

**Effective:[See Notes]**

United States Code Annotated Currentness

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle F. Procedure and Administration (Refs & Annos)

Chapter 66. Limitations (Refs & Annos)

Subchapter A. Limitations on Assessment and Collection (Refs & Annos)

→ **§ 6501. Limitations on assessment and collection**

(a) **General rule.**--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed.--

(1) **Early return.**--For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) **Return of certain employment taxes and tax imposed by chapter 3.**--For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) **Return executed by Secretary.**--Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) **Return of excise taxes.**--For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions.--

(1) **False return.**--In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax.--In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return.--In the case of failure to file a 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.

(4) Extension by agreement.--

(A) In general.--Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notice to taxpayer of right to refuse or limit extension.--The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) Tax resulting from changes in certain income tax or estate tax credits.--

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status.--In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns.--Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify secretary of certain foreign transfers.--In the case of any information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any event or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(9) Gift tax on certain gifts not shown on return.--If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter

12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(10) Listed transactions.--If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of--

(A) the date on which the Secretary is furnished the information so required, or

(B) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.

(d) Request for prompt assessment.--Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless--

(1) (A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2) (A) such written request notifies the Secretary that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items.--Except as otherwise provided in subsection (c)--

(1) Income taxes.--In the case of any tax imposed by subtitle A--

(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.

(B) Constructive dividends.--If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.

(2) Estate and gift taxes.--In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts 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. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item 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.

(3) Excise taxes.--In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, 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 is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) Personal holding company tax.--If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth--

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year 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 for such year was filed.

(g) Certain income tax returns of corporations.--

(1) Trusts or partnerships.--If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations.--If a taxpayer determines in good faith that it is an exempt organization and files a

return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC.--If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) Net operating loss or capital loss carrybacks.--In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) Foreign tax carrybacks.--In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c) (relating to carryback and carryover of excess foreign taxes) or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) Certain credit carrybacks.--

(1) In general.--In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined.--For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(k) Tentative carryback adjustment assessment period.--In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) Special rule for chapter 42 and similar taxes.--

(1) In general.--For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or

by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations.--In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2).--In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Deficiencies attributable to election of certain credits.--The period for assessing a deficiency attributable to any election under section 30(d)(4), 30B(h)(9), 30C(e)(5), 40(f), 43, 45B, 45C(d)(4), 45H(g), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n) Cross references.--

- (1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).
- (2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.
- (3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 803; Sept. 2, 1958, Pub.L. 85-859, Title I, § 165(a), 72 Stat. 1313; Sept. 2, 1958, Pub.L. 85-866, Title I, §§ 80, 81, 72 Stat. 1662; June 25, 1959, Pub.L. 86-69, § 3(g), 73 Stat. 140; Sept. 14, 1960, Pub.L. 86-780, § 3(c), 74 Stat. 1013; Oct. 11, 1962, Pub.L. 87-794, Title III, § 317(c), 76 Stat. 890; Oct. 16, 1962, Pub.L. 87-834, § 2(e)(1), 76 Stat. 971; Oct. 23, 1962, Pub.L. 87-858, § 3(b)(4), 76 Stat. 1137; Feb. 26, 1964, Pub.L. 88-272, Title II, § 225(k)(6), 78 Stat. 94; Sept. 2, 1964, Pub.L. 88-571, § 3(b), 78 Stat. 857; June 21, 1965, Pub.L. 89-44, Title VIII, § 810(a), (b), 79 Stat. 169; Nov. 2, 1966, Pub.L. 89-721, §§ 2(f), 3(a), 80 Stat. 1150, 1151; Nov. 13, 1966, Pub.L. 89-809, Title I, § 105(f)(3), 80 Stat. 1568; Dec. 27, 1967, Pub.L. 90-225, § 2(c), 81 Stat. 731; Dec. 30, 1969, Pub.L. 91-172, Title I, § 101(g)(1) to (3), Title V, § 512(e)(1), 83 Stat. 525, 639; Dec. 31, 1970, Pub.L. 91-614, Title I, § 102(d)(8), 84 Stat. 1842; Dec. 10, 1971, Pub.L. 92-178, Title V, § 504(c), Title VI, § 601(d)(1), (e)(2), 85 Stat. 551, 558, 560; Sept. 2, 1974, Pub.L. 93-406, Title II, § 1016(a)(14), 88 Stat. 930; Oct. 4, 1976, Pub.L. 94-455, Title X, §§ 1031(b)(5), 1035(d)(3),

Title XIII, §§ 1302(b), 1307(d)(2)(F)(vi), Title XIX, § 1906(b)(13)(A), Title XXI, § 2107(g)(2)(A), 90 Stat. 1623, 1633, 1714, 1728, 1834, 1904; May 23, 1977, Pub.L. 95-30, Title II, § 202(d)(4)(A), (5)(B), 91 Stat. 149, 151; Feb. 10, 1978, Pub.L. 95-227, § 4(d)(4), (5), 92 Stat. 23; Nov. 6, 1978, Pub.L. 95-600, Title II, § 212(a), Title III, § 321(b)(2), Title V, 504(b)(3), Title VII, §§ 701(t)(3)(A), 703(n), (p)(2), 92 Stat. 2818, 2819, 2835, 2881, 2912, 2943, 2944; Nov. 10, 1978, Pub.L. 95-628, § 8(c)(1), 92 Stat. 3631; Apr. 1, 1980, Pub.L. 96-222, Title I, §§ 102(a)(2)(A), 103(a)(6)(G)(x), 94 Stat. 208, 210; Apr. 2, 1980, Pub.L. 96-223, Title I, § 101(g)(1), 94 Stat. 253; Sept. 3, 1982, Pub.L. 97-248, Title IV, § 402(c)(5), 96 Stat. 667; July 18, 1984, Pub.L. 98-369, Div. A, Title I, §§ 131(d)(2), 163(b)(1), Title II, § 211(b)(24), Title III, § 314(a)(3), Title IV, §§ 447(a), 474(r)(39), Title VII, § 714(p)(2)(F), Title VIII, § 801(d)(14), 98 Stat. 664, 698, 757, 787, 817, 846, 965, 997; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, §§ 1810(g)(3), 1847(b)(12) to (14), 100 Stat. 2828, 2857; Dec. 22, 1987, Pub.L. 100-203, Title X, §§ 10712(c)(2), 10714(c), 101 Stat. 1330-467, 1330-470; Aug. 23, 1988, Pub.L. 100-418, Title I, § 1941(b)(2)(H), 102 Stat. 1323; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1008(j)(1), Title IV, § 4008(c)(2), 102 Stat. 3445, 3653; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7814(e)(2)(E), 103 Stat. 2414; Nov. 5, 1990, Pub.L. 101-508, Title XI, §§ 11511(c)(2), 11602(b), 104 Stat. 1388-485, 1388-500; Aug. 20, 1996, Pub.L. 104-188, Title I, §§ 1702(e)(3), 1703(n)(8), 1704(j)(4)(B), 110 Stat. 1870, 1877, 1882; Aug. 5, 1997, Pub.L. 105-34, Title V, § 506(b), Title XI, § 1145(a), Title XII, §§ 1239(e)(2), 1284(a), Title XVI, § 1601(g)(2), 111 Stat. 855, 985, 1028, 1038, 1092; July 22, 1998, Pub.L. 105-206, Title III, § 3461(b), Title VI, §§ 6007(e)(2)(A), 6023(27), 112 Stat. 764, 809, 826; Oct. 22, 2004, Pub.L. 108-357, Title IV, § 413(c)(28), Title VIII, § 814(a), 118 Stat. 1509, 1581; Aug. 8, 2005, Pub.L. 109-58, Title XIII, §§ 1341(b)(4), 1342(b)(4), 119 Stat. 1049, 1051; Dec. 21, 2005, Pub.L. 109-135, Title IV, § 403(y), 119 Stat. 2629; Dec. 29, 2007, Pub.L. 110-172, § 7(a)(2)(B), 121 Stat. 2482.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1954 Acts. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S. Code Cong. and Adm. News, p. 4561.

1958 Acts. Senate Report No. 2090 and Conference Report No. 2596, see 1958 U.S. Code Cong. and Adm. News, p. 4395.

Senate Report No. 1983 and Conference Report No. 2632, see 1958 U.S. Code Cong. and Adm. News, p. 4791.

1959 Acts. Senate Report No. 291 and Conference Report No. 520, see 1959 U.S. Code Cong. and Adm. News, p. 1575.

1960 Acts. Senate Report No. 1393 and Conference Report No. 2199, see 1960 U.S. Code Cong. and Adm. News, p. 1010.

1962 Acts. Senate Report No. 2059 and Conference Report No. 2518, see 1962 U.S. Code Cong. and Adm. News, p. 3110.

Senate Report No. 1881 and Conference Report No. 2508, see 1962 U.S. Code Cong. and Adm. News, p. 3297.

Senate Report No. 2109 and Conference Report No. 2542, see 1962 U.S. Code Cong. and Adm. News, p. 3890.

1964 Acts. House Report No. 749, Senate Report No. 830, Senate Supplemental Report No. 830, and Confer-

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ence Report No. 1149, see 1964 U.S. Code Cong. and Adm. News, p. 1313.

Senate Report No. 1428 and Conference Report No. 1843, see 1964 U.S. Code Cong. and Adm. News, p. 3586.

1965 Acts. House Report No. 433, Senate Report No. 324, and Conference Report No. 525, see 1965 U.S. Code Cong. and Adm. News, p. 1645.

1966 Acts. Senate Report No. 1709, see 1966 U.S. Code Cong. and Adm. News, p. 3761.

Senate Report No. 1707 and Conference Report No. 2327, see 1966 U.S. Code Cong. and Adm. News, p. 4446.

1967 Acts. Senate Report No. 490 and Conference Report No. 1010, see 1967 U.S. Code Cong. and Adm. News, p. 2606.

1969 Acts. House Report No. 91-413, Senate Report No. 91-552, and Conference Report No. 91-782, see 1969 U.S. Code Cong. and Adm. News, p. 1645.

1970 Acts. Senate Report No. 91-1444, see 1970 U.S. Code Cong. and Adm. News, p. 5689.

1971 Acts. House Report No. 92-533, Senate Report No. 92-437, and House Conference Report No. 92-708, see 1971 U.S. Code Cong. and Adm. News, p. 1825.

1974 Acts. House Report Nos. 93-533, 93-807, Senate Report Nos. 93-127, 93-383, House Conference Report No. 93-1280, and Senate Conference Report No. 93-1090, see 1974 U.S. Code Cong. and Adm. News, p. 4639.

1976 Acts. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

1977 Acts. Senate Report No. 95-66 and House Conference Report No. 95-263, see 1977 U.S. Code Cong. and Adm. News, p. 185.

1978 Acts. House Report No. 95-438 and Explanatory Statement, see 1978 U.S. Code Cong. and Adm. News, p. 72.

House Report No. 95-1445, Senate Report No. 95-1263, and House Conference Report No. 95-1800, see 1978 U.S. Code Cong. and Adm. News, p. 6761.

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1982 Acts. Senate Report No. 97-494, House Conference Report No. 97-760, and Statements by Legislative Leaders, see 1982 U.S. Code Cong. and Adm. News, p. 781.

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1986 Acts. House Conference Report No. 99-841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1987 Acts. House Report No. 100-391 and House Conference Report No. 100-495, see 1987 U.S. Code Cong. and Adm. News, p. 2313-1.

1988 Acts. House Conference Report No. 100-576, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

Senate Report No. 100-445 and House Conference Report No. 100-1104, see 1988 U.S. Code Cong. and Adm. News, p. 4515.

1989 Acts. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

1990 Acts. House Report No. 101-881 and House Conference Report No. 101-964, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1996 Acts. Senate Report No. 104-281 and House Conference Report No. 104-737, see 1996 U.S. Code Cong. and Adm. News, p. 1474.

1997 Acts. House Report No. 105-148, Senate Report No. 105-33, House Conference Report No. 105-220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

1998 Acts. House Conference Report No. 105-599, see 1998 U.S. Code Cong. and Adm. News, p. 297.

2004 Acts. House Conference Report No. 108-755, see 2004 U.S. Code Cong. and Adm. News, p. 1341.

2005 Acts. House Conference Report No. 109-190, see 2005 U.S. Code Cong. and Adm. News, p. 448.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S17.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S47.

Codifications

Subsecs. (k) to (m). Pub.L. 99-514, § 1847(b)(12), inserted “(as amended by sections 211, 314, and 474 of this Act)” in the directory language of section 168(b)(1) of Pub.L. 98-369. That insertion of language resulted in no change in the text of subsecs. (k), (l), and (m) of this section as thus amended by section 168(b)(1) of Pub.L. 98-369 but served to remove an ambiguity which had resulted from the failure of the directory language as originally enacted to indicate that the amendments of this section by sections 211, 314, and 474 of Pub.L. 98-369 were prerequisite to the amendment of this section by section 168(b)(1) of Pub.L. 98-369.

Portion of section 1702(e)(3)(A) of Pub.L. 104-188, which provided that subsec. (m) of this section, relating to deficiency attributable to election under section 44B, was to be repealed, was incapable of execution, since such subsec. (m) had previously been repealed by Pub.L. 100-418.

Section 1703(n)(8) of Pub.L. 104-188, which provided that subsec. (m) of this section as redesignated by section 1602 of Pub.L. 104-188 was to be amended by substituting “45B, or 51(j)” for “or 51(j)”, was executed by mak-

ing such substitution in subsec. (m) as redesignated and amended by section 1702(e)(3) of Pub.L. 104-188, as the probable intent of Congress.

Section 1704(j)(4)(B) of Pub.L. 104-188, which provided that subsec. (m) of this section as redesignated by section 1602 of Pub.L. 104-188 was to be amended by substituting “sections 30(d)(4), 40(f)” for “section 40(f)”, was executed by making such substitution in subsec. (m) as redesignated and amended by section 1702(e)(3) of Pub.L. 104-188, as the probable intent of Congress.

Amendment of subsec. (m) by section 11511(c)(2) of Pub.L. 101-508, directing that “43 or 44B” be substituted for “44B” each place it appears, was incapable of execution since subsec. (m) had previously been repealed by Pub.L. 100-418.

Section 1239(e)(2) of Pub.L. 105-34, which amended subsec. (o) by adding paragraph (3), was executed to subsec. (n), as so redesignated by section 1702(e)(3)(A) of Pub.L. 104-188, to reflect the probable intent of Congress.

Amendments

2007 Amendments. Subsec. (m). Pub.L. 110-172, § 7(a)(2)(B), inserted “45H(g),” following “45C(d)(4),”.

2005 Amendments. Subsec. (c)(10)(B). Pub.L. 109-135, § 403(y), struck out “(as defined in section 6111)” following “the date that a material advisor”.

Subsec. (m). Pub.L. 109-58, § 1341(b)(4), inserted “30B(h)(9),” following “30(d)(4),”.

