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**From:**

**Sent:** Thursday, March 11, 2010 10:45:14 AM

**To:**

**Cc:**

**Subject:** RE: Who Must Sign an Amended Return?

Based on the facts and circumstances in this case, we think the Form 1040X and attached letter are a valid protective, informal refund claim for \_\_\_\_\_ for tax year \_\_\_\_\_. Although the Form 1040X is missing \_\_\_\_\_ social security number and was not signed under penalty of perjury by \_\_\_\_\_, \_\_\_\_\_ name is listed on the Form 1040X as it appeared on the original Form 1040, and the original Form 1040 was filed jointly. In general, a valid protective claim must identify the contingency affecting the claim, be sufficiently clear and definite to alert the Service as to the essential nature of the claim, and identify a specific year or years for which the refund is sought. IRM 4.10.8.9.4.1. In this case, the letter attached to the Form 1040X identifies the contingency, alerts the Service to the nature of the claim, and identifies specific years for which a refund is sought. The Form 1040X was filed shortly before the period of limitations on filing a refund claim for tax year \_\_\_\_\_ expired. Additionally, the claim is in writing, puts the Service on notice that a refund is sought for a particular year or period, and contains enough information for the Service to begin to examine the claim. See United States v. Kales, 314 U.S. 186, 195 (1941). There are no rigid guidelines for informal claims, except that they must have a written component and "should adequately apprise the Internal Revenue Service that a refund is sought and for certain years." Arch Engineering Co., Inc. v. United States, 783 F.2d 190, 192 (Fed. Cir. 1986).

We agree that the Form 1040X and attached letter contain two defects - namely that \_\_\_\_\_ social security number is not on the Form 1040X, and \_\_\_\_\_ did not sign under penalty of perjury. Treas. Reg. § 301.6402-2(b)(1). The IRM provides that refund claims that are defective and therefore unprocessable will be returned to the taxpayer with a request to cure any defect, such as supplying \_\_\_\_\_ social security number and proper signature here. IRM 21.5.3.4.2. In this case, no action was apparently taken on the Form 1040X and the letter.

We recommend that the field call or correspond with the taxpayers and advise the taxpayers of the signature and social security number defects and encourage correction of those defects so that the Service can process the claim according to IRM procedures. See IRM 21.5.3.4.7.3. Courts have found that while an informal claim serves to toll the statute of limitations on a refund claim, the informal claim must ultimately be corrected by the taxpayer. See Kaffenberger v. United States, 314 F.3d 944 (8th Cir. 2003); Gallo v. United States, 950 F.Supp. 1246 (S.D.N.Y. 1997). If no reply is received from the taxpayers, the Service should follow the procedures set forth in the IRM. See IRM 21.5.3.4.7.3.2.

Please contact me if you have any additional questions.

Sincerely