs 301.6203.1

⁶

- ii) Power to demand payment and collect⁷
- iii) Secretary can always make assessment as to what is shown on the return⁸
- c) **Substantial omission of gross income:** If the gross income of the taxpayer is an amount of more than 25% of what is stated in the return⁹

- i) Overstating deductions doesn't give the service the extended statutes of limitations
- ii) Need to know the gross income, and the amount of the omission
 - (1) Business taxpayers: look at gross income prior to diminution by COGS¹⁰
- iii) Can declare on tax returns what any amount would – provided that good reason is given for it¹¹
- d) **Overpayments**
 - i) Assessed or collection of tax after statutes of limitations¹²

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6201a
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Assessment authority.
(a) Authority of Secretary. The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:
(1) Taxes shown on return. The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

⁷ § 6201a1
⁸ § 6201a1
⁹ § 6501e

(e) Substantial omission of items. Except as otherwise provided in subsection (c)--
A--
(1) Income taxes. In the case of any tax imposed by subtitle (A) General rule. If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph--
(i) in the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and
(ii) in determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

¹⁰ 6501e1a1
¹¹ Colonie and 6501e11I

ii) Judicial overpayment is defined as withholding over tax liability

2) Statutes of limitations for deficiencies

a) General rule absent fraud and filing -- **3 years**¹³ including the 90 days for statutory notice (check this) **after return is filed** -- a day day letter suspends the statutes of limitations¹⁴

i) Deeming returns to be filed: (not for statutes of limitations purposes -- runs from the date of transmissions, as due date marches forward)

(1) On or before due date deemed to be filed on due date^{15,16} as evidence by postmark

(a) Foreign postmarks count¹⁷

(b) Private couriers count¹⁸

(2) If filed after due date actual date of receipt by service is due date for statutes of limitations purposes¹⁹

(3) business conventions: If a due date is on a Weekend or Holiday, mailing return on the next non-holiday/weekend deems it filed in a timely fashion^{20,21}

(4) rules

(a) statutes of limitations runs from the date of filing

(i) date of filing

1. if pre due date, than it is the date of the postmark

2. if it is due on a Saturday, Sunday, or Holiday, it is deemed to be filed on the date of receipt

3. late return (postmark irrelevant)

(5) extension: Form 4868 -- (a) statutes of limitations runs from date of filing²²

ii) Definitions of return

(1) but return can be filed if it has enough to compute liability, and it is a return^{23,24}

(2) imperfect compliance does not render the return a nullity²⁵

(3) fatal errors

(a) no signature²⁶

(b) must be signed under penalty of perjury²⁷

(4) legal definition

(a) sufficient data to calculate tax liability²⁸

(b) document must purport to be a return²⁹

(c) honest and reasonable attempt to satisfy the requirements of the tax law³⁰

(d) must be under penalties of perjury³¹

(5) if a taxpayer files a fraudulent return, than amends return, it is deemed that no non-fraudulent return is filed³²

b) Validity of statutory notice of deficiency

¹² 6401a

¹³ § 6501a

¹⁴ § 6501

¹⁵ § 7502

¹⁶ § 6501b1

¹⁷ § 7502 (1992)

¹⁸ § 7502f

¹⁹ Emmons

²⁰ § 7503

²¹ 81-269

²² Reg. 301.6501b-1a

²³ 6501c

²⁴ McCaskill

²⁵ § Blount(failure to include w2)

²⁶ § Campise

²⁷ Sommer

²⁸ Beard

²⁹ Beard

³⁰ Beard

³¹ Beard

³² Badaracco

- i) Determination: ³³ -- notice sent to proper last known address ^{34,35}
 - (1) Can't lose 1040.
 - (2) Determination of Deficiency³⁶ -- has to be specific, and not vague and not rely on amending³⁷
 - (1) Doesn't need to be that detailed³⁸
 - (2) If it is apparent on the face of the 90 day letter that the IRS didn't look at the returns, than 90 day letter invalid³⁹
- ii) Once a tax court petition is filed, after a 90 day letter IRS can't assert additional deficiencies⁴⁰
 - (1) Prohibited period: During the 90 day period after the sending of the statutory notice, and/or after a petition is filed with the tax court and until the decision of the tax court becomes final the IRS can be enjoined by a court, the IRS can't assess or levy⁴¹ --
 - (a) But if the taxpayer is notified that there is a greater amount owed, due to a **mathematical error** -- that notice is considered to be a notice of deficiency⁴² for these purposes -- and you can't go to tax court. -- If it is a mathematical error, you cannot go to tax court, and the IRS can't assess until 90 days past the letter