Pub.L. 109-58, § 1342(b)(4), inserted “30C(e)(5)” following “30B(h)(9),”.

2004 Amendments. Subsec. (c)(10). Pub.L. 108-357, § 814(a), added par. (10).

Subsec. (e)(1)(B). Pub.L. 108-357, § 413(c)(28), rewrote subpar. (B), which formerly read: “**(B) Constructive dividends.**--If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), 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.”.

1998 Amendments. Subsec. (c)(4). Pub.L. 105-206, § 3461(b), added subpar. (A) designation and heading and added subpar. (B).

Subsec. (c)(9). Pub.L. 105-206, § 6007(e)(2)(A), struck out “The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a).”

Subsec. (m). Pub.L. 105-206, § 6023(27), substituted “election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any)” for “election under sections 30(d)(4), 40(f), 43, 45B, or 51(j) (or any)”.

1997 Amendments. Pub.L. 105-34, § 1601(g)(2), amended directory language of Pub.L. 104-188, and so required no change in text.

Subsec. (a). Pub.L. 105-34, § 1284(a), added a sentence: “For purposes of this chapter, the term ‘return’ means

the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)." at the end of subsec. (a).

Subsec. (c)(8). Pub.L. 105-34, § 1145(a), amended par. (8), which formerly read:

"(8) Failure to notify Secretary under section 6038B.--In the case of any tax imposed on any exchange or distribution by reason of subsection (a), (d), or (e) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange or distribution under section 6038B(a)."

Subsec. (c)(9). Pub.L. 105-34, § 506(b), amended par. (9), which formerly read:

"(9) Gift tax on certain gifts not shown on return.--If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

Subsec. (o)(3). Pub.L. 105-34, § 1239(e)(2), added par. (3) of subsec. (o), now redesignated (n).

Subsec. (n)(3). Pub.L. 105-34, § 1239(e)(2), added par. (3).

1996 Amendments. Subsec. (m). Pub.L. 104-188, § 1702(e)(3)(A), purported to strike out former subsec. (m) (which had already been repealed, see Codifications note set out under this section), and redesignated subsec. (n) as (m).

Pub.L. 104-188, § 1702(e)(3)(B), inserted reference to section 43.

Pub.L. 104-188, § 1703(n)(8), inserted reference to section 45B. See Codifications note set out under this section.

Pub.L. 104-188, § 1704(j)(4)(B), substituted "sections 30(d)(4), 40(f)" for "section 40(f)". See Codifications note set out under this section.

Subsec. (n). Pub.L. 104-188, § 1702(e)(3)(A), redesignated subsecs. (n) and (o) as (m) and (n), respectively.

Subsec. (o). Pub.L. 104-188, § 1702(e)(3)(A), redesignated subsec. (o) as (n).

1990 Amendments. Subsec. (c)(9). Pub.L. 101-508, § 11602(b), added par. (9).

1989 Amendments. Subsec. (n). Pub.L. 101-239, § 7814(e)(2)(E), struck out " , 41(h)" after "section 40(f)".

1988 Amendments. Subsec. (m). Pub.L. 100-418 struck out subsec. (m), which related to special rules for windfall profit tax.

Subsec. (n). Pub.L. 100-647, § 4008(c)(2), substituted " , 41(h) or 51(j)" for "or 51(j)".

Subsec. (o)(3). Pub.L. 100-647, § 1008(j)(1), struck out par. (3), relating to the extension of period in the case of certain contributions in the aid of construction.

1987 Amendments. Subsec. (l)(1). Pub.L. 100-203, § 10712(c)(2), substituted “plan, trust, or other organization” for “plan, or trust”.

Pub.L. 100-203, § 10714(c), substituted “by section 4912, by chapter 42 (other than section 4940),” for “by chapter 42 (other than section 4940)”.

1986 Amendments. Subsec. (c)(8). Pub.L. 99-514, § 1810(g)(3), substituted “exchange or distribution” for “exchange” wherever appearing, and “subsection (a), (d), or (e)” for “subsection (a) or (d)”.

Subsecs. (k) to (p). Pub.L. 99-514, § 1847(b)(12), inserted “(as amended by sections 211, 314, and 474 of this Act)” in directory language of section 163(b)(1) of Pub.L. 98-369, which resulted in no change in text but removed an ambiguity which had resulted from failure of directory language as originally enacted to indicate that amendments of this section by sections 211, 314, and 474 of Pub.L. 98-369 were to be executed before the amendment by section 163(b)(1) of Pub.L. 98-369. See 1984 Amendment notes below.

Subsec. (k). Pub.L. 99-514, § 1847(b)(14), substituted “or a credit carryback (as defined in section 6511(d)(4)(C))” for “an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback”.

Subsec. (n). Pub.L. 99-514, § 1847(b)(13), added subsec. (n). Former subsec. (n) redesignated (o).

Subsec. (o). Pub.L. 99-514, § 1847(b)(13), redesignated former subsec. (n) as (o).

1984 Amendments. Subsec. (c)(6). Pub.L. 98-369, § 211(b)(24)(A), redesignated par. (7) as par. (6). Former par. (6), which had provided that, in the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applied, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applied, such tax could be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceased to be an insurance company, the second taxable year for which the taxpayer was not a life insurance company, or the taxable year in which the distribution was actually made, as the case might be, was struck out.

Subsec. (c)(7). Pub.L. 98-369, § 211(b)(24)(A), redesignated former par. (7) as par. (6).

Pub.L. 98-369, § 447(a), added par. (7).

Subsec. (c)(8). Pub.L. 98-369, § 131(d)(2), added par. (8).

Subsec. (g)(3). Pub.L. 98-369, § 801(d)(14), substituted “section 6011(e)(2)” for “section 6011(c)(2)”.

Subsec. (k). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated subsec. (m) as subsec. (k).

Pub.L. 98-369, § 211(b)(24)(B), struck out former subsec. (k) which had provided that in the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders

surplus account of life insurance companies for certain unused deductions), such deficiency could be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2) could be assessed.

Subsec. (l). Pub.L. 98-369, § 163(b)(1), struck out subsec. (l), which read “For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4). Former subsec. (n) was redesignated subsec. (l).”

Subsec. (l)(3). Pub.L. 98-369, § 314(a)(3), substituted “section 4942(g)(2)(B)(ii)” for “section 4942(g)(2)(B)(i)(II)” in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub.L. 98-369, § 163(b)(1).

Subsec. (m). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated former subsec. (p) as subsec. (m). Former subsec. (m) was redesignated subsec. (k).

Subsec. (n). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), added subsec. (n). Former subsec. (n) was redesignated subsec. (l).

Subsec. (n)(3). Pub.L. 98-369, § 314(a)(3) substituted “section 4942(g)(2)(B)(ii)” for “section 4942(g)(2)(B)(i)(II)” in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub.L. 98-369, § 163(b)(1).

Subsec. (o). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), struck out subsec. (o), which read: “For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.”

Subsec. (p). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated subsec. (p) as subsec. (m).

Pub.L. 98-369, § 474(r)(39), redesignated subsec. (q) as (p). Former subsec. (p), which related to deficiencies attributable to an election under section 44B, was struck out.

Subsec. (q). Pub.L. 98-369, § 474(r)(39), redesignated subsec. (q) as (p).

Subsec. (q)(3). Pub.L. 98-369, § 714(p)(2)(F), substituted cross reference direction to section 6229 as made applicable by section 6232 for extension of period for windfall profit tax items of partnerships for former provision which read:

“(3) Partnership items of federally registered partnerships.--Under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986.”

1982 Amendments. Subsec. (o). Pub.L. 97-248 substituted “Special rules for partnership items” for “Special rules for partnership items of federally registered partnerships” as the subsection heading and, in text, substituted provisions directing that for extension of period in case of partnership items (as defined in section 6231(a)(3)), see section 6229, for provisions that had formerly directed that, (1) in the case of any tax imposed by subtitle A with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership did not expire before the later of (A) the date which was 4 years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or, later, if the date prescribed for filing the return), or (B) if the name or address of such person did not appear on the partnership return, the date which was 1 year after the date on which such

information was furnished to the Secretary in such manner and at such place as he might prescribe by regulations, (2) for purposes of this subsection, the term “partnership item” meant (A) any item required to be taken into account for the partnership taxable year under any provision of subchapter K of chapter 1 to the extent that regulations prescribed by the Secretary provided that for purposes of this subtitle such item was more appropriately determined at the partnership level than at the partner level, and (B) and other item to the extent affected by an item described in subparagraph (A), (3) the extensions referred to in subsection (c)(4), insofar as they related to partnership items, could, with respect to any person, be consented to (A) except to the extent the Secretary was otherwise notified by the partnership, by a general partner of the partnership, or (B) by any person authorized to do so by the partnership in writing, and (4) for purposes of this subsection, the term “federally registered partnership” meant, with respect to any partnership taxable year, any partnership (A) interests in which had been offered for sale at any time during such taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission, or (B) which, at any time during such taxable year or a prior taxable year, had been subject to the annual reporting requirements of the Securities and Exchange Commission which related to the protection of investors in the partnership.

1980 Amendments. Subsec. (o). Pub.L. 96-222, § 102(a)(2)(A), redesignated former subsec. (q), relating to special rules for partnership items of Federally registered partnerships, as (o). Former subsec. (o), relating to work incentive program credit carrybacks, was repealed by Pub.L. 95-628, § 8(c)(1)(C), Nov. 10, 1978, 92 Stat. 3632.

Subsec. (p). Pub.L. 96-222, § 103(a)(6)(G)(x), redesignated former subsec. (q), relating to deficiency attributable to election under section 44B, as (p). Former subsec. (p), relating to new employee credit carrybacks, was repealed by Pub.L. 95-628, § 8(c)(1)(C), Nov. 10, 1978, 92 Stat. 3632.

Subsec. (q). Pub.L. 96-223 added subsec. (q). Former subsec. (q), as added by section 212(a) of Pub.L. 95-600, redesignated (o). Former subsec. (1), as added by section 321(b)(2) of Pub.L. 95-600, redesignated (p).

1978 Amendments. Subsec. (e)(3). Pub.L. 95-600, § 701(t)(3)(A), substituted “43, or 44” for “or 43”.

Pub.L. 95-227, § 4(d)(4), added reference to chapter 44.

Subsec. (h). Pub.L. 95-600, § 703(n), (p)(2), substituted “section 6213(b)(3)” for “section 6213(b)(2)” and struck out provisions relating to the assessment of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c).

Subsec. (j). Pub.L. 95-628, § 8(c)(1)(A), substituted in the heading “Certain credit carrybacks” for “Investment credit carrybacks”, designated existing paragraph as par. “(1) In general”, substituted in such paragraph “credit carryback” for “investment credit carryback” in two instances and “unused credit” for “unused investment credit”, inserted reference to other credit carryback, and substituted reference to section 6213(b)(3) for 6213(b)(2), and added par. (2).

Pub.L. 95-600, § 703(n), substituted “section 6213(b)(3)” for “section 6213(b)(2)”.

Subsec. (m). Pub.L. 95-628, § 8(c)(1)(B), struck out references to subsecs. (o) and (p) in two instances.

Pub.L. 95-600, § 504(b)(3), added “and refund” following “tentative carryback”.

Subsec. (n). Pub.L. 95-227, § 4(d)(5), in the subsec. catchline added “and similar” following “42”, and par. (1) added reference to section 4975 and “, plan, or trust (as the case may be)” following “foundation”.

Subsecs. (o), (p). Pub.L. 95-628, § 8(c)(1)(C), struck out provisions of subsecs. (o) and (p) for work incentive program credit carrybacks and new employee credit carrybacks.

Subsec. (o). Pub.L. 95-600, § 703(n), substituted “section 6213(b)(3)” for “section 6213(b)(2)”.

Subsec. (q). Pub.L. 95-600, § 212(a), added subsec. (q), relating to special rules for partnership items of Federally registered partnerships.

Pub.L. 95-600, § 321(b)(2), added subsec. (q), relating to deficiency attributable to election under section 44B.

1977 Amendments. Subsec. (m). Pub.L. 95-30, § 202(d)(5)(B), added references to new employee credit carrybacks and to subsec. (p).

Subsec. (p). Pub.L. 95-30, § 202(d)(4)(A), added subsec. (p).

1976 Amendments. Subsecs. (b)(3), (c)(4), (d), (e)(1)(A)(ii), (e)(2). Pub.L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” following “secretary”.

Subsec. (e)(3). Pub.L. 94-455, § 1307(d)(2)(F)(vi), substituted “chapter 41, 42, or 43” for “chapter 42 or 43”.

Subsec. (i). Pub.L. 94-455, §§ 1031(b)(5), 1035(d)(3), substituted “section 904(c)” for “section 904(d)” wherever appearing and inserted “or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes)” following “excess foreign taxes” and “or 907(f)” before “which results in such carryback”.

Subsec. (n)(3). Pub.L. 94-455, § 1302(b), added subsec. (n)(3).

Subsec. (o). Pub.L. 94-455, § 2107(g)(2)(A), inserted “, an investment credit carryback,” following “net operating loss carryback”.

1974 Amendments. Subsec. (e)(3). Pub.L. 93-406 inserted reference to chapter 43.

1971 Amendments. Subsec. (g)(3). Pub.L. 92-178, § 504(c), added par. (3).

Subsec. (m). Pub.L. 92-178, § 601(e)(2)(A) and (B), substituted “an investment credit carryback, or a work incentive program carryback” for “or an investment credit carryback” and inserted reference to subsec. (o) in two instances, respectively.

Subsec. (o). Pub.L. 92-178, § 601(d)(1), added subsec. (o).

1970 Amendments. Subsec. (e)(2). Pub.L. 91-614 substituted “during the period for which the return was filed” for “during the year”.

1969 Amendments. Subsec. (c)(7). Pub.L. 91-172, § 101(g)(2), added subsec. (c)(7).

Subsec. (e)(3). Pub.L. 91-172, § 101(g)(3), inserted provision excluding, in specified cases, chapter 42 taxes from those considered in determining the amount of taxes omitted from a return.

Subsec. (h). Pub.L. 91-172, § 512(e)(1)(A) to (D), substituted “loss or capital loss carrybacks” for “loss carry-

backs” in subsec. catchline, “loss carryback or a capital loss carryback” for “loss carryback,” “operating loss or net capital loss which” for “operating loss which,” “assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed” for “assessed, or” and “if later than the date prescribed by the preceding sentence” for “whichever is later.”

Subsec. (j). Pub.L. 91-172, § 512(e)(1)(E), substituted “loss carryback or a capital loss carryback” for “loss carryback.”

Subsec. (m). Pub.L. 91-172, § 512(e)(1)(F), substituted “net operating loss carryback, a capital loss carryback, or an investment credit carryback” for “net operating loss carryback or an investment credit carryback.”

Subsec. (n). Pub.L. 91-172, § 101(g)(1), added subsec. (n).

