

ID: CCA\_2015010914274558

UILC: 6401.00-00

Number: **201509033**

Release Date: 2/27/2015

---

**From:** [REDACTED]

**Sent:** Friday, January 09, 2015 2:27:45 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** RE: IRC Section 6401 overpayment issue

Hi. I agree that where an amended return is filed after the ASED, any amount paid with that return must be refunded if the taxpayer makes a timely claim for refund (within two years of payment) because the amount is a "statutory overpayment" under IRC 6401(a) as indicated by Rev. Rul. 74-580. Under IRC 6402 the Service may only issue a refund if the taxpayer has overpaid tax; but IRC 6401(a) creates an overpayment regardless of the payments made by, and the total tax liability of, the taxpayer for a tax period.

If, instead, the amended return was filed on or before the ASED but not timely assessed and a payment was made with that return, then there's no statutory overpayment under IRC 6401(a). In this second situation, there might not be an overpayment despite the lack of a timely assessment. This second situation is addressed in Rev. Rul. 85-67 which distinguishes Rev. Rul. 74-580. While there's no general definition of an "overpayment" in the Code or regs, case law has established that the word should be given its ordinary meaning—a payment to the government in excess of what is due. Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947). So, in this second situation if the Service believed that the taxpayer actually owed the amount being claimed, then there's no overpayment. See Lewis v. Reynolds, 284 U.S. 281 (1932) (all adjustments that increase or decrease taxable income, even those barred by the period of limitations, must be taken into account in determining the amount of an overpayment of tax).