³³ 6212a
³⁴ 6212b
³⁵ Abeles, Crawford
³⁶ 6212
³⁷ Scar
³⁸ Clapp
³⁹ Scar
⁴⁰ 6212c1
⁴¹ 6213a
⁴² 6213b

- (2) Once a tax court petition is filed, any additional deficiencies that the IRS believes, must be raised in the answer -- no more 90 day letters⁴³
 - (a) Tax court can make injunctions to protect its jurisdiction⁴⁴
 - (3) Can still file with the tax court after paying the IRS, the tax court still has jurisdiction⁴⁵
 - iv) Taxpayer can voluntarily rescind a 90 day letter, and give the taxpayers' right to go to tax court⁴⁶
 - (1) With consent of taxpayer
 - (2) Criteria in rev. Rul. 98-54⁴⁷
 - (a) Contact person listed on notice⁴⁹
 - (b) Request to rescind notice of deficiency asap⁵⁰
 - (i) Won't be rescind after 90 days is expired
 - (c) If 90 day letter was issued to husband and wife, must be signed by both husband and wife⁵¹
 - (d) Must cover same tax period as 90 day letter
 - (e) Form 8626 preferred filled out, but document can be filled out⁵² but won't be effective unless it includes the enumerated information
 - (i) Statement that they agreement to rescind⁵³
 - (ii) ID of the notice of deficiency⁵⁴
 - (iii) Date of issuance of the 90 day letter⁵⁵

⁴³ 6212c
⁴⁴ Camholz
⁴⁵ 6214b4
⁴⁶ 6212d
⁴⁷ rev proc 98-54
⁴⁸ rev proc 98-54
⁴⁹ rev proc 98-54
⁵⁰ rev proc 98-54
⁵¹ rev proc 98-54
⁵² rev proc 98-54
⁵³ rev proc 98-54
⁵⁴ rev proc 98-54
⁵⁵ rev proc 98-54

- (iv) Type of tax⁵⁶
 - (v) Tax periods⁵⁷
 - (vi) Representations that the periods of limitations on the assessment have not expired,⁵⁸
 - (vii) Representations that the taxpayer has not petitioned the tax payer⁵⁹
 - (viii) Agreement that the recessions effect, is that it will return the parties to the rights an obligations immediately prior to the statutory notice⁶⁰
 - (ix) signature⁶¹
 - (3) Effective date on recession agreement is that date that the commissioner (or agent) signs⁶²
 - Requirements of statutory notice deficiency (Defects are waiveable)
 - (1) Last known address⁶³
 - (2) Certified or registered mail⁶⁴
 - (3) Have to be notified about existence of taxpayer advocate⁶⁵
 - (4) IRS has to state what the 90th day is⁶⁶
 - (5) Need sufficient time to respond:
 - (a) 11 days is enough⁶⁷
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- c) Return filed with substantial omissions of gross income – 6 year time limit
 - i) If the gross income of the taxpayer is an amount of more than 25% of what is stated in the return⁶⁸ must be
 - (1) Note: includes illicit income⁶⁹
 - (2) Also applies to gift tax⁷⁰
 - ii) Note: **must be completely omitted from return not just miscalculation or understatement**⁷¹
 - d) **No return filed:** no time limit⁷² -- but return can be filed if it has enough to compute liability, and it is a return⁷³
 - i) A non-filer can commence the statutes of limitations for filing if they file
 - ii) Failing to file is not a permanent status like a fraudulent return
 - e) Fraudulent return⁷⁴ or willful attempt to defeat or evade tax⁷⁵: government has burden of proving fraud⁷⁶ -- but if a taxpayer is convicted of fraud, taxpayer is collaterally estopped
 - i) Filing of a corrected return
 - (1) Amended returns are a creature of administrative grace
 - (2) If a taxpayer files a fraudulent return, than amends return, it is deemed that no non-fraudulent return is filed⁷⁷
 - (3) Dissent: would discourage compliance⁷⁸

⁵⁶ rev proc 98-54
⁵⁷ rev proc 98-54
⁵⁸ rev proc 98-54
⁵⁹ rev proc 98-54
⁶⁰ rev proc 98-54
⁶¹ rev proc 98-54
⁶² IR 98-54
⁶³ 6212b1
⁶⁴ 6212b1
⁶⁵ 6212a
⁶⁶ Balkison
⁶⁷ Ciggert (1th Cir.)