1967 Amendments. Subsec. (j). Pub.L. 90-225 added “, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed,” following “the unused investment credit which results in such carryback may be assessed”.

1966 Amendments. Subsec. (b). Pub.L. 89-809 inserted reference to chapter 3 in pars. (1) and (2) and “and tax imposed by chapter 3” in the heading of par. (2).

Subsec. (j). Pub.L. 89-721, § 2(f), substituted “investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)),” for “investment credit carryback”.

Subsec. (m). Pub.L. 89-721, § 3(a), added subsec. (m).

1965 Amendments. Subsec. (b)(4). Pub.L. 89-44, § 810(a), added par. (4).

Subsec. (e). Pub.L. 89-44, § 810(b)(2), substituted “Substantial omission of items” for “Omission from gross income” in the catchline.

Subsec. (e)(3). Pub.L. 89-44, § 810(b)(1), added par. (3).

1964 Amendments. Subsec. (f). Pub.L. 88-272 substituted “gross income and adjusted ordinary gross income, described in section 543” for “gross income, described in section 543(a).”

Subsec. (k). Pub.L. 88-571 added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub.L. 88-571 redesignated former subsec. (k) as (l).

1962 Amendments. Subsec. (c)(6). Pub.L. 87-858 substituted “802(a)” for “802(a)(1).”

Subsec. (h). Pub.L. 87-794 authorized assessment of a deficiency within 18 months after the date on which the taxpayer files in accordance with § 172(b)(3) a copy of the certification issued under § 317 of the Trade Expansion Act of 1962, whichever is later.

Subsec. (j). Pub.L. 87-834 added subsec. (j) and redesignated former subsec. (j) as (k).

Subsec. (k). Pub.L. 87-834 redesignated former subsec. (j) as (k).

1960 Amendments. Subsec. (i). Pub.L. 86-780 added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub.L. 86-780 redesignated former subsec. (i) as (j).

1959 Amendments. Subsec. (c)(6). Pub.L. 86-69 added subsec. (c)(6).

1958 Amendments. Subsec. (a). Pub.L. 85-859 substituted “at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid” for “within 3 years after such tax became due”.

Subsec. (d). Pub.L. 85-866, § 80, substituted in first sentence “subsection (c), (e), or (f)” for “subsection (c)”, designated existing clauses (1)-(3) of second sentence as clause (1) and added clauses (2) and (3).

Subsec. (g)(2). Pub.L. 85-866, § 81(a), substituted “organization” for “corporation” wherever appearing.

Subsec. (h). Pub.L. 85-866, § 81(b), added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i). Pub.L. 85-866, § 81(b), redesignated former subsec. (h) as (i).

Effective and Applicability Provisions

2007 Acts. Amendments made by Pub.L. 110-172, § 7, take effect as if included in the provisions of Pub.L. 108-357 to which they relate, see Pub.L. 110-172, § 7(e), set out as an Effective and Applicability Provisions note under 26 U.S.C.A. § 1092.

2005 Acts. Amendments made by Pub.L. 109-135, § 403, effective as if included in provisions of the American Jobs Creation Act of 2004, Pub.L. 108-357, to which they relate, see Pub.L. 109-135, § 403(nn), set out as a note under 26 U.S.C.A. § 26.

Amendments by Pub.L. 109-58, § 1341, applicable to property placed in service after Dec. 31, 2005, in taxable years ending after Dec. 31, 2005, see Pub.L. 109-58, § 1341(c), set out as a note under 26 U.S.C.A. § 30B.

Amendments by Pub.L. 109-58, § 1342, applicable to property placed in service after Dec. 31, 2005, in taxable years ending after Dec. 31, 2005, see Pub.L. 109-58, § 1342(c), set out as a note under 26 U.S.C.A. § 30C.

2004 Acts. Amendment by Pub.L. 108-357, § 413(c)(28), amending subsec. (e)(1)(B) of this section, applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see Pub.L. 108-357, § 413(d)(1), set out as an Effective and Applicability Provisions note under 26 U.S.C.A. § 1.

Pub.L. 108-357, Title VIII, § 814(b), Oct. 22, 2004, 118 Stat. 1581, provided that: “The amendment made by this section [adding subsec. (c)(10) of this section] shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act [Oct. 22, 2004].”

1998 Acts. Section 3461(c) of Pub.L. 105-206 provided that:

“(1) **In general**--The amendments made by this section [amending subsec. (c)(4) of this section and section 6502 of this title] shall apply to requests to extend the period of limitations made after December 31, 1999.

“(2) Prior request--If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986 [section 6502(a) of this title], such extension shall expire on the latest of--

“(A) the last day of such 10-year period;

“(B) December 31, 2002; or

“(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.”

Amendment by section 6023(27) of Pub.L. 105-206 effective July 22, 1998, see section 6023(32) of Pub.L. 106-206, set out as a note under section 34 of this title.

Amendments by Title VI (sections 6001 to 6024) of Pub.L. 105-206, except as otherwise provided in such title, shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997, Pub.L. 105-34, Aug. 5, 1997, 111 Stat. 788, to which they relate, see section 6024 of Pub.L. 105-206, set out as a note under section 1 of this title.

1997 Acts. Section 506(e)(2) of Pub.L. 105-34 provided that: “The amendment made by subsection (b) [amending subsec. (c)(9) of this section] shall apply to gifts made in calendar years ending after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1145(b) of Pub.L. 105-34 provided that: “The amendment made by subsection (a) [amending subsec. (c)(8) of this section] shall apply to information the due date for the reporting of which is after the date of the enactment of this Act [Aug. 5, 1997].”

Amendments by section 1239 of Pub.L. 105-34 applicable to partnership taxable years ending after August 5, 1997, see section 1239(f) of Pub.L. 105-34, set out as a note under section 6225 of this title.

Section 1284(b) of Pub.L. 105-34 provided that: “The amendment made by this section [amending subsec. (a) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

Amendments by section 1601 of Pub.L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub.L. 104-188, Aug. 20, 1996, 110 Stat. 1755], see section 1601(j)(1) of Pub.L. 105-34, set out as a note under section 23 of this title.

1996 Acts. Amendment by section 1702 of Pub.L. 104-188 effective as if included in provision of Revenue Reconciliation Act of 1990 [Pub.L. 101-508, Title XI, Nov. 5, 1990, 104 Stat. 1388-400, see Tables for classification] to which it relates, except as otherwise specifically provided, see section 1702(i) of Pub.L. 104-188, set out as a note under section 38 of this title.

Amendment by section 1703 of Pub.L. 104-188 effective as if included in provision of Revenue Reconciliation Act of 1993 [Pub.L. 103-66, Title XIII, Chapter I, § 13001 et seq., Aug. 10, 1993, 107 Stat. 416, see Tables for classification] to which it relates, see section 1703(o) of Pub.L. 104-188, set out as a note under section 39 of this title.

1990 Acts. Section 11602(e)(2) of Pub.L. 101-508 provided that: “The amendment made by subsection (b)

[amending subsec. (c) of this section] shall apply to gifts after October 8, 1990.”

1989 Acts. Section 7817 of Pub.L. 101-239 provided that amendment by part I of subtitle H of Title VII (sections 7811 to 7816) of Pub.L. 101-239 shall take effect as if included in the provisions of Pub.L. 100-647 to which such amendment relates, see section 7817 of Pub.L. 101-239, set out as a note under section 1 of this title.

1988 Acts. Amendment by section 1008(j)(1) of Pub.L. 100-647 effective as if included in the provisions of Pub.L. 99-514 to which such amendment relates, except that no addition to tax shall be made under section 6654 or 6655 of this title for any period before Apr. 16, 1989 (Mar. 16, 1989 in the case of a taxpayer subject to section 6655 of this title) with respect to any underpayment to the extent such underpayment was created or increased by any provision of Titles I or II of Pub.L. 100-647, see section 1019 of Pub.L. 100-647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(2) of Pub.L. 100-647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub.L. 100-647, set out as a note under section 41 of this title.

Amendment by Pub.L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub.L. 100-418, set out as a note under section 164 of this title.

1987 Acts. Amendment by section 10712(c)(2) of Pub.L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub.L. 100-203, set out as a note under section 4955 of this title.

Amendment by section 10714(c) of Pub.L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub.L. 100-203, set out as a note under section 4912 of this title.

1986 Acts. Amendment by Pub.L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub.L. 98-369, to which such amendment relates, see section 1881 of Pub.L. 99-514, set out as a note under section 48 of this title.

1984 Acts. Amendment by section 131(d)(2) of Pub.L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub.L. 98-369, set out as a note under section 367 of this title.

Amendment by section 163(b)(1) of Pub.L. 98-369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after December 31, 1984, see section 163(c) of Pub.L. 98-369, set out as a note under section 118 of this title.

Amendment by section 211(b)(24) of Pub.L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub.L. 98-369, set out as a note under section 801 of this title.

Amendment by section 314(a)(3) of Pub.L. 98-369 effective July 18, 1984, see section 314(a)(4) of Pub.L. 98-369, set out as a note under section 4942 of this title.

Section 447(b) of Pub.L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 474(r)(39) of Pub.L. 98-369 applicable to taxable years beginning after Dec. 31, 1983,

and to carrybacks from such years, see section 475(a) of Pub.L. 98-369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(F) of Pub.L. 98-369, effective as if included in provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub.L. 97-248 to which such amendment relates, see section 715 of Pub.L. 98-369, set out as a note under section 31 of this title.

Amendment by section 801(d)(14) of Pub.L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub.L. 98-369, set out as a note under section 921 of this title.

1982 Acts. Amendment by Pub.L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1) and (3) of Pub.L. 97-248, set out as a note under section 6221 of this title.

1980 Acts. Amendment by Pub.L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub.L. 96-223, set out as a note under section 4986 of this title.

Amendment by Pub.L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub.L. 95-600, to which such amendment relates, see section 201 of Pub.L. 96-222, set out as a note under section 32 of this title.

1978 Acts. Amendment by Pub.L. 95-628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub.L. 95-628, set out as a note under section 6511 of this title.

Section 212(c) of Pub.L. 95-600 provided that: "The amendments made by this section [amending this section and sections 6511 and 6512 of this title] shall apply to partnership items arising in partnership taxable years beginning after December 31, 1978."

Section 321(d)(5) of Pub.L. 95-600, as added by Pub.L. 96-222, title I, § 103(a)(6)(B), Apr. 1, 1980, 94 Stat. 209, provided that: "The amendments made by subsection (b) [amending this section and former section 44B of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 504(b)(3) of Pub.L. 95-600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub.L. 95-600, set out as a note under section 6411 of this title.

Amendment by section 701(t)(3)(A) of Pub.L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub.L. 95-600, set out as a note under section 859 of this title.

Amendment by section 703(p)(2) of Pub.L. 95-600 applicable with respect to losses sustained in taxable years ending after Nov. 6, 1978, see section 703(p)(4) of Pub.L. 95-600, set out as a note under section 172 of this title.

Amendment by section 703(n) of Pub.L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub.L. 95-600, set out as a note under section 46 of this title.

Amendment by Pub.L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub.L. 95-227, set out as a note under section 192 of this title.

1977 Acts. Amendment by Pub.L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub.L. 95-30, set out as a note under section 51 of this title.

1976 Acts. Amendment by section 1906 of Pub.L. 94-455 effective the first day of the first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub.L. 94-455, set out as a note under section 6013 of this title.

Amendment by section 1031(b)(5) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, with specific exceptions, see section 1031(c) of Pub.L. 94-455, set out as a note under section 904 of this title.

Amendment by section 1035(d)(3) of Pub.L. 94-455 applicable to taxes paid or accrued during taxable years ending after Oct. 4, 1976, see section 1035(e) of Pub.L. 94-455, set out as a note under section 907 of this title.

Amendment by section 1302(b) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1974, see section 1302(c) of Pub.L. 94-455, set out as a note under section 4942 of this title.

Amendment by section 1307(d)(2)(F)(vi) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e)(5) of Pub.L. 94-455, set out as a note under section 501 of this title.

1974 Acts. Amendment by Pub.L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub.L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub.L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub.L. 93-406, set out as a note under section 410 of this title.

1971 Acts. Amendment by section 504(c) of Pub.L. 92-178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub.L. 92-178, set out as a note under section 991 of this title.

Amendment by section 601(d), (e)(2)(A), (B) of Pub.L. 92-178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub.L. 92-178, set out as a note under section 381 of this title.

1970 Acts. Amendment of section by Pub.L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub.L. 91-614, set out as a note under section 2501 of this title.

1969 Acts. Amendment by section 101(g)(1) to (3) of Pub.L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub.L. 91-172, set out as a note under section 4940 of this title.

Amendment by section 512(e)(1) of Pub.L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub.L. 91-172, set out as a note under section 1212 of this title.

1967 Acts. Amendment by Pub.L. 90-225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub.L. 90-225, set out as a note under section 46 of this title.

1966 Acts. Section 105(f)(4) of Pub.L. 89-809 provided that: “The amendments made by this subsection [amending this section and section 6513 of this title] shall take effect on the date of the enactment of this Act [November 13, 1966].”

Amendment by section 2(f) of Pub.L. 89-721 applicable with respect to taxable years ending after Dec. 31, 1961, but only in the case of applications filed after Nov. 2, 1966, see section 2(g) of Pub.L. 89-721, set out as a note under section 6411 of this title.

Section 3(b) of Pub.L. 89-721 provided that: “The amendment made by subsection (a) [amending this section] shall apply in any case where the application under section 6411 of the Internal Revenue Code of 1954 is filed after the date of the enactment of this Act [Nov. 2, 1966].”

1965 Acts. Section 810(c) of Pub.L. 89-44 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to returns filed on or after July 1, 1965.”

1964 Acts. Section 3(f) of Pub.L. 88-571 provided that: “The amendments made by this section [amending sections 815, 6501, 6511, 6601 and 6611 of this title] shall apply with respect to amounts added to policyholders surplus accounts (within the meaning of section 815(c) of the Internal Revenue Code of 1954) for taxable years beginning after December 31, 1958.”

Amendment by Pub.L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub.L. 88-272, set out as a note under section 316 of this title.

1962 Acts. Section 3(f) of Pub.L. 87-858 provided that: “Except as provided in subsection (d)(2), the amendments made by this section [amending this section, and former sections 801, 802, 804, 809 and 815 of this title] shall apply with respect to taxable years beginning after December 31, 1961.”

Amendment by Pub.L. 87-834, applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub.L. 87-834, set out as a note under section 46 of this title.

1960 Acts. Amendment by Pub.L. 86-780 applicable to taxable years beginning after Dec. 31, 1957, see section 4 of Pub.L. 86-780, set out as a note under section 904 of this title.

1959 Acts. Amendment by Pub.L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub.L. 86-69, set out as a note under section 841 of this title.

