

Part III

Administrative, Procedural, and Miscellaneous

26 CFR § 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: 26 C.F.R. § 301.6402-2: Claims for credit or refund.)

Rev. Proc. 2010-27

SECTION 1. PURPOSE

This revenue procedure informs the trustee (or debtor in possession) representing the bankruptcy estate of the debtor of the procedure to be followed to properly request a tax refund from the Service. This revenue procedure does not apply to the filing by the trustee of an application for a tentative carryback or refund adjustment under section 6411 of the Internal Revenue Code.

SECTION 2. BACKGROUND

During the administration of a bankruptcy case, the bankruptcy estate may have a right to a tax refund. Under section 505(a)(2)(B) of Title 11 of the United States Code (Bankruptcy Code) the bankruptcy court may not determine any right of the bankruptcy

estate to a tax refund before the earlier of

- (1) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or
- (2) a determination by such governmental unit of such request.

SECTION 3. APPLICATION

.01 If a credit or refund of an overpayment of tax was not claimed on a return previously filed by the debtor, the trustee may do so by filing the appropriate amended return or form.

(1) Pursuant to section 301.6402-3(a) of the Regulations on Procedure and Administration and section 601.105(e)(1) of the Statement of Procedural Rules (26 CFR Part 601), in the case of an overpayment of income taxes for a taxable year for which:

(a) a Form 1040 or 1040A has been filed by an individual debtor, a claim for credit or refund shall be made by the trustee on Form 1040X, Amended U.S. Individual Income Tax Return;

(b) a Form 1120 has been filed by a corporate debtor, a claim for credit or refund shall be made by the trustee on Form 1120X, Amended U.S. Corporation Income Tax Return;

(c) a form other than Form 1040, 1040A, or 1120 has been filed by a debtor (such as Form 1041, U.S. Fiduciary Income Tax Return), a claim for credit or refund shall be made by the trustee on the appropriate amended income tax return.

(2) Pursuant to section 301.6402-2(c) and section 601.105(e)(1), in the

case of an overpayment of taxes other than income tax for which the debtor has filed a return, a claim for credit or refund shall be made on Form 843, Claim for Refund and Request for Abatement. An exact copy of the return (or returns) that is the subject of the claim should also be submitted, together with a statement of the name and location of the office where the return was filed. See section 301.6402-2(e), relating to proof of representative capacity to accompany the claim.

.02 If the debtor has claimed a credit or refund of an overpayment of tax on a properly filed return or form, the trustee may rely on such claim.

.03 With regard to an overpayment of taxes of the bankruptcy estate incurred during the administration of the bankruptcy case, a properly executed tax return shall, at the election of the trustee, constitute a claim for credit or refund of the overpayment.

.04 The forms or returns described in this section must be mailed to Centralized Insolvency Operation, Post Office Box 21126, Philadelphia, PA 19114. The return or form must be marked "Request for Prompt Refund" and be accompanied by a written statement explaining that the request is being submitted pursuant to section 505(a) of the Bankruptcy Code.

.05 The Service will examine the appropriate amended return, Form 843, or original return filed by the trustee on an expedited basis. The Service will complete the examination and notify the trustee of the decision rendered within 120 days from the date of the filing of the claim.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 81-18, 1981-1 C.B. 688, is obsoleted.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to all cases commenced under the Bankruptcy Code with the exception of chapter 9 municipal debt adjustment cases and chapter 15 ancillary and cross-border cases.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Teresa Dondlinger Trissell of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact William Beard on (202) 622-3620 (not a toll free call).