⁶⁸ 6501e
⁶⁹ § 61
⁷⁰ 6501e
⁷¹ Colony
⁷² 6501c3
⁷³ 6501c
⁷⁴ 6501c3
⁷⁵ 6501c2
⁷⁶ 7201
⁷⁷ Badaracco
⁷⁸ Stevens in Badaracco

- ii) Statutes of limitations begins to run on the date that the taxpayer files a delinquent, non-fraudulent return⁷⁹
- iii) Note: once criminal division sweeps in, the civil side can't look at records
- iv) Burden of proof shall be on the IRS⁸⁰
- f) Extension of statutes of limitations by agreement⁸¹
 - i) When the tp signs an 872, the service statutes of limitations on the stat notice gets an additional 90 days
 - ii) Creation of agreement⁸²
 - (1) Form 872: Regular consent
 - (a) Extends to a specified date
 - (b) Form says 60 days
 - (2) Form 872a: Regular consent
 - (a) Keeps statutes of limitations open until 90 days after the service or the taxpayer terminates the agreement
 - (i) Term
 - iii) Termination of agreement -- when the service terminates, they have 90 days to assess a deficiency
 - (1) Terminates if a statutory notice of deficiency is issued (so says form)
 - (2) Taxpayer termination effect when service receives 872t
 - (a) 872a terminable with an 872t filed at the IRS office that is handling matter⁸³
 - (3) service termination by 872t: on service mailing
 - (a) does not need to be mailed to the Taxpayer's last known address⁸⁴
 - (4) invalid 90 day letter: won't terminate an 872a⁸⁵

⁷⁹ rr 79-178

⁸⁰ 7454

⁸¹ 6501c4

⁸² 6501c4

⁸³ grunwald

⁸⁴ IRC 6212, rozkos -- note: this case was reviewed

⁸⁵ Prodigy of Coffee

- g) mailing of a notice of deficiency suspends the statutes of limitations on the deficiency for 60 days (maybe gives the service 60 more days to find their last known address)⁸⁶ -- check this
- 3) Jeopardy and termination
 - a) Jeopardy is defined immediate assessment of a tax already due⁸⁷
 - i) Jeopardy does require a notice of deficiency⁸⁸
 - b) Termination is defined as terminate current plus taxable year and assess tax due^{89,90}
 - i) Termination requires a notice of deficiency⁹¹ -- so can't get into tax court (still can get into district court) -- **notice of deficiency should be sent**⁹² - **check this**
 - c) Criteria
 - i) Taxpayer is or appears to be leaving the US (or concealing self)⁹³
 - ii) Taxpayer appears to be trying to hid property⁹⁴
 - iii) Taxpayer is in peril of financial insolvency^{95,96}

⁸⁶ 6503a1

⁸⁷ 6861

⁸⁸ Laing

⁸⁹ Laing

⁹⁰ 6651

⁹¹ Laing

⁹² Shapiro -- quoted in Laing 423 US 161

Laing: amount due and unreported at the time of a jeopardy termination of a tax year was a "deficiency," so that statutory procedures for assessment and collection of a deficiency whose collection is in jeopardy were applicable and taxpayers were entitled to notice of deficiency; and that, once the 60-day period within which such notices to be given had run and where Government was seeking to sell an automobile which had been seized without the issuance of a notice of deficiency, the Anti-Injunction Act did not bar the suits.