1958 Acts. Amendment by Pub.L. 85-859 effective the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub.L. 85-859.

Amendment by Pub.L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub.L. 85-866, set out as a note under section 165 of this title.

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 CJS Internal Revenue § 658, Commencement of Period of Limitations.
 CJS Internal Revenue § 659, Request for Prompt Assessment.
 CJS Internal Revenue § 660, Effect of Erroneous, False, or Fraudulent Returns.
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I. GENERALLY

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1. Construction

Section 275(c) [I.R.C.1939 (now this section)], making a special five-year period of limitation applicable when taxpayer, even though acting in good faith, had omitted from gross income an amount properly includable therein which was in excess of 25% of amount of gross income stated in return, was ambiguous, and therefore court called upon to construe such subsection would turn to legislative history to determine Congressional intent. *Colony, Inc. v. C.I.R.*, U.S.1958, 78 S.Ct. 1033, 357 U.S. 28, 2 L.Ed.2d 1119, on remand 259 F.2d 270.

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See, also, *Uptegrove Lumber Co. v. C.I.R.*, C.A.3, 1953, 204 F.2d 570. Statutes  217.2

Limitations statutes barring collection of taxes otherwise due and unpaid are strictly construed in favor of the government. *Lucia v. U. S.*, C.A.5 (Tex.) 1973, 474 F.2d 565. Internal Revenue  4881

Statutes of limitations barring collection of taxes, liability for which did accrue, are strictly construed in favor of the government and their applicability will not be presumed in the absence of clear congressional action. *McDonald v. U.S.*, C.A.6 (Ky.) 1963, 315 F.2d 796. See, also, *U.S. v. City of New York*, D.C.N.Y.1955, 134 F.Supp. 374; *U.S. v. Bank of Commerce & Trust Co.*, D.C.N.Y.1940, 32 F.Supp. 942, affirmed 124 F.2d 187. Internal Revenue  4881

Statute of limitation barring collection of taxes receives strict construction in favor of government. *U.S. v. Red Stripe, Inc.*, E.D.N.Y.1992, 792 F.Supp. 1338. Internal Revenue  4881

Although the limitation contained in this section is to be construed liberally in favor of the taxpayer, where there is no ambiguity in language of a taxpayer's agreement to waive the running of the statute, he will be held to have bound himself within the clear meaning of the terms employed. *U.S. v. Wilson*, D.C.N.J.1960, 182 F.Supp. 567. Internal Revenue  4898

Section 275(c) [I.R.C.1939 (now this section)], providing that income tax may be collected by distraint or by proceeding in court, but only if begun within six years after assessment of tax or prior to expiration of any period for collection agreed on in writing by Commissioner and taxpayer before expiration of six year period, is not ambiguous, and does not require construction. *Simmons v. Westover*, S.D.Cal.1948, 76 F.Supp. 442, affirmed 172 F.2d 556. Internal Revenue  4881

Statute prescribing three-year period within which adjustment to partnership tax return must be issued was ambiguous as to whether it served as a separate statute of limitations for making assessments on individual partners, or functioned as a special provision for assessing tax on partnership items, thereby extending general three-year statute of limitations on tax assessments. *AD Global Fund, LLC ex rel. North Hills Holding, Inc. v. U.S.*, Fed.Cl.2005, 67 Fed.Cl. 657, motion to certify appeal granted 68 Fed.Cl. 663, petition granted 167 Fed.Appx. 171, 2006 WL 171766, appeal filed , affirmed 481 F.3d 1351. Internal Revenue  4568

2. Construction with other laws

Tax Code provisions setting forth required contents of Subchapter S corporation tax return and requiring Commissioner desiring to make assessment to act within three years of filing does not bring individual's income tax return within reference to "any return" simply because portion of return reports income and losses that have passed through from return of S corporation; phrase "any return" filed pursuant to section, coupled with fact that Tax Code provision is concerned with describing contents of corporations return, indicated that section was not meant to determine when assessment period for shareholder's individual tax return began. *Bufferd v. C.I.R.*, U.S.1993, 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306. Internal Revenue  4570

Statute prescribing three-year period within which adjustment to partnership tax return must be issued unambiguously sets forth a minimum period for assessments of partnership items that may extend the regular statute of limitations, which explicitly provides that it applies to any tax imposed by the title, such as tax imposed for partnership items. *AD Global Fund, LLC ex rel. North Hills Holding, Inc. v. U.S.*, C.A.Fed.2007, 481 F.3d 1351. Internal Revenue  4568

Statute providing that limitations period for assessment of additional tax is extended for three years from date Commissioner of Internal Revenue is notified that qualified real property is disposed of or ceases to be used for qualifying use for estate tax purposes takes precedence over Revenue Code's general limitations period. *LeFever v. C.I.R.*, C.A.10 1996, 100 F.3d 778. Internal Revenue  4568

Section 7503 of this title providing that when last day prescribed for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday had effect of making filing of income tax return on Monday, April 16, 1956 timely but did not make three-year statute of limitations on assessment of deficiency run from April 15 due date rather than actual filing date of April 16 so that "90-day letter" mailed on April 16, 1959 was timely, the three-year statute of limitations running from actual filing date of April 16. *Brown v. U.S.*, Ct.Cl.1968, 391 F.2d 653, 183 Ct.Cl. 13. Internal Revenue  4570; Time  10(1)

Assessment made by commissioner on June 29, 1962, and involving 1951 tax year was barred by statute of limitations unless commissioner was correct and timely in applying the "mitigation provisions" of sections 1311-1315 of this title. *Shields v. U.S.*, C.A.6 (Ohio) 1967, 375 F.2d 457. Internal Revenue  4565

Section 7122 of this title authorizing Secretary of the Treasury or his delegate to compromise any civil or criminal case arising under internal revenue laws prior to, or after, reference to Department of Justice for prosecution or defense has no relationship to, or dependency on, this section which prescribes three-year statute of limitations for assessment of taxes. *U.S. v. Feinberg*, C.A.3 (Pa.) 1965, 372 F.2d 352. Internal Revenue  4760

Extension of limitations period under statute governing limitations upon Internal Revenue Service's (IRS) ability to assess and collect did not alter 3 year limitations period applicable to taxpayers' amendment of returns seeking credits or refunds for partnership on basis of increasing research activities under statute governing the tax treatment of partnership items, as incorporated by statute governing special rules with respect to partnership credits and refunds, and thus partnership was not entitled to the credit it belatedly claimed and improperly passed on to its S corporation partners and individual taxpayers, and as such, IRS was entitled to repayment of the taxpayers' refund that arose from the untimely amended filing. *U.S. v. McFerrin*, S.D.Tex.2007, 492 F.Supp.2d 695. Internal Revenue  3943; Internal Revenue  4479; Internal Revenue  4960; Internal Revenue  4974

Statute providing for penalty for one who advises with respect to preparation or presentation of any portion of return knowing that such portion, if so used, will result in understatement of tax liability, is analogous to sections enacted to combat fraud that provide unlimited periods of limitation, and is not subject to three-year statute of limitation in accordance with statute providing that amount of any tax imposed by particular title shall be assessed within three years after return is filed. *Kuchan v. U.S.*, N.D.Ill.1988, 679 F.Supp. 764. Internal Revenue  5230

Even though section 7405 of this title imposes five year limitation on suit where it appears refund was induced by fraud or misrepresentation of material fact, government can still bring action to recover erroneous refunds under this section for which there is no time limitation in cases of false or fraudulent returns or wilful attempts to evade tax. *Black Prince Distillery, Inc. v. U.S.*, D.C.N.J.1984, 586 F.Supp. 1169. Internal Revenue  4974

To define the period of limitation for commencement of suits for collection of taxes as against transferees of taxpayer, the statutes of limitation relating to taxpayer and to transferee liability must be read together. *U.S.v. City of New York*, S.D.N.Y.1955, 134 F.Supp. 374. Internal Revenue  3035

Statute setting forth period of limitations for making assessments of income tax pertaining to partnership items can, given the appropriate facts, extend the general statute of limitations on assessing tax on items reported on a tax return. *Epsilon Ltd. ex rel. Sligo (2000) Co., Inc. v. U.S.*, Fed.Cl.2007, 78 Fed.Cl. 738. Internal Revenue  4568

Plain language of statute prescribing a three-year period within which the Internal Revenue Service (IRS) may assess taxes attributable to a partnership item does not establish an independent limitations period but extends the general limitations period for the assessment of income taxes on partnership items, such that the IRS may issue a final partnership administrative adjustment (FPAA) within the alternative minimum period of the statute, as a prerequisite for assessing a tax attributable to a partnership item. *Schumacher Trading Partners, II v. U.S.*, Fed.Cl.2006, 72 Fed.Cl. 95. Internal Revenue  4568

Tax statute prescribing three-year period within which adjustment to partnership tax return must be issued does not establish a limitations period that is separate and apart from the general three-year statute of limitations on income tax assessments with respect to individual partnership assessments; rather, the two provisions act in tandem so that adjustment statute can extend the period for assessment proscribed in general statute, but can never contract it. *Grapevine Imports, Ltd. v. U.S.*, Fed.Cl.2006, 71 Fed.Cl. 324. Internal Revenue  4568

In absence of reliable legislative history, ambiguity as to whether tax statute prescribing three-year period within which adjustment to partnership tax return must be issued served as a separate statute of limitations, or functioned as an extension of general three-year statute of limitations, would be resolved in favor of the government to find that statute functioned as an extension of time, as presumption in favor of government is applied when statute at issue is a limitation statute barring collection of taxes otherwise due. *AD Global Fund, LLC ex rel. North Hills Holding, Inc. v. U.S.*, Fed.Cl.2005, 67 Fed.Cl. 657, motion to certify appeal granted 68 Fed.Cl. 663, petition granted 167 Fed.Appx. 171, 2006 WL 171766, appeal filed, affirmed 481 F.3d 1351. Internal Revenue  4568

Taxpayer's error in computing the rate of exchange in connection with its credit for foreign tax did not make the provisions of § 131 [I.R.C.1939] applicable so as to make inapplicable the period of limitation prescribed by § 275 [I.R.C.1939], which has expired. *Texas Co. (Caribbean) Ltd. v. C.I.R.*, Tax Ct.1949, 12 T.C. 925.

The Internal Revenue Service (IRS) violated discharge injunction when it assessed prepetition tax claims against debtors postconfirmation; however, assessments, which were made in attempt to avoid running statute of limitations should the IRS prevail on pending appeal from bankruptcy court decision disallowing claim for prepetition taxes, and which were made on paper only with no further attempt to pursue payment on the tax claims, would be allowed to stand. *In re Norris Grain Co.*, Bkrcty.M.D.Fla.1992, 138 B.R. 1004, affirmed 168 B.R. 264, affirmed 42 F.3d 643. Bankruptcy  2364

Provision of Internal Revenue Code establishing period of limitation for making assessments of partnership items is independent of provision stating general rule that amount of any tax shall be assessed within three years after return was filed. *In re Frary*, Bkrcty.D.Alaska 1990, 117 B.R. 541. Internal Revenue  4568

3. Purpose

In enacting § 275(c) [I.R.C.1939 (now this section)], making special five-year period of limitations applicable when taxpayer even though acting in good faith, had "omitted" from gross income an amount properly includable therein which was in excess of 25% of amount of gross income stated in return, Congress intended only to

give Commissioner an additional two years to investigate tax returns in cases where, because of taxpayer's omission to report some taxable item. Commissioner was at special disadvantage in detecting errors; and it was intended that such five-year limitation should apply only when specific receipts or accruals of income items had been "left out" in computation of gross income and not when understatement of gross income had resulted from taxpayer's miscalculation of profits through erroneous inclusion of an excessive item of cost. *Colony, Inc. v. C.I.R.*, U.S.1958, 78 S.Ct. 1033, 357 U.S. 28, 2 L.Ed.2d 1119, on remand 259 F.2d 270. Internal Revenue  4572

Revenue Act 1932, § 275, fixing a period of four years for assessment if a corporation makes no return of tax imposed by the statute, but each shareholder returns his distributive share of the net income was adopted to set a period of limitations where no return is filed by an association, but returns are filed by the members, and is intended to limit rather than to enlarge the time for assessment in such case. *Germantown Trust Co. v. Commissioner of Internal Revenue*, U.S.1940, 60 S.Ct. 566, 309 U.S. 304, 84 L.Ed. 770. Internal Revenue  4565

Objectives of this section providing that time will not bar collection of taxes for which no returns have been filed and that limitations period begins to run not when return could or should have been filed but only when a return is actually filed is to insure that passage of time will not prevent collection of the tax unless the government has been informed by the taxpayer that there is or might be, tax liability; such objective is essential to our national tax system, which is premised largely on theory of self-assessment. *Lucia v. U. S.*, C.A.5 (Tex.) 1973, 474 F.2d 565. Internal Revenue  4892

Purpose of this section extending period of limitations to six years for period within which tax deficiency can be assessed if taxpayer has omitted amount from gross income that exceeds 25% of gross income stated in his return is to give government additional time to investigate tax returns in cases where taxpayer's failure to report taxable items puts government at special disadvantage to discover omission in three-year period. *Taylor v. U.S.*, C.A.5 (Fla.) 1969, 417 F.2d 991. See, also, *Phinney v. Chambers*, C.A.Tex.1968, 392 F.2d 680, certiorari denied 88 S.Ct. 1848, 391 U.S. 935, 20 L.Ed.2d 854. Internal Revenue  4572

Provisions of this section prescribing limitations on assessment and collection and providing when return of excise taxes will be deemed filed, and prescribing time for commencement of suit to collect tax omitted from return are designed to modify harsh consequences which have resulted from failing to include items subject to excise tax in composite return and for claims for excise taxes only with respect to claims filed on or after July 1, 1965. *Miller v. U.S.*, C.A.6 (Tenn.) 1968, 399 F.2d 881. Internal Revenue  4891; Internal Revenue  4566

4. Retroactive effect

Under I.R.C.1939, there was no statute of limitations covering liability for payment of admission taxes when taxpayers filed no return within time required, and section of 1954 Code fixing a three-year period was not applicable with respect to liability for 1950 admission taxes owing by taxpayers, who failed to file any tax return within time required by law. *Sommers v. U.S.*, D.C.N.J.1962, 201 F.Supp. 906. Internal Revenue  4568

Statute of limitations did not bar the Tax Court from reopening the record to determine the exact amount of income taxes owed, pursuant to the retroactive conferral of jurisdiction under Community Renewal Tax Relief Act (CRTRA). *Western Management, Inc. v. C.I.R.*, C.A.9 2006, 176 Fed.Appx. 778, 2006 WL 991875, Unreported, certiorari denied 127 S.Ct. 190, 166 L.Ed.2d 142. Internal Revenue  4666.1