⁹³ Reg. 1.6851-1(a)(1), 1.6861-1a

⁹⁴ Reg. 1.6851-1(a)(1), 1.6861-1a

- (1) Requires IRS council review
- (2) Could be for liens
- d) Must give taxpayer a written statement explaining basis in 5 days⁹⁷
- e) Taxpayer can petition for review
- f) IRS has burden of proving the reasonableness of the assessment, but taxpayer bears the burden of proving that the amount assessment is excessive⁹⁸
- g) No delays necessary to levy
- h) Levies that levies made more than 30 days after notice and demand, no administrative review available⁹⁹
- i) If someone has cash, and denies ownership of the cash, and the true owner doesn't claim it, the IRS Can make a jeopardy or termination assessment¹⁰⁰ ¹⁰¹ -- and taxed at 50% rate!
- j) Bond can be posted to stay collection¹⁰²
- 4) waiver
 - a) Form 870 waives all restrictions and allows assessment and collection to take place: **if the taxpayer waives restrictions, they do not give up their right to a refund suit**
 - i) limits exposure to interest
 - ii) after the 30 days beyond 870, interest stops accruing¹⁰³
 - (1) if an 870 is filed, the interest stops running 30 days after the filing of the 870, if the service has not sent demand letter¹⁰⁴
- b) form 870ad: mutual agreement, which includes agreement not to sue IRS for refund suit – government is prevented from reopening case – must conform to requirements of closing agreements¹⁰⁵
 - i) there are some cases where people can file an 870ad and can still sue for refund – check this
 - ii) requirements for 870ad preventing the taxpayer from suing
 - (1), form 870ad – from mutual concessions or compromise¹⁰⁶
 - (2) meeting of minds¹⁰⁷
 - (3) to permit the taxpayer from reopen the issues would be prejudicial to the government in light of its reliance on the form¹⁰⁸
- 5) after filing of with tax court
 - a) restraint by injunction of collection of tax – not allowed,¹⁰⁹ except if in violation of the prohibited period surrounding 90 day letters¹¹⁰
 - i) to get an injunction with the tax court, must show that there is no remedy at law, as one could sue for a refund¹¹¹ -- note: **the tax court will follow its own equitable determinations, and not look to the circuit to which it would appeal**
 - (1) equitable remedies require a showing of irreparable harm
 - b) effects of invalid 90 day letter
 - i) the tax court won't have jurisdiction
 - ii) the statute won't have been tolled
 - iii) the service may be precluded from sending another one

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⁹⁵ Reg. 1.6851-1(a)(1), 1.6861-1a

⁹⁶ 7429

⁹⁷ 7429

⁹⁸ 7429g

⁹⁹ 7429

¹⁰⁰ 6867

¹⁰¹ Matut

¹⁰² 7863

¹⁰³ 6601C

¹⁰⁴ 6601C

¹⁰⁵ 7121

¹⁰⁶ Kretchmar, Schneider

¹⁰⁷ Kretchmar, Schneider

¹⁰⁸ Kretchmar, Schneider

¹⁰⁹ 7421a

¹¹⁰ 6213a

¹¹¹ Cool Fuel

- c) there are procedures for designation of what you -- can pay deficiency after the 90 day letter¹¹²
- d) the tax court can't permit amend, answer to change particulars (for example names)¹¹³
- e) no assessment, levy, or collection can be made until the notice is made to the taxpayer and 90 days pass without a petition to the tax court¹¹⁴
 - i) taxpayer can go to the tax court to remedy **Only after petitioning for refund**¹¹⁵
 - f) filing with tax court must be down within 90 days of stat letter, not including Saturdays, Sundays, or Holidays in DC¹¹⁶ -- this 90 days is jurisdictional
 - g) remedy: if the IRS starts levying early, can enforce the restrictions, can enjoin in court (including tax court)¹¹⁷
 - h) Can still file with the tax court after paying the IRS, the tax court still has jurisdiction¹¹⁸
- 6) Judicial review
 - a) District court
 - i) Payment necessary: if you can carve out a particular period and you can port and sue (but not applicable to income tax and estate tax and for divisible taxes)
 - (1) if you want to make a payment on a pending deficiency than you have to make payment on the tax as well, and they are going to first apply the money to the underlying tax liability¹¹⁹
 - (2) Taxpayer can't control whether money is applied to interest on deficiencies or principle¹²⁰

¹¹² 6213b4

¹¹³ Scar

¹¹⁴ 6213

¹¹⁵ 6213

¹¹⁶ 6213

¹¹⁷ 6213a

¹¹⁸ 6214b4

¹¹⁹ Rev. Proc. 84-68 § 6

¹²⁰ Perkins

ii) Overpayments: government can credit overpayments against underpayment without going to court¹²¹

(1) Overpayments

(a) Legislative overpayment is defined as Assessed or collection of tax after statutes of limitations, includes levy collected after statutes of limitations¹²²

(i) 6514a:

(ii) 6514b:

(b) Judicial overpayment is defined as withholding over tax liability

(2) Offset by other taxes: refunds can be offset by time-barred deficiencies¹²³ -- IRS can only offset, can't be used offensively

(a) IRS can consider other years when looking at refund claim even if time-barred

(i) Burdens of proof in offset

1. Of the proposed offsetting adjustment relates to the same type of tax in the same year or a related type tax that will affect that in issue and is in the same year, than the taxpayer has the bop (even raised by government)

2. The proposed offset relates to a different an independent tax, than the government has the bop¹²⁴

(3) Any credit or refund after statutes of limitations shall be void¹²⁵ -- check this

(a) 6401 is for the taxpayer 6514 is for the government.

¹²¹ 6514b

¹²² 6401a

¹²³ Lewis v. Reynolds

¹²⁴ Missouri Pac RR

¹²⁵ 6514b



- (i) If the taxpayer makes a payment after the statutes of limitations, that is an overpayment.
- (ii) If the government refunds or credits after the expiration of the statutes of limitations, that is deemed to be void and/or erroneous
- iii) Government can offset refund by raising additional issues that are barred by the statutes of limit
 - iv) Jury trial
 - v) Court of claims
 - i) Payment necessary: If you can carve out a particular period and you can port and sue (but not applicable to income tax and estate tax and for divisible taxes)
 - ii) Government can offset refund by raising additional issues that are barred by the statutes of limitations ¹²⁶
 - iii) Burden of proof ¹²⁷
 - (1) Taxpayer has burden ¹²⁸
 - (2) If taxpayer presents credible evidence, the burden shifts ¹²⁹
- c) Jurisdictional issues of tax court
 - i) General non-equitable rule: can consider other rules, but does not have jurisdiction over them ¹³⁰
 - ii) 90 day letter required
 - (1) but if you pay, and still have the 90 day letter in hand, Tax Court still has jurisdiction ¹³¹
 - (a) 90 days might be equitably tolled if good reasons such as wrong address ¹³²
 - (b) if defective 90 day letter, statutes of limitations continues to run ¹³³

¹²⁶ Lewis v. Reynolds

¹²⁷ 7491

¹²⁸ 7491

¹²⁹ 7491

¹³⁰ 6214bw

¹³¹ 6213b-3

¹³² Sickler

- iii) (2) if no letter filed, than tax court loses jurisdiction filing in tax court may require proof of mailing
- iv) tax court's powers to increase or decrease liability
 - (1) can increase liability beyond that asserted in 90 day letter ¹³⁴
 - (2) can decrease
 - (a) incidental refund jurisdiction ¹³⁵ is defined as jurisdiction to refund based other areas of that year's liability ¹³⁶
 - (3) Equitable jurisdiction
 - (a) Equitable recoupment permitted only when the same transaction or event has been subjected to two taxes based on inconsistent legal theories.
 - (i) requirements
 - 1. prior treatment time-barred
 - 2. present claim not time-barred ¹³⁷
 - (ii) (dicit) can offset income tax against income tax ¹³⁸
 - (b) reformation of agreement possible ¹³⁹: (for example closing agreement)
 - (4) tax court can refund money paid after the 90 day letter ¹⁴⁰
- v) Procedure
 - (1) Follows c-o-a in district it sits ¹⁴¹
 - (2) 19 judges
 - (a) chief judge deices how whether en banc or not, and whether it is a regular opinion or not