5. Law governing

Government is not bound by state limitations periods or laches in enforcing its right. *Chevron, U.S.A., Inc. v. U.S.*, C.A.9 (Cal.) 1983, 705 F.2d 1487. Limitation Of Actions  11(1); United States  133

The Massachusetts statute limiting the time within which a representative may be held to answer to an action brought by a creditor of the deceased does not apply to a claim by the federal government for unpaid income taxes assessed against the decedent, but the applicable statute is the federal six-year limitation statute for collection of income taxes. *U. S. v. Saxe*, C.A.1 (Mass.) 1958, 261 F.2d 316. Internal Revenue  4883

6. Power of Congress

As a matter of constitutional law, statutes of limitations go to matters of remedy and do not involve destruction of fundamental rights; thus, extent to which a tax assessment is barred by time is within exclusive congressional control, unlimited by the Constitution. *Lucia v. U. S.*, C.A.5 (Tex.) 1973, 474 F.2d 565. Limitation Of Actions  3(1)

Absent congressional enactment, collection of taxes by United States is subject to no time limit. *U.S.v. City of New York*, S.D.N.Y.1955, 134 F.Supp. 374. Internal Revenue  4880

7. Power of Secretary

Within statutory period of limitations and in absence of a binding settlement, the Commissioner has authority to reexamine and redetermine taxpayer's tax liability. *Blackhawk-Perry Corp. v. C.I.R.*, C.A.8 1950, 182 F.2d 319, certiorari denied 71 S.Ct. 120, 340 U.S. 875, 95 L.Ed. 636, rehearing denied 71 S.Ct. 1010, 341 U.S. 956, 95 L.Ed. 1377. Internal Revenue  4540

The Commissioner is free to reaudit a taxpayer's liability within the period of limitations. *Okonite Co. v. C.I.R.*, C.C.A. 3 1946, 155 F.2d 248, certiorari denied 67 S.Ct. 125, 329 U.S. 764, 91 L.Ed. 658, rehearing denied 67 S.Ct. 296, 329 U.S. 829, 91 L.Ed. 703, rehearing denied 67 S.Ct. 1748, 331 U.S. 870, 91 L.Ed. 1872. Internal Revenue  4540

That statute of limitations bars the government from collecting income tax deficiency in earlier year does not justify Commissioner in distorting income for later year to rectify previous error. *Countway v. Commissioner of Internal Revenue*, C.C.A. 1 1942, 127 F.2d 69. Internal Revenue  4522

8. Rules and regulations

Purpose of treasury regulation that taxpayer offering to compromise claim for federal taxes must agree to tolling of period of statutory limitations is to allow government reasonable time to consider offers without prejudicing its right to collect tax as result of this consideration. *U. S. v. Harris Trust and Sav. Bank*, C.A.7 (Ill.) 1968, 390 F.2d 285. Internal Revenue  4575; Internal Revenue  4895

Regulation which allowed the adjustment figure for the value of taxpayer's inventory with respect to its furniture manufacturing business to be computed by referring back to the tax year 1954 rather than the tax year 1972 was not invalid as in contravention of the three-year statute of limitations set forth in this section. *Memphis Furniture Mfg. Co. v. U. S.*, W.D.Tenn.1981, 523 F.Supp. 1022, affirmed 711 F.2d 1057. Internal Revenue  3105.1

9. Fees and taxes subject to limitations

Commission was entitled to amend its answer to taxpayer's petition challenging deficiency tax assessment to assert that taxpayer realized additional income that was not noted on original notice of deficiency, even though amendment occurred nearly six years after petition was filed, and nearly ten years from year of deficiency; amendment was not barred by limitations, as limitations period was suspended upon institution of tax court proceeding by taxpayer. *Laurins v. C.I.R.*, C.A.9 1989, 889 F.2d 910. Internal Revenue  4652

Internal Revenue Code section which provides general rule for limitations on assessment and collection of taxes, and section which provides that if assessment of any tax has been made within period of limitation, such tax may be collected by levy or by proceeding in court begun within six years after assessment of tax, were applicable in Government's action against commercial finance company, under theory of lender liability, in regard to borrower's delinquent withholding taxes, despite lender's argument that six-year statute of limitations could not apply to it because, even though borrower was assessed tax within three years, lender was not. *O'Hare v. U.S.*, C.A.6 (Mich.) 1989, 878 F.2d 953. Internal Revenue  4568

Wholesale gasoline distributor's gasoline excise tax refunds for sales of gasoline to city, on which excise taxes had been improperly paid, could be set off against erroneous excise tax refunds sent to distributor for gasoline sold to city, on which excise taxes had not been paid, if corresponding assessment was made on erroneously issued refund within three year limitations period. *Janus Petroleum Co., Inc. v. U.S.*, E.D.N.Y.1996, 915 F.Supp. 556. Internal Revenue  5024

Provision of Internal Revenue Code which set six-year statute of limitations on actions to recover income and certain excise taxes did not bar Government's suit under Surface Mining Act to collect mine reclamation fees assessed upon coal produced by coal operator; disagreeing with *United States v. Gary Bridges Logging and Coal Company*, 570 F.Supp. 531 (E.D.Tenn.). *U.S. v. Hawk Contracting, Inc.*, W.D.Pa.1985, 649 F.Supp. 1. Mines And Minerals  92.5(2)

Government's action to collect abandoned mine reclamation fees was governed by six-year period of limitations for actions based on contracts or, alternatively, by six-year statute of limitations for collection of excise or income taxes since fees were in nature of tax on mining or sale of coal. *U.S. v. Gary Bridges Logging and Coal Co.*, E.D.Tenn.1983, 570 F.Supp. 531. Mines And Minerals  92.5(2)

Where petitioner estate's decedent D, who died May 18, 1986, had claimed excessive number of annual gift tax exclusions, in 1982 and 1983, Court determined, for 1983 gift tax return, ordinary 3-year period of limitations had expired, and 6-year period of limitations, under this section, was inapplicable, because there was no omission from total gifts respecting items exceeding 25 percent of total gifts reported on D's 1983 gift tax return. *Estate of Robinson v. C.I.R.*, U.S.Tax Ct.1993, 101 T.C. 499, Unreported.

Where, in 1982, petitioner corporation failed to report on Form 1042 interest paid by its foreign subsidiary on Euronote obligations to nonresident aliens, which interest payments exceeded 25 percent of gross income stated on Form 1042 as paid to nonresident aliens, and which interest was subject to 30 percent withholding tax, Court determined special 6-year period of limitations for assessment of tax was applicable under this section, since understatement of interest paid to nonresident aliens on Form 1042 was omission of "gross income," for purposes of this section, and Court denied petitioner's motion for partial summary judgment. *Northern Indiana Public Service Co. v. C.I.R.*, U.S.Tax Ct.1993, 101 T.C. 294, Unreported.

Federal government's claim against alleged responsible person for corporate taxpayer's unpaid withholding tax was time-barred, where only assessment that government made in connection with this tax debt was made while

automatic stay was in effect in alleged responsible person's bankruptcy case, so as to be void ab initio, and where government had not made proper assessment within applicable limitations period. *U.S. v. White*, N.D.Ga.2005, 325 B.R. 918, motion to amend denied 2005 WL 2470527, reversed 466 F.3d 1241. Internal Revenue  5225

Statute of limitations did not apply to bar tax collection action that was filed less than 10 years after amount of income taxes owed by taxpayers, for tax years approximately 10 years earlier, was finally determined by tax court and taxes were assessed by Internal Revenue Service (IRS). *U.S. v. Dawes*, C.A.10 (Kan.) 2005, 161 Fed.Appx. 742, 2005 WL 3278027, Unreported. Internal Revenue  4888

Since IRS established by clear and convincing evidence that taxpayer underpaid his tax liabilities for three taxable years and that such underpayments were due to fraud, limitations period for assessment and collection activities remained open; tax could be assessed at any time. *Maciel v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 205819, Unreported, affirmed in part , reversed in part 489 F.3d 1018. Internal Revenue  4572; Internal Revenue  4840

10. Assessment of tax

Creation of residuary trust in husband's will constituted single taxable event, and thus equitable recoupment doctrine precluded application of statute of limitations to avoid taxation of trust in connection with wife's estate, even though trust was improperly designated as qualified terminable interest in property (QTIP) trust and United States did not raise QTIP issue after audit of husband's estate; but for QTIP election, trust would have been taxed with husband's estate, application of statute of limitations would allow trust to avoid taxation, wife's estate paid tax on residuary estate that should have been paid by husband's estate, and primary beneficiaries of estates were same. *Buder v. U.S.*, C.A.8 (Mo.) 2006, 436 F.3d 936. Internal Revenue  4572

Assessment against person responsible for unpaid withholding taxes, abated due to inadvertent ministerial error, could be validly reinstated after statute of limitations for assessment had run; abatement had not extinguished liability, and taxpayer was seasonably informed both of erroneous abatement and of its eventual reinstatement. In re *Becker*, C.A.2 (N.Y.) 2005, 407 F.3d 89. Internal Revenue  4567

Recoupment is available against refund claims for taxes shown to be fairly due, though not assessed, for same taxable year as refund; taxes fairly due but not properly assessed for one year cannot be set-off against refunds due from another year. *Philadelphia & Reading Corp. v. U.S.*, C.A.3 (Del.) 1991, 944 F.2d 1063, 115 A.L.R. Fed. 693. Internal Revenue  4973

For purposes of this section requiring that the amount of any tax imposed shall be assessed within three years after the return is filed, "assessment of tax" consists of no more than the ascertainment of the amount due and the formal entry of that amount on the books of the secretary. *U. S. v. Dixieline Financial, Inc.*, C.A.9 (Cal.) 1979, 594 F.2d 1311. Internal Revenue  4569

Any employment tax assessments made more than three years after returns were to be filed were nonetheless timely under exceptions for fraudulent returns or willful attempts to evade tax, in light of sham trust and other elements of fraudulent scheme intended by business owners to avoid payment of such taxes. *U.S. v. Mathis Implement, Inc.*, D.S.D.2005, 405 F.Supp.2d 1101. Internal Revenue  4572

United States was not entitled under doctrine of equitable recoupment to seek unassessed income tax liabilities

for tax years for which assessment of additional taxes was time-barred, in taxpayer's action to recover federal income taxes and related interest collected for tax year 1984, where refund taxpayer sought and recoupment the United States sought were not based on a single transaction, item, or taxable event. *Provident Life & Accident Ins. Co. v. U.S.*, E.D.Tenn.2004, 334 F.Supp.2d 1029. Internal Revenue 🔑 5025

Issuance of John Doe summons by the Internal Revenue Service (IRS) to law firm seeking identities of taxpayers who participated in abusive tax shelter suspended statute of limitations on assessment of tax on items reported by taxpayer on income tax return, where firm did not comply with summons within six months of its issuance by furnishing the name, address, and taxpayer identification number of the taxpayer. *Epsolon Ltd. ex rel. Sligo (2000) Co., Inc. v. U.S.*, Fed.Cl.2007, 78 Fed.Cl. 738. Internal Revenue 🔑 4573

Issuance by the Internal Revenue Service (IRS) on December 14, 2004 of final administrative partnership adjustment (FPAA) challenging reporting of partnership items as predicate to making individual partnership assessments suspended running of general three-year statute of limitations on income tax assessments with respect to individual partnership assessments for tax year 2000. *Grapevine Imports, Ltd. v. U.S.*, Fed.Cl.2006, 71 Fed.Cl. 324. Internal Revenue 🔑 3910; Internal Revenue 🔑 4573

Issuance by the Internal Revenue Service (IRS) of final administrative partnership adjustment (FPAA) challenging reporting of partnership items as predicate to making individual partnership assessments suspended running of general three-year statute of limitations on income tax assessments with respect to individual partnership assessments. *AD Global Fund, LLC ex rel. North Hills Holding, Inc. v. U.S.*, Fed.Cl.2005, 67 Fed.Cl. 657, motion to certify appeal granted 68 Fed.Cl. 663, petition granted 167 Fed.Appx. 171, 2006 WL 171766, appeal filed, affirmed 481 F.3d 1351. Internal Revenue 🔑 3910; Internal Revenue 🔑 4573

Receipt of fraudulently induced refund in name of third party gives rise to debt on part of recipient, but assessment to recover amount owed does not amount to assessment of tax for purposes of assessment statutes. *deRochemont v. U.S.*, Cl.Ct.1991, 23 Cl.Ct. 80. Internal Revenue 🔑 4974

Assessment is not necessary prerequisite for tax liability. *In re Craddock*, D.Colo.1995, 184 B.R. 974, reversed 149 F.3d 1249, 168 A.L.R. Fed. 757. Internal Revenue 🔑 4525

Under the Internal Revenue Code, assessment is prerequisite to collecting taxes. *In re Norris Grain Co.*, Bkrtcy.M.D.Fla.1992, 138 B.R. 1004, affirmed 168 B.R. 264, affirmed 42 F.3d 643. Internal Revenue 🔑 4840

Where petitioner was sole shareholder of subch. S corporation X, which had taxable year ending Nov. 30, 1985, and, on April 12, 1989, Commissioner sent notice of deficiency, for calendar year 1985, to petitioner after expiration of 3-year period for assessment against X, which deficiency notice disallowed loss attributable to X, Court determined notice of deficiency was timely, since assessment of petitioner's income tax was not barred by limitations in subsec. (a) of this section. *Fehlhaber v. C. I. R.*, U.S.Tax Ct.1990, 94 T.C. 863, affirmed 954 F.2d 653.

Limitations period for assessing gift tax against taxpayer ended no later than date on which IRS assessed tax, given taxpayer's stipulation to tax amount and waiver of further review, when terms of extension agreement between taxpayer and Internal Revenue Service (IRS) provided that agreement ended on earlier of stated expiration date or assessment date reflecting final determination of tax; thus, notices informing donees of transferee liability for unpaid assessed tax, mailed more than one year after this date, were untimely. *Ripley v. C.I.R.*, C.A.4 1996, 103 F.3d 332. Internal Revenue 🔑 4546; Internal Revenue 🔑 4591

Where petitioner carried over to his 1976 tax year his distributive share of 1973 net operating loss (NOL) from professional football partnership; petitioner signed series of Forms 872, extending period of limitation for assessment of tax; and final consent Form 872-A, mailed to petitioner instead of his authorized representative, contained language restricting any assessment, for 1976, to adjustments resulting from "any carryover or continuing tax effects caused by adjustments to any prior taxable year or period", Court determined that three-year period of limitation did not bar assessment of deficiency for petitioner's 1976 tax year, since Commissioner's signatories had requisite authority, and nothing precluded petitioner, who was advised by counsel, from executing form mailed directly to him. *Mecom v. C.I.R.*, U.S.Tax Ct.1993, 101 T.C. 374, Unreported, affirmed 40 F.3d 385.