¹³³ 6503

¹³⁴ 6214a

¹³⁵ 6512

¹³⁶ 6512b2

¹³⁷ Dalm (SC wants us to have jurisdiction), Bull, Stone, White

¹³⁸ Mueller

¹³⁹ Woods

¹⁴⁰ 6512b2a

¹⁴¹ Golsen

- (i) TCM – settled areas of law
 - (3) Burden of proof
 - (a) Taxpayer has burden
 - (b) If taxpayer presents credible evidence, the burden shifts
 - (4) Collateral estoppel is defined as barring re litigation of issues actually litigated and necessarily determined in a prior suit (issues presented are the same, controlling facts or legal principles have changed significance, whether other special circumstances warrant an exception to application of the doctrine of collateral estoppel)
 - (a) Mutual
 - (i) Will be estoppel in civil penalty cases after criminal conviction¹⁴²
 - (b) Non-mutual: if the government asserts against one party – not permitted
 - (i) Old law non-mutual collateral estoppel did apply, but there is some dispute as to whether non-mutual collateral estoppel is dead.¹⁴³ – (note face were where the same transaction was litigated in different forums)
 - (ii) Recent cases non-mutual collateral estoppel have failed (but was a TCM)¹⁴⁴
 - (c) Offensive and defensive
 - (i) Offensive: taxpayer asserts against gov.
 - (ii) Defensive: government v. tp¹⁴⁵
 - 1. Identical issues
 - 2. Final judgements
 - 3. Invoke it against someone who is party to action
 - 4. Actual litigation of the action
 - (5) Res judicata
 - (a) Always same parties
 - vi) Posting a bond to stay assessment of collection¹⁴⁶
 - vii) Remedies
 - (1) Determine liability
 - (2) Equity jurisdiction
 - (a) Equitable recoupment
 - (i) Equitable recoupment permitted only when the same transaction or event has been subjected to two taxes based on inconsistent legal theories.
 - 1. requirements
 - a. prior treatment time-barred
 - b. present claim not time-barred¹⁴⁷
 - viii) Burden of proof¹⁴⁸
 - (1) Taxpayer has burden
 - (2) If taxpayer presents credible evidence, the burden shifts
 - d) Conflict of forums issues¹⁴⁹
 - i) First court to get jurisdiction over a particular matter keeps it
 - ii) District court loses jurisdiction to the extent that tax court against jurisdiction – but note that since the tax court can't really get equitable jurisdiction, the district court might jurisdiction over equitable matters¹⁵⁰
- 7) filing of refund suits
 - a) Prerequisite – claim for refund must be filed (for example demand from IRS)
 - b) procedure for refund suits

¹⁴⁶ 7484

¹⁴⁷ Dalm, Bull, Stone, White

¹⁴⁸ 7491

¹⁴⁹ 7422

¹⁵⁰ Russel

¹⁴² Meir

¹⁴³ Mendoza

¹⁴⁴ Wolf

¹⁴⁵ Pec

- i) full payment required¹⁵¹
 - (1) divisible taxes – split in circuit
 - (a) included: employment taxes are divisible, as are
exise taxes
 - (b) split in circuits as to whether all payments of
interest and penalties must be made
 - (i) Arnold: have to pay interest
 - (ii) Kelstrum: no, you don't have to pay interest
 - (2) Defining a payment
 - (a) Payment must be made after the notice of
deficiency
 - (i) Majority: taxpayer intent test – majority and
tax court look at how the taxpayer intended
the money to be used – look at the entire
circumstances^{152,153}
 - (ii) Minority: Per se assessment rule in the 5th
and 8th circuits
 - 1. 5th circuit said that they don't really like
the rule
 - 2. under that rule, there is absolutely no
payment until an assessment takes
place
 - (b) if the taxpayer has some idea idea (and
expresses) that this money represents payment
of a certain liability, than it is payment¹⁵⁴
 - (c) assumptions: pre-stat notice is a deposite,
unless otherwise degisnated, post is a payment
unless otherwise designated
 - (i) no interest on deposit
 - (d) if there is no assessment, it will always be
demed to be a deposit, unless otherwise
noted¹⁵⁵

¹⁵¹ Flora
¹⁵² Rosenmann
¹⁵³ Rismann
¹⁵⁴ Baral

- (e) if the service enters into a closing agreement,
than a payment in pursuit of it becomes
binding¹⁵⁶
- ii) Claim for refund required¹⁵⁷
 - (1) Requirements in 301.6402-2
 - (a) service center where return filed
 - (b) claim has to state detailed statutory ground
 - (c) 1040x for income tax refund
 - (d) 843 for estate tax
 - (e) need separate claim for each year in the case of
income taxes
 - (2) dollar limits¹⁵⁸
 - (i) government can use claims to defeat a claim for judicial
overpayment, but can't use claims to defeat a claim for
statutory overpayment
 - (1) definition
 - (a) statutory: Assessed or collection of tax after
statutes of limitations¹⁵⁹ (have a virtual right)
 - (i) for example you may owe it, but if it is after
the statutes of limitations it is considered
deemed to be an overpayment
 - (b) Judicial overpayment is defined as withholding
over tax liability
- iii)
 - (1) 3 years from date return filed¹⁶⁰
 - (a) anti-Lundy: have extra to file if 90 day letter is
sent within 3 years of the return (check this) (so
if the service waits to send a 90 day letter, there
is an exception for filing a refund)
 - (2) 2 years from date tax paid¹⁶¹
- iv) Times
 - (1) 3 years from date return filed¹⁶⁰
 - (a) anti-Lundy: have extra to file if 90 day letter is
sent within 3 years of the return (check this) (so
if the service waits to send a 90 day letter, there
is an exception for filing a refund)
 - (2) 2 years from date tax paid¹⁶¹

¹⁵⁵ Baral
¹⁵⁶ Ewing
¹⁵⁷ 7422a
¹⁵⁸ 6511a, b
¹⁵⁹ 6401a
¹⁶⁰ 6511a

- v) if statutes of limitations has been extended by the taxpayer, the taxpayer can file between the end of the extended period and six months afterward¹⁶²
 - (1) question: are the rules for extension of statutes of limitations the same for deficiencies – check this deemed filed when it is received by service
 - vii) waiver of statutory notice of claim disallowance possible¹⁶³
 - (1) 2 year statutes of limitations runs from when filed¹⁶⁴
 - can be extended¹⁶⁵
 - (2) taxpayer must still wait 6 months¹⁶⁶
- c) Date of filing of suit
 - i) Lower limit: Suit must be filed until after 6 months have passed from date of filing refund claim, or disallowance of claim
 - (1) Statutory notice of claim disallowance¹⁶⁷
 - d) Exceptions to statutes of limitations for filing
 - i) Equitable recoupment permitted only when the same transaction or event has been subjected to two taxes based on inconsistent legal theories.
 - (1) requirements
 - (a) prior treatment time-barred
 - (b) present claim not time-barred¹⁶⁸
 - ii) statutory mitigation¹⁶⁹: can peak into previous year to offset or increase liability – if there is an inconsistent position
 - (1) requirements

¹⁶¹ 6511a

¹⁶² 6511c2

¹⁶³ Form 2297

¹⁶⁴ 6532a3

¹⁶⁵ 6432a2

¹⁶⁶ Reg 301.6532-1c

¹⁶⁷ 6532a3

¹⁶⁸ Dalm, Bull, Stone, White

¹⁶⁹ 1311-1314

- (a) determination that an error was made concerning proper treatment of item¹⁷⁰
 - (i) court order
 - (ii) closing agreement¹⁷¹
 - (iii) final disposition of a claim for refund
 - (iv) agreement entered into pursuant to § 1313a rule of law must prevent correction (for example statutes of limitations)¹⁷²
- (b) must meet one of 7 circumstances of adjustment – check 1312¹⁷³
 - (i) double inclusion of an item of gross income¹⁷⁴
 - (ii) double allowance of a deduction or credit¹⁷⁵
 - (iii) double exclusion of an item of gross income¹⁷⁶
 - (iv) double disallowance of a deduction or credit¹⁷⁷
- (v) errors concerning basis of property¹⁷⁸
 - 1. if the taxpayer fails to take depreciation deduction and the commission reduces basis in property by the amount that was available – a failure to tax depreciation allowances is not a transaction¹⁷⁹
 - 2. parties must be party to litigation establishing vail¹⁸⁰

¹⁷⁰ 1313

¹⁷¹ 7212

¹⁷² 1311a

¹⁷³ 1312

¹⁷⁴ 1312.1

¹⁷⁵ 1312.2

¹⁷⁶ 1312.3

¹⁷⁷ 1312.4

¹⁷⁸ 1312.7

¹⁷⁹ Gardiner (10th Cir)

¹⁸⁰ O'Brien (7th Cir)

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- 3. must be the same transaction (for example in respect of the same thing)
 - (vi) correlative deduction and credit between certain related corporations¹⁸¹
 - (vii) correlative deductions between estate and beneficiaries¹⁸²
 - (d) part in whose favor must have made an inconsistent termination¹⁸³
 - (2) remedy: only after final determination may taxpayer¹⁸⁴ or government seek adjustment for prior year
- 8) statutes of limitations for collection
 - a) 90 day letter tolls 3 year statutes of limitations for collection¹⁸⁵
- 9) taxpayer's remedies for litigation costs if service's position is not substantially justified¹⁸⁶
 - a) can recover litigation costs¹⁸⁷
 - b) service's position must not have been substantially justified¹⁸⁸
- 10) penalties
 - a) ad valorem
 - i) percentage of tax due
 - ii) accuracy is defined as negligence or disregard of rules (1) definition
 - (a) substantial understatement of tax¹⁸⁹
 - (b) substantial understatement of pension liabilities¹⁹⁰

¹⁸¹ 1312.6
¹⁸² 1312.5
¹⁸³ 1331b
¹⁸⁴ 1311
¹⁸⁵ 6501
¹⁸⁶ 7430
¹⁸⁷ 7430
¹⁸⁸ 7430
¹⁸⁹ 6662
¹⁹⁰ 6662

- (c) gift tax valuation¹⁹¹
- (2) amount
 - (a) if there is any negligence, there is a penalty of 20% of the **portion of the underpayment** to which this section applies¹⁹²
 - (b) stacking
 - (i) no stacking of understatement penalties and negligence penalties¹⁹³
 - (ii) failure to file won't be stacked¹⁹⁴
 - (iii) failure to file penalty imposes a maxim of 25% penalty which increase at the rate of % per month¹⁹⁵ -- up to 25% -- **in nutshell**, **page 182**
 - (c) even if you are on the right side of the line, there is a substantial understatement penalty -20% -- substantial has to exceed the greater of 10% of 5k of the tax.
 - (i) note: amount of understatement for calculating whether or not in threshing shall be calculated by deducting the amount which there was substantial authority¹⁹⁶ reasonable cause exceptions¹⁹⁷
 - (i) qualified appraisal
 - (ii) reasonable basis
 - (iii) substantial authority
 - (iv) they list type of authority
 - 1. irc
 - 2. regs
 - 3. rev rul and procedres

¹⁹¹ 6662
¹⁹² 6662b
¹⁹³ 6664
¹⁹⁴ 6664
¹⁹⁵ 6651a1
¹⁹⁶ 6662d2b
¹⁹⁷ 6664c

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- 4. court cases
- 5. congressional intent as reflected in committee reports, etc.
- 6. floor statements
- 7. blue book
- 8. AOD –
- (v) Not substantial authority
 - 1. Treatises
 - 2. Legal opinions are not authority
 - 3. Letters from tax professionals
 - 4. Tax courts opinions depending on where you live
 - 5. can cure negligence before the IRS contacts you, but not fraud¹⁹⁸ -- in a qualified amended return
- (3) penalties bear interest
- (4) if any portion of the penalty was due to fraud than 6663 attaches
- (5) examples of fraud: no stacking of fraud with accuracy
 - (a) "Fraud is conduct, the likely effect of which is to mislead and conceal" in which the taxpayer voluntarily and intentionally engages in in order to evade tax
 - (b) parks case: indicia of intent
 - (c) keeping two sets of books
 - (d) false entries or invoices or documents
 - (e) destruction of books or records
 - (f) concealing assets – or transferring to another person
 - (g) deliberate failure to keep records
 - (h) consistent pattern of understatement of the income or the deductoins
 - (i) false or inconsistent statements made to an agent

¹⁹⁸ 6664c2

- (j) reconstruction
- (6) disclosure exceptions
 - (a) provided one has a reasonable basis, they can disclose their basis for including something under a certain¹⁹⁹
- b) assessable
 - i) flat rate usually against tax shelter promoters²⁰⁰
 - ii) interest issues: short-term fed rate + 3% --
- a) general rule is that interest starts accruing when return is due²⁰¹
 - i) if IRS sends notice of demand within 30 days of 870, than interest continues to run²⁰²
 - ii) if IRS sends notice of demand outside of 30 days of 870, than interest ceases between day 31 and notice of demand letter sent out²⁰³
- b) beginning running of interest on deficiencies rate: short-term fed rate + 3% -- (for example *innocent, good deficiencies*)
 - i) normal: **tolls** interest and it makes it 21 calendar days of notice and demand²⁰⁴
 - (1) if in 22nd day, have to pay for the 21 days as well
 - ii) if an 870 is filed, the interest stops running 30 days after the filing of the 870, if the service has not sent demand letter²⁰⁵
- c) interest on penalties for fraud
 - i) begin to accrue on the due date of the return²⁰⁶
- d) netting of interest

¹⁹⁹ 8275r
²⁰⁰ 6671 ti 6724
²⁰¹ 6601a
²⁰² 6601e3
²⁰³ 6601e3
²⁰⁴ 6601e3a
²⁰⁵ 6601c
²⁰⁶ 6601e2

- i) Interest netting Differential rates: taxpayers have to let the service know how to handle interest netting areas (used to be that with differential if the amounts were the same the taxpayer would still need to be netted)²⁰⁷

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