Assessment and notice of a tax penalty must be completed within the time permitted by the statute of limitations for the penalty to be enforceable. *Stallard v. U.S.*, W.D.Tex.1992, 806 F.Supp. 152, affirmed 12 F.3d 489, rehearing denied. Internal Revenue  5230

Tax court litigation and appeals tolled time limitation on tax assessments until expiration of time period for seeking reconsideration of Supreme Court's denial of certiorari. *Hefti v. I.R.S.*, C.A.7 (Ill.) 1993, 8 F.3d 1169, rehearing and suggestion for rehearing en banc denied. Internal Revenue  4573

Taxpayers were entitled to receive statutory notices of deficiency for two tax years, and failure of Internal Revenue Service (IRS) to issue those notices within three-year statute of limitations nullified deficiency assessments levied for those years and permanently barred IRS from assessing the alleged tax deficiency. *Russell v. U.S.*, W.D.Mo.1991, 774 F.Supp. 1210. Internal Revenue  4543

Final partnership administrative assessment (FPAA) for particular tax year that was issued after expiration of time for assessment of partnership's taxes for that year, but within three years of time that partners had filed subsequent individual tax returns that claimed net operating loss (NOL) carryforwards of partnership items from same year, effected suspension of general limitations period on assessment and collection as to partners. *Curr-Spec Partners, LP v. C.I.R.*, U.S.Tax Ct.2007, 2007 WL 2768784, Unreported. Internal Revenue  4573

Where taxpayer did not file any employment tax returns, period of limitations on assessment of employment taxes remained open indefinitely. *Orion Contracting Trust v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 2773883, Unreported. Internal Revenue  4572

IRS's omission of reference to partnership or affected items in Forms 872, consent to extend time to assess tax, issued to individual taxpayers who were indirect partners in Tax Equity and Fiscal Responsibility Act (TEFRA) partnership, failed to extend time for assessing tax with respect to affected items; statutory precondition for effectiveness, as to partnership or affected items, of agreement to extend general limitations period, that agreement "expressly provide" that it is applicable to tax attributable to partnership items, applied regardless of fact that IRS had made no partnership-level adjustments. *Ginsburg v. C.I.R.*, U.S.Tax Ct.2006, 127 T.C. 75, 2006 WL 2506573, Unreported. Internal Revenue  4581

Period of limitations on assessment of income taxes remained open indefinitely; return was never filed because it was not signed by taxpayer's husband. *Mostafa v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 1319461, Unreported. Internal Revenue  4572

Deficiency assessment was not time-barred, even though it was made more than three years after tax return was filed; because return was filed early, it was deemed to have been filed on last day prescribed by law for filing,

and assessment was made less than three years after that deemed filing date. *Hylar v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 360816, Unreported. Internal Revenue  4570

Doctrine of laches did not bar IRS from asserting deficiencies for 1999 and 2000 tax years, even though IRS had previously decided not to assert deficiencies for 1989, 1994, 1997, and 1998 tax years on same grounds on which it sought deficiencies for 1999 and 2000 tax years; IRS asserted 1999 and 2000 deficiencies within period of limitations. *Wright v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 78790, Unreported. Internal Revenue  4574

Tax Court would not vacate or revise decision it entered for IRS in proceedings on taxpayer's petition for review of determination to proceed with collection of taxpayer's federal income tax liabilities, despite taxpayer's claim that, at time of decision, Court had no chance to consider the recent opinion of the United States Supreme Court in *United States v. Galletti*, which held that assessment must be made within 3 years after return was filed; taxpayer's motion simply repeated his argument, made throughout proceedings, that IRS did not timely assess liabilities in question, and not only was there nothing in record to support that claim, but record demonstrated that assessments in question were timely. *Kun v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2712202, Unreported, affirmed 157 Fed.Appx. 971, 2005 WL 3086640. Internal Revenue  4664.1

Collection of taxpayer's federal income tax liabilities was not time-barred; assessment was well within 3-year period of limitations, IRS received, before applicable 10-year period of limitations for collection by levy expired, taxpayer's Forms 12153 requesting collection due process hearing, and running of that 10-year period was suspended by Form 12153 and remained suspended. *Picchiottino v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2284376, Unreported. Internal Revenue  4885

Once Tax Court found fraud on part of taxpayer, Form 872, Consent to Extend Time to Assess Tax, which allowed IRS three additional years to assess tax, became inapplicable, and assessment could be made at any time. *Delvecchio v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2153932, Unreported, affirmed 166 Fed.Appx. 431, 2006 WL 304550, rehearing and rehearing en banc denied 179 Fed.Appx. 688, 2006 WL 1629120. Internal Revenue  4572; Internal Revenue  4591

Evidence in levy action showed that subject income tax had been assessed; notice of determination set forth statement of Appeals officer that "the assessment is valid," and attached to Declaration of Appeals officer was copy of transcript of taxpayer's account, showing that subject tax was assessed. *McBride v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 1719377, Unreported. Internal Revenue  4855

Period of limitations for assessment remained open, since fraud determination for period of limitations on assessment was the same as determination of fraud for purposes of civil addition to tax for fraud and fraud penalty. *Ferguson v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 605224, Unreported. Internal Revenue  4572

Three-year limitations period for assessment of tax did not apply to assessment of tax deficiencies, since underpayment of tax for each year was due to fraud, for which tax could be assessed at any time. *Morse v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 22853796, Unreported, affirmed 419 F.3d 829. Internal Revenue  4572

Running of limitations period to assess tax was suspended when notice of deficiency was mailed. *Zarins v. C.I.R.*, U.S.Tax Ct.2001, 2001 WL 282988, Unreported, affirmed 37 Fed.Appx. 747, 2002 WL 1334751. Internal Revenue  4573

Although IRS failed to put the petition date on notice of deficiency, notice was valid to toll limitations period on

assessment and collection, where taxpayers nevertheless received notice and filed petition in timely manner. *Smith v. C.I.R.*, U.S.Tax Ct.2000, 114 T.C. 489, 2000 WL 730739, Unreported, affirmed 275 F.3d 912. Internal Revenue  4545

11. Assessment certificate

Three-year statute of limitations on assessment of responsible person penalty requires that summary record of assessment be timely signed by appropriate official, but does not require that supporting documentation (with information identifying the taxpayer, the character of tax, and the applicable tax period) be prepared before three-year statute expires. *Stallard v. U.S.*, C.A.5 (Tex.) 1994, 12 F.3d 489, rehearing denied. Internal Revenue  5230

Where assessment certificate was not signed by proper official, as prescribed by applicable treasury regulation, within statutory period after filing of estate tax return, assessment of deficiency against estate was invalid and suit against transferee for collection of unpaid estate taxes was barred by statute of limitations. *Brafman v. U.S.*, C.A.5 (Fla.) 1967, 384 F.2d 863. Internal Revenue  4558; Internal Revenue  4890

Where petitioner filed petition in Federal District Court to quash Commissioner's third-party administrative summons on petitioner's bank; District Court dismissed petition, and petitioners did not appeal; bank complied with summons 205 days after filing of motion to quash summons; period for appeal from District Court's dismissal of petition expired 244 days after filing of petition; and notice of deficiency was mailed 3 years and 236 days after petitioners filed their 1983 income tax return, Court determined 3-year assessment period was suspended from filing of petition to quash until expiration of appeal from denial of such petition, bank's compliance with summons had no effect on suspension of limitations period, and deficiency notice was timely mailed. *Hefti v. C.I.R.*, U.S.Tax Ct.1991, 97 T.C. 180, affirmed 983 F.2d 868, certiorari denied 113 S.Ct. 2349, 508 U.S. 913, 124 L.Ed.2d 258.

12. Capital loss carrybacks

Commissioner of Internal Revenue's assessment of deficiency in income taxes of corporation for 1972 was not barred by three-year limitations period, in that reduction in carry over amount of taxpayer's 1971 income to 1972 was "attributable to the application to the taxpayer of" the 1974 capital loss and investment credit carry backs, both of which were effective to reduce its 1971 tax liability and to result in a 1972 deficiency. *First Chicago Corp. v. C.I.R.*, C.A.7 (Ill.) 1984, 742 F.2d 1102. Internal Revenue  4569

Fact that assessment on partnership items was time-barred for the 1999 taxable year did not preclude the Internal Revenue Service (IRS) from challenging losses carried forward in the 2000 taxable year, even though the event which generated the losses occurred in the barred year. *Grapevine Imports, Ltd. v. U.S.*, Fed.Cl.2007, 77 Fed.Cl. 505. Internal Revenue  4540

13. Credit carrybacks

Where taxpayer incurred net operating loss in 1969 and claimed carryback adjustment to 1966, tentative allowance of which released previously allowed investment credit which taxpayer carried back to 1963, and erroneous refund was issued for that year, Tax Court determined deficiency notice mailed in 1969 to correct erroneous refund for 1963 income taxes was within Commissioner's discretion as procedure to correct refund error under application for tentative carryback adjustment and was timely under subsec. (j) of this section, since under facts in-

vestment credit carryback to 1963 was “attributable” to tentative allowance for adjustments resulting from net operating loss incurred in 1969, so that, under this section, limitations period for 1963 was coterminous with 3-year limitation period prescribed in subsec. (a) of this section for net operating loss incurred in 1969. *Herman Bennett Co. v. Commissioner of Internal Revenue*, U.S.Tax Ct.1975, 65 T.C. 506.

14. Net operating loss carrybacks

Government's assessment of taxes and interest was not barred by three-year statute of limitations period under Internal Revenue Code; assessment was for deficiencies attributable to application of net operating loss carry back for taxable year 1981, and taxpayer consented to extension of statute of limitations for taxable year 1981 until 1985. *Centennial Sav. Bank FSB v. U.S.*, N.D.Tex.1987, 670 F.Supp. 195. Internal Revenue  4895

Section 6532(b) of this title limiting to two years the period during which government may bring suits to recover erroneous refunds applies only to suits by United States to collect erroneous refunds and does not apply to assessment of deficiency based on disallowance of net operating loss carryback where assessment was made within period of limitations applicable to year of loss which caused carryback. *Nalley v. Ross*, N.D.Ga.1969, 308 F.Supp. 1388. Internal Revenue  4568

Where petitioner joined affiliated group on Jan. 1, 1981, and group incurred net operating loss for its fiscal year ending June 30, 1981, which petitioner carried back to its 1979 taxable year, and claimed tax refund; assessment period, for 1979, was extended by agreement of parties, but assessment period for 1981 expired before issuance of deficiency notice for 1979; and petitioner contended that this section precluded assessment for 1979, Court determined Commissioner was not time barred from assessing deficiency for 1979, even though it resulted from disallowance of net operating loss from 1981, an otherwise closed year, since this section did not nullify or preempt parties' agreement to extend assessment period for 1979. *Calumet Industries, Inc. and Subsidiaries v. C. I. R.*, U.S.Tax Ct.1990, 95 T.C. 257.

Where taxpayers H and W filed joint returns for 1971 and 1974, applied for tentative carryback adjustment of 1974 net operating loss to 1971, obtained refund of \$144,184, Commissioner subsequently determined deficiency in 1971 which was not attributable to carryback, and at time notice was issued, period of limitation on assessment for 1974 had been extended by agreement, Tax Court determined statute of limitations did not bar assessment of 1971 deficiency, since, under exception in subsec. (m) of this section, period for assessing deficiency for 1971 was extended to include period for assessing deficiency for 1974, net operating loss year in which carryback arose, even though deficiency was not attributable to carryback of net operating loss. *Pesch v. Commissioner of Internal Revenue*, U.S.Tax Ct.1982, 78 T.C. 100.

Allowance of net operating loss carry back pursuant to § 3780 [I.R.C.1939] does not operate to enlarge period of limitations for assessment of deficiencies with respect to earlier years under § 3780(c) [I.R.C.1939] or § 276(d) [I.R.C.1939] except to extent that deficiency is based upon error “attributable to carryback.” *Bouchev v. C.I.R.*, Tax Ct.1953, 19 T.C. 1078.

15. Change of accounting method

This section requiring assessment of tax within three years after filing of return did not bar, in situation where Subchapter S corporation in 1962 changed its method in valuing inventory from nominal value to actual value, collection of tax for that portion of the inventory accumulated in years prior to 1961 fiscal year. *Weiss v. C.I.R.*, C.A.10 1968, 395 F.2d 500. Internal Revenue  4574

Limitations period did not bar adjustment for change in method of accounting in an open tax year, even though adjustment was attributable to deduction taken in a closed year, since adjustment affected income for the open tax year; adjustment accounted for deductions duplicated by change in method of accounting for payments of state franchise tax. *Earthquake Sound Corp. v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 330338, Unreported. Internal Revenue  3102

16. Dissolved corporations

An assessment of income taxes against a corporation is not invalid because the corporation has been dissolved by a court order and has thereby become defunct, in view of the congressional intent to authorize such an assessment which determines that the defunct corporation owes the tax, and which will be sufficient in a proper proceeding both to start the running of the statute of limitations and fix the liability as against the assets of the dissolved corporation in the hands of a transferee. *Signal Oil & Gas Co. v. U.S.*, C.C.A.9 (Cal.) 1942, 125 F.2d 476. Internal Revenue  3620; Internal Revenue  4817; Internal Revenue  4890

17. Maintenance of inconsistent position

Determination, made in prior suit for income tax refund filed by widow, that deceased's estate and not widow owed taxes on mesne profits and capital gains which were attributable to assets which were allotted to widow's dower portion of the estate prior to distribution constituted a determination inconsistent with prior position maintained by estate's coexecutors who had claimed and obtained refunds of taxes paid on those mesne profits and capital gains; thus, Commissioner could, reopen estate's tax years which otherwise would have been closed by three-year statute of limitations and collect taxes on the mesne profits and capital gains. *McKay v. U. S.*, C.A.5 (Fla.) 1975, 510 F.2d 579. Internal Revenue  4880

Where taxpayer in prior suit involving assessment for 1960 asserted that transaction was not taxable at any time and that transaction took place in 1959 and determination was made in that suit that no additional taxes were due for 1960 and where taxpayer in subsequent suit alleged that assessment for 1959 on same transaction was barred by statute of limitations, taxpayer had not maintained an inconsistent position and bar of statute of limitations was effective against assessment for deficiency in 1959. *G-B, Inc. v. U. S.*, C.A.10 (Colo.) 1970, 422 F.2d 1035. Internal Revenue  4565

Where taxpayers had adhered to their original claim that there was no ascertainable value in rights to life policy renewal commissions received on dissolution of corporation in 1950, even though that issue was found against them in cases involving 1953 and 1954 taxes, statute of limitations was not tolled and late adjustment of 1950 income sought by commissioner in 1961 was barred. *C.I.R. v. Goldstein's Estate*, C.A.2 1965, 340 F.2d 24. Internal Revenue  4885

Taxpayers by asserting successfully as alternative in Tax Court that certain income was recognizable in 1949 rather than 1948 maintained position that was inconsistent with their erroneous omission of that income from their 1949 return and mitigation statutes, §§ 1311-1315 of this title, relieved government, which sought to assess deficiency in 1961, from bar of this section. *Dobson v. U.S.*, Ct.Cl.1964, 330 F.2d 646, 165 Ct.Cl. 460. Internal Revenue  4572

18. Personal holding company tax

Where taxpayer corporation X, herein determined to be personal holding company under section 542(a) of this

title and subject to tax under section 541 of this title, failed to file with its return schedule required by subsec. (f) of this section, applicable period of limitation upon assessment of taxes as provided by subsec. (b) of this section was 6 years; and, contrary to X's contention, nowhere on its return did it show its adjusted ordinary gross income or information necessary for its computation, and even if X had reported such information in same inconspicuous manner in which it included other information pertaining to gross income, explicit return requirement of subsec. (b) of this section was not met. *Pleasanton Gravel Co. v. Commissioner of Internal Revenue*, U.S. Tax Ct. 1975, 64 T.C. 510, affirmed 578 F.2d 827, certiorari denied 99 S.Ct. 841, 439 U.S. 1071, 59 L.Ed.2d 37.

Failure by personal holding company to file Form 1120H for taxable year 1954 and schedule PH for 1959-61, for all of which years it filed corporate income tax returns reflecting some information about its personal holding company status, did not bar assessment of personal holding company tax, since filing of such forms was plainly required by provisions of section 62 [I.R.C.1939 (now section 7805 of this title)] and applicable regulations and on failure to file there was an unlimited period for assessment for 1954 and 6-year period for other tax years. *West Coast Ice Company, Petitioner v. Commissioner of Internal Revenue, Respondent*, Tax Ct. 1968, 49 T.C. 345, acq. .

19. Persons affected by limitations period

In order for Internal Revenue Service (IRS) to avail itself of ten-year increase in statute of limitations for collection of tax debt, it had to assess taxes only against partnership that was directly liable for debt, and not against each individual partner who might be jointly and severally liable for debts of partnership; proper assessment of tax against partnership sufficed to extend statute of limitations for collection of tax from general partners who were liable for payment of partnership's debts. *U.S. v. Galletti*, U.S. 2004, 124 S.Ct. 1548, 541 U.S. 114, 158 L.Ed.2d 279. Internal Revenue  4527; Internal Revenue  4885

A donee could be held liable to extent of value of the gift for deficiency in gift tax of donor, notwithstanding that donor was solvent and no steps to determine deficiency against him had ever been taken, and right to make deficiency assessment against him had become barred by statute of limitations. *Mississippi Valley Trust Co. v. C.I.R.*, C.C.A. 8 1945, 147 F.2d 186. Internal Revenue  4820

A gift tax assessment against donee on February 20, 1940, was not barred by limitation notwithstanding three-year statutory period for determining any deficiency against donor expired on March 11, 1939, in view of Revenue Act 1932, § 1025(b)(1), giving an additional year after expiration of period of limitation against donor in which to assert donee's liability. *Moore v. C.I.R.*, C.C.A. 2 1945, 146 F.2d 824. Internal Revenue  4568

Donee's liability as transferee for unpaid tax on gift to another donee made by same donor in same calendar year was a legal and not an equitable liability so that as respects enforcement thereof it was immaterial whether gifts rendered donor insolvent or whether he remained solvent during period of his enforceable liability for the tax. *Baur v. C I R*, C.C.A. 3 1944, 145 F.2d 338. Internal Revenue  4820

In action by taxpayer's transferee against Collector to recover income and excess profits taxes paid by transferee under protest, transferee could not assert, as a basis for alleged invalidity of tax, that limitations had run in favor of his transferor, where decision of Board had been against the transferee on his petition to the Board notwithstanding that the question had not been raised by him before the Board, since the Board's decision embraced not only such matters as were raised by transferee with respect to the taxes but all matters that could have been raised as affecting the validity of the taxes. *Brooks v. Driscoll*, C.C.A.3 (Pa.) 1940, 114 F.2d 426. Judgment  713(2)

Taxpayers alone--and not their corporations or anyone else--had standing to dispute correctness of penalty assessments against taxpayers in wrongful levy action concerning asset transferred by taxpayers to corporations; thus, corporations could not assert that assessments against taxpayers were time barred under applicable three-year limitations period. *Le Premier Processors, Inc. v. U.S.*, E.D.La.1990, 775 F.Supp. 897. Internal Revenue  5230

Failure of carrier to file transportation tax return did not commence running of limitations as against shipper who remained liable for taxes. *Clarksdale Rubber Co. v. U.S.*, N.D.Miss.1965, 243 F.Supp. 465. Internal Revenue  4892

Generally, right to bring action against taxpayer to enforce collection of unpaid income taxes expires six years after assessment of tax, and normally time to commence suit against his transferees expires on the same date. *U.S.v. City of New York*, S.D.N.Y.1955, 134 F.Supp. 374. Internal Revenue  4890

The Commissioner was not barred from reviewing the fair market value of corporate stock, a gift of which was made by the taxpayer in years more than three years prior to assessment, and assessing a deficiency in the current year based upon the alleged undervaluation of such stock. *Peters v. Alsup*, D.Hawai'i 1951, 95 F.Supp. 684. Internal Revenue  4565

An income tax deficiency assessment could not be made against wife after expiration of three years from date of filing of joint income tax return by husband. *U.S. v. Rosebush*, E.D.Wis.1942, 45 F.Supp. 664. Internal Revenue  4568; Taxation  3542

One who purchased assets of partnership from assignee for benefit of creditors under contract whereby purchaser agreed to pay in full all taxes and claims entitled to priority by law was not entitled to interpose as a defense to government's action against him to recover excise taxes due from the partnership the six-year limitation which is for benefit of taxpayers only. *U S v. Bessen*, S.D.N.Y.1941, 8 F.R.D. 75. Internal Revenue  4886

Where petitioner, individual partner, moved to vacate and revise earlier opinion based on contention that Commissioner's deficiency notices were untimely under statute of limitations because they were mailed more than 3 years after partnership filed its informational returns for 1979-80, Court determined filing of partnership returns did not affect 3-year statute of limitations applicable to individual partners. *Stahl v. C. I. R.*, U.S.Tax Ct.1991, 96 T.C. 798.

Where petitioners, who filed joint income tax returns for 1982-84 before their divorce, each notified Commissioner of their separate residences through filing of individual returns for subsequent years; Commissioner sent joint notice of deficiency to H, but did not send duplicate original joint notice to W at her address; H forwarded copy of notice to W, who filed joint petition with H after expiration of 3-year period for assessment, Court determined (1) Commissioner issued and mailed joint notice of deficiency to W; (2) notwithstanding Commissioner's failure to send duplicate joint notice to W's last known address, jurisdiction to hear case existed because W received actual notice and timely petitioned; and (3) notwithstanding W's not receiving actual notice until more than 3 years after her 1982-83 returns were filed, period for assessment was tolled by Commissioner's timely mailing of notice of deficiency. *Miller v. C.I.R.*, U.S.Tax Ct.1990, 94 T.C. 316.

Assessment of income tax deficiency on income received by individual beneficiary was not barred by § 275(b) [I.R.C.1939 (now this section)], since that section merely limits time for an assessment of income tax on income received by a decedent during his lifetime or his estate during administration period. *Schubert v. C. I. R.*,

Tax Ct.1960, 33 T.C. 1048, affirmed 286 F.2d 573, certiorari denied 81 S.Ct. 1919, 366 U.S. 960, 6 L.Ed.2d 1253.

Taxpayers' son's reporting on his return dividend income that should have been reported on taxpayers' return did not satisfy "adequate to apprise" exception to enhanced limitations period for assessment based on substantial underreporting of gross income. *Benson v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 770577, Unreported. Internal Revenue  4572

Since statute of limitations is an affirmative defense that may be raised by taxpayer in response to determination made by IRS, Tax Court has jurisdiction to consider such defense in proceedings for determination of employment status, despite Court's limitation under such proceedings to determine only proper classification of service providers and application of safe harbor for non-employee classification. *Neely v. C.I.R.*, U.S.Tax Ct.2000, 115 T.C. 287, 2000 WL 1424832, Unreported. Internal Revenue  4647

20. Reassessments

Reduction of taxpayer's account balance with Internal Revenue Service (IRS) as result of IRS computer error was not "authorized abatement," and thus IRS's reinstatement of debt was not reassessment subject to three-year statute of limitations for assessments, where program erroneously calculated that statute of limitations for collecting liability had run, and IRS did not have statutory authority to abate tax assessments on basis that it could no longer collect money due. *Simon v. U.S.*, M.D.La.2003, 261 F.Supp.2d 567. Internal Revenue  4568; Internal Revenue  4636

If Commissioner abates income tax assessment, it ceases to exist or to have any effect thereafter, and the Commissioner cannot subsequently rescind his actions or restore the assessment, but must rather make a new assessment unless the statute of limitations has previously expired. *Carlin v. U.S.*, Ct.Cl.1951, 100 F.Supp. 451, 121 Ct.Cl. 643. Internal Revenue  4636

The Commissioner may determine part of a deficiency, and then may make a redetermination and reassessment and collect another part of the deficiency, or he may reopen the tax liability and make another determination of such liability until § 275 [I.R.C.1939 (now this section)], runs against him, or he may make an assessment and then, after payment, refund the tax, and then if he deem the refund in error, he may redetermine and reassess the tax within said section. *Berry v. Westover*, S.D.Cal.1947, 70 F.Supp. 537. Internal Revenue  4540; Internal Revenue  4953

21. Recomputation in closed years for tax determination in open years

Where donor had made gifts in 1936 to minors in trust, and in 1937 and 1938 had made additional gifts, the statute of limitations which had run as to the collection of the 1936 gift taxes did not preclude the utilization of the net gift figure for 1936 in computing the gift tax for successive years. *C.I.R. v. Disston*, U.S.Neb.1945, 65 S.Ct. 1328, 325 U.S. 442, 89 L.Ed. 1720. Internal Revenue  4528; Internal Revenue  4574

Internal Revenue Service and the courts may recompute taxable income in a closed year in order to determine tax liability in an open year; although statute of limitations precluded Government from making any deficiency assessments for tax years prior to 1975 the Government was not precluded from making upward adjustments to taxpayer's income for years prior to 1975, thereby resulting in decreased business loss and charitable contribution carryovers to 1975 and subsequent years, resulting in increased tax liability for those years. *Barenholtz v.*

U.S., C.A.Fed.1986, 784 F.2d 375. Internal Revenue  4540

Where Commissioner determined a deficiency in taxpayer's income tax for 1943, computed pursuant to § 6(b) of the Current Tax Payment Act of 1943 and based on adjustments to 1942 income which were in excess of 25 per cent of taxpayer's total gross income for 1942 and 1943 and deficiency notice was mailed more than five years after taxpayer filed his return for 1942, but less than five years after he filed his return for 1943, the five-year period of limitation embodied in § 275(c) [I.R.C.1939 (now this section)], runs from the date on which taxpayer filed his return for 1943, and the assessment of the deficiency by Commission was timely. *Koby v. C.I.R.*, Tax Ct.1950, 14 T.C. 1103.

22. Refunds

In acting on a claim for refund of federal estate taxes, based on disallowance of a particular deduction, Commissioner has authority to reaudit return and to reject claim if redetermination does not show an overall overpayment even though statute of limitations prevents him from making an additional assessment for year involved. *Morristown Trust Co. v. Manning*, C.A.3 (N.J.) 1952, 200 F.2d 194, certiorari denied 73 S.Ct. 829, 345 U.S. 939, 97 L.Ed. 1365. Internal Revenue  4968

Commissioner within period of limitation could readjust income tax returns for 1937 of corporate taxpayer keeping books and making income tax returns on cash basis by disallowing deduction originally allowed for capital stock tax paid in 1937 and refunded in 1939, though taxpayer reporter refund as income in 1939 and paid tax thereon. *Cooperstown Corporation v. Commissioner of Internal Revenue*, C.C.A. 3 1944, 144 F.2d 693, certiorari denied 65 S.Ct. 131, 323 U.S. 772, 89 L.Ed. 618. Internal Revenue  4540

Taxpayer may be forced to return a refund procured after statute of limitations for payment of refund has run. *Globe Products Corp. v. U. S.*, D.C.Md.1974, 386 F.Supp. 319. Internal Revenue  4974

Limitations would bar the 1959 taxing of New York franchise tax refunds for 1945 and 1946 as income for federal tax purposes in 1945 and 1946 if refunds accrued in 1945 and 1946. *E.W. Bliss Co. v. U.S.*, N.D.Ohio 1963, 224 F.Supp. 374, affirmed 351 F.2d 449. Internal Revenue  4569

In action for refund of income taxes paid, district court had jurisdiction of government's counterclaim for amount of additional deficiency assessment and counterclaim was not barred by § 275(c) [I.R.C.1939 (now this section)], though assessments were made over five years after filing of taxpayers' returns and within 90 day period for filing petition for redetermination, where taxpayers were notified of proposed assessments two days before expiration of limitation period. *Mayes v. U.S.*, E.D.Okla.1952, 106 F.Supp. 961, affirmed 207 F.2d 326. Internal Revenue  5024; Internal Revenue  5046

23. Request for prompt assessment

Where corporate taxpayer failed to include in income tax return profits from sale of assets in an amount in excess of 25 per cent. of gross income as set out in return, tax on such profits could have been assessed at any time within five years after return was filed, notwithstanding taxpayer's written request for prompt assessment made after return was filed. *Meurer Steel Barrel Co. v. Commissioner of Internal Revenue*, C.C.A. 3 1944, 144 F.2d 282, certiorari denied 65 S.Ct. 864, 324 U.S. 860, 89 L.Ed. 1417, rehearing denied 65 S.Ct. 1182, 325 U.S. 892, 89 L.Ed. 2004. Internal Revenue  4572

Under § 275(c) [I.R.C.1939 (now this section)], permitting assessment of tax or court proceeding without assessment within five years after filing of return if taxpayer omitted from gross income an amount properly includible therein in excess of 25 per cent. of amount of gross income stated in return, where taxpayer failed to include in gross income a sum paid to her as interest which amounted to more than 25 per cent. of gross income reported, neither 18 months nor three-year limitation in subsections (a) and (b) of said section applied, notwithstanding taxpayer's request for prompt assessment. *Foster's Estate C. C I R, C.C.A.5 (Fla.) 1942, 131 F.2d 405.* Internal Revenue  4568; Internal Revenue  4880

Limitations under subsection (d) of this section of 18 months did not apply to taxpayer corporation, since taxpayer failed to comply with specific procedural conditions for application of this subsection in accordance with § 301.6501(d)-1, *Proced. and Admin.Reg.* Central Bldg. and Loan Ass'n v. C. I. R., Tax Ct.1960, 34 T.C. 447.

Notations on the face of, and in, the return that taxpayer had dissolved and a request made at the close of a document attached to the return for an immediate examination of the return were not sufficient to put the Commissioner on notice of intention to shorten the statutory period for assessment. *Vandam Charlton Corp. v. C.I.R., B.T.A.1941, 45 B.T.A. 159.*

A statement on the return that the taxpayer had been dissolved and that its parent company had acquired its assets in liquidation was not a request for prompt assessment affecting the statute of limitations. *California Brewing Ass'n v. C.I.R., B.T.A.1941, 43 B.T.A. 721, review dismissed 129 F.2d 321.*

A letter attached to and requesting an early examination of the final returns of a dissolved corporation, which was addressed to the Collector, and disclosed no corporate authority for the request, did not constitute a request for prompt assessment within the meaning of § 275 [I.R.C.1939 (now this section)]. *Cage v. C. I. R., Tax Ct.1950, 15 T.C. 529.*

24. Self-incrimination

Application of subsec. (c) (2) of this section, removing bar of limitations to tax assessment when no return has been filed, would not impose constitutionally impermissible punishment upon taxpayer assessed for wagering taxes, there being no request for civil forfeiture or criminal penalty. *Higginbotham v. U. S., C.A.4 (W.Va.) 1974, 491 F.2d 432.* Internal Revenue  4521

Where filing of federal wagering excise tax returns by plaintiff who sought to enjoin jeopardy assessment proceeding might well have led to prosecution under Texas antigambling laws and to conviction under such laws by means of evidence supplied by plaintiff, plaintiff was under no duty to file returns during period for which jeopardy assessment was made and could not be deprived of defense of statute of limitations in assessment proceeding for failure to file returns. *Lucia v. U. S., C.A.5 (Tex.) 1971, 447 F.2d 912, rehearing granted 451 F.2d 1024, on rehearing 474 F.2d 565.* Internal Revenue  4565

25. Set-offs

Revenue Act 1928, §§ 275(a), 607, 609, limiting time for collection of tax and precluding collector or government, in suit by taxpayer, from relying on claim against taxpayer barred by said sections as a set-off or counterclaim, do not deprive the government of defenses based on special equities establishing its right to withhold a refund from the demanding taxpayer, as where tax sought to be recovered by testamentary trustees should have been paid by beneficiary in whose interest the suit is brought and recovery against whom is barred by limita-

tions. *Stone v. White*, U.S.Mass.1937, 57 S.Ct. 851, 301 U.S. 532, 81 L.Ed. 1265, rehearing denied 58 S.Ct. 260, 302 U.S. 777, 82 L.Ed. 601. Internal Revenue  4990

Although statute of limitations may act to effectively bar Commissioner from assessing a deficiency for a past year, it does not prohibit him from correctly recomputing tax liability for that year and using his corrected figures to offset a timely refund claim. *Dynamics Corp. of America v. U.S.*, Ct.Cl.1968, 392 F.2d 241, 183 Ct.Cl. 101. Internal Revenue  5024

Where a deduction is reported in wrong year, correction can be made in later years, notwithstanding that offsetting corrections in earlier returns may be barred by statute of limitations. *Crosley Corp. v. U.S.*, C.A.6 (Ohio) 1956, 229 F.2d 376. Internal Revenue  4479

Where at time taxpayer sought refund of amount paid to satisfy erroneous 1944 income tax deficiency assessment government was barred by limitation from assessing 1945 deficiency which resulted from adjustment of 1944 tax government was not entitled to offset 1945 overassessment erroneously paid taxpayer, though changes in tax liability for both years resulted from change in method of treating premium paid by taxpayer for bonds purchased in 1944 and sold in 1945. *Wood v. U S*, C.A.2 (N.Y.) 1954, 213 F.2d 660. Internal Revenue  5024

Where executor filed action to recover alleged overpayment of estate taxes, the government was entitled to recoup any amount due which resulted from alleged underassessment, notwithstanding the running of the statute of limitations. *Bank of New York v. U.S.*, C.C.A.3 (N.J.) 1948, 170 F.2d 20. Internal Revenue  5024; Set-off And Counterclaim  32

As distinguished from offset, equitable recoupment allows the Internal Revenue Service (IRS) or a taxpayer to reduce a refund or a deficiency due for one tax year by an underpayment or overpayment from a different tax year, but, to preserve and effectuate the purposes of limitations statutes in federal tax litigation, equitable recoupment is permitted only in narrowly defined cases. *Provident Life & Accident Ins. Co. v. U.S.*, E.D.Tenn.2004, 334 F.Supp.2d 1029. Internal Revenue  4829.10; Internal Revenue  5025

“Doctrine of equitable recoupment” specifies that a taxpayer should not recover from government refunds due it for a particular year to extent that it has underpaid its taxes relating to same transaction in a year which is barred by statute of limitations, and it also provides that government should not be permitted to collect a deficiency for a particular year to extent that a taxpayer has overpaid its taxes relating to same transaction in a year which is barred by statute of limitations. *National Biscuit Co. v. U.S.*, Ct.Cl.1957, 156 F.Supp. 916, 140 Ct.Cl. 443. Internal Revenue  4873; Internal Revenue  5024

Statute of limitations period for Internal Revenue Service's (IRS's) assertion of deficiency assessment, while it would bar counterclaim by government, would not bar government's assertion of offset in action by taxpayer asserting refund claim. *Americold Corp. v. U.S.*, Fed.Cl.1993, 28 Fed.Cl. 747. Internal Revenue  4574

II. FILING OF RETURNS

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51. Filing of returns generally

In computing period for assessing income and profit taxes, day when return was filed should be excluded. *Burnet v. Willingham Loan & Trust Co.*, U.S.Ga.1931, 51 S.Ct. 185, 282 U.S. 437, 75 L.Ed. 448. Time  9(2)

Under provisions of this section that any tax imposed shall be assessed within three years after tax becomes due unless extended by agreement, period of assessment does not begin to run until return is filed. *Stevens v. U.S.*, S.D.Ohio 1967, 274 F.Supp. 280. Internal Revenue  4570

Although an option is given by § 58(3)(d)(B) [I.R.C.1939] to amend previously filed declaration of estimated tax by filing final return or amended estimate by January 15, the final filing date is determined under § 275 [I.R.C.1939] to be March 15, on which date the statute of limitations commences to run. *Sidles v. C.I.R.*, Tax Ct.1953, 19 T.C. 1114, acq. ..

52. Amended returns correcting fraudulent returns, filing of returns

Nothing in the statutory language, the structure of this title, or the decided cases supports a contention that a fraudulent income tax return is a “nullity” for statute of limitation purposes and that therefore the amended return is necessarily the return referred to in this section establishing a three-year period of limitations after the return is filed for the assessment of income taxes. *Badaracco v. C.I.R.*, U.S.N.J.1984, 104 S.Ct. 756, 464 U.S. 386, 78 L.Ed.2d 549. Internal Revenue  4572

General three-year statute of limitations commenced running when taxpayers filed their amended returns in 1976, correcting fraudulent returns for 1972, 1973 and 1974, and therefore, deficiencies assessed in 1979 after period expired were untimely. *Britton v. U. S.*, D.C.Vt.1981, 532 F.Supp. 275, affirmed 697 F.2d 288. Internal Revenue  4572

Subsequent filing of delinquent returns, found to be not fraudulent, after failing to file returns for taxable years due to fraud with intent to evade tax, was sufficient to start running of 3-year period of limitations under § 275(a) [I.R.C.1939 (now this section)], and notice of deficiency mailed several days after running of 3-year period was therefore untimely as to years 1945, 1946, and 1947. *Bennett v. C.I.R.*, Tax Ct.1958, 30 T.C. 114, acq. ..

53. Failure to file returns

Subsec. (c) of this section providing that in a case of failure to file a return, the tax may be assessed “at any time” ceases to apply once a return has been filed for a particular year, regardless of whether that return is filed late and even though the failure to file timely return in the first instance was due to fraud; however, provision providing exceptions to three-year period for assessment of income taxes does not produce a disparity in treatment between a taxpayer who in first instance files a fraudulent return and one who fraudulently fails to file any return at all. *Badaracco v. C.I.R.*, U.S.N.J.1984, 104 S.Ct. 756, 464 U.S. 386, 78 L.Ed.2d 549. Internal Revenue  4565

Deficiency assessments were not barred by three-year statute of limitations imposed by 26 U.S.C.A. § 6501(a) because taxpayers failed to file returns for years for which the deficiencies were assessed; under 26 U.S.C.A. § 6501(c)(3), the taxes could be assessed at any time. *Rapp v. C.I.R.*, C.A.9 1985, 774 F.2d 932. See, also, *Patrick v. U.S.*, C.A.Ill.1975, 524 F.2d 1109; *Birmingham Business College, Inc. v. C.I.R.*, C.A.Ala.1960, 276 F.2d 476; *Blevins v. C.I.R.*, C.A.6, 1956, 238 F.2d 621; *Kashat v. C.I.R.*, C.A.6, 1956, 229 F.2d 282; *New York Athletic Supply Co., Inc. v. U.S.*, D.C.N.Y.1978, 450 F.Supp. 469; *McDonald v. U.S.*, D.C.Ky.1961, 196 F.Supp. 415, affirmed 315 F.2d 796. Internal Revenue  4546

With respect to individual taxpayers who failed to file any returns for years in question, mere absence of any fraud with respect to deficiency determined for any year and lack of substantial omissions from gross income did not mean that the statute of limitations on assessment and collection began to run with respect to each year involved in view of specific provision that in case of failure to file any return tax may be assessed or proceeding for collection of tax may be begun without assessment at any time. *Durovic v. C. I. R.*, C.A.7 1973, 487 F.2d 36,

certiorari denied 94 S.Ct. 2625, 417 U.S. 919, 41 L.Ed.2d 224, on remand 65 T.C. 480. Internal Revenue  4565; Internal Revenue  4892

Manufacturers' excise tax assessments were timely even though made four years after filing of monthly returns, where there was failure to file return exception to the general four-year time limitation on assessment. *Sarkes Tarzian, Inc. v. U.S.*, Ct.Cl.1969, 412 F.2d 1203, 188 Ct.Cl. 766. Internal Revenue  4565

In view of fact that statute of limitations did not run if a return was not filed with respect to the three per cent tax imposed on amount paid for transportation of property by motor vehicle, United States was not barred by the statute of limitations from assessing deficiencies against shipper for numerous shipments made over a 16-year period during which the truckers had not complied with their duty under § 4291 of this title of filing returns. *Jones v. U.S.*, Ct.Cl.1967, 371 F.2d 442, 178 Ct.Cl. 16. Internal Revenue  4570

Under this section providing that in case of a false return or failure to file a return tax may be assessed or proceeding for collection of tax may be begun without assessment at any time, once an assessment has been made six-year limitation becomes applicable. *Price v. U.S.*, C.A.5 (Ala.) 1964, 335 F.2d 671. Internal Revenue  4892; Internal Revenue  4893

Assessment of excise tax on an initiation fee which consisted of a loan in the nature of a mortgage bond which was purchased by taxpayer in 1947 was not barred by four year statute of limitations applicable to all internal revenue taxes, with certain exceptions, when no return was filed indicating that a taxable event had occurred, even though taxpayer and club acted in good faith. *McDonald v. U.S.*, C.A.6 (Ky.) 1963, 315 F.2d 796. Internal Revenue  4573

Where failure of taxpayer to file return for 1938 for gifts made in trust was due to ruling of Commissioner made in 1938 and reaffirmed as late as 1941 that no return was required of taxpayer, Commissioner was barred from asserting in 1948 a gift tax liability notwithstanding provision of § 1016(b)(1) [I.R.C.1939]. *Stockstrom v. C.I.R.*, C.A.D.C.1951, 190 F.2d 283, 88 U.S.App.D.C. 286. Internal Revenue  4892

Government could assess taxes without time limit where taxpayer failed to file any returns. *Brewer v. U.S.*, S.D.N.Y.1991, 764 F.Supp. 309. Internal Revenue  4565

Penalty for failure to file cabaret tax returns for period of August 1, 1948, through June 30, 1954, being collectible under § 3612 [I.R.C.1939], as part of such tax, was controlled for purposes of limitation by § 3312(b) [I.R.C.1939] providing that, in case of failure to file return within prescribed time, tax may be assessed or proceeding commenced for collection of such tax at any time, and assessment and collection of such penalty were not subject to five-year statute of limitations. *Bloch v. U.S.*, N.D.Ohio 1964, 235 F.Supp. 634. Internal Revenue  5230

Assessment and collection of taxes was not barred by limitations since social club filed no 1954-58 income tax returns and deficiency notice was timely filed after club filed information returns in 1966 for 1954-58 at Commissioner's request. *Colombo Club, Inc. v. Commissioner of Internal Revenue*, U.S.Tax Ct.1970, 54 T.C. 100, affirmed 447 F.2d 1406.

Failure by personal holding company to file Form 1120H for taxable year 1954 and schedule PH for 1959-61, for all of which years it filed corporate income tax returns reflecting some information about its personal holding company status, did not bar assessment of personal holding company tax, since filing of such forms was

plainly required by provisions of section 62 [I.R.C., 1939 (now section 7805 of this title)] and section 6501 of this title and applicable regulations and on failure to file there was an unlimited period for assessment for 1954 and 6-year period for other tax years. *West Coast Ice Company, Petitioner v. Commissioner of Internal Revenue, Respondent*, Tax Ct.1968, 49 T.C. 345, acq. .

Period of limitations on collection for 1988 and 1989 had not expired; assessments in 1994 of deficiencies and additions to tax for 1988 and 1989 were timely because, in light of taxpayer's failure to file returns for these years, IRS could assess taxes for 1988 and 1989 at any time, IRS sought to levy on taxpayer's property in 2002, which was well within 10-year period of limitations, and period of limitations on collection for 1988 and 1989 was suspended in 2002 by taxpayer's hearing request. *Griffith v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2650720, Unreported. Internal Revenue ☞ 4565; Internal Revenue ☞ 4572; Internal Revenue ☞ 4573

Evidence supported finding that taxpayer and her now-deceased husband did not file income tax return, and thus, notice of deficiency, issued after three-year statute of limitations on assessments expired, was timely; although taxpayer expressed her unsubstantiated belief that husband filed joint return, such testimony was not as persuasive as original "Certification of Lack of Record," Form 3050, which stated that IRS office conducted "thorough search" but found no record that petitioner filed Form 1040, and revenue agent's testimony during trial that he had examined "IRS transcripts" in administrative file which showed that taxpayer did not file tax return. *Quarterman v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2361672, Unreported. Internal Revenue ☞ 4625

Assessments in notice of deficiency were not barred by statute of limitations with respect to four subject tax years, since taxpayer, an attorney, filed no valid returns, and fraud was found for portions of all years. *McGee v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1434240, Unreported. Internal Revenue ☞ 4572

54. Forms constituting returns, filing of returns--Generally

Where income tax return, which was complete in form, and which was signed in name of taxpayer by his wife, who purported to and actually had such authority, was filed, there was such a "return" as would commence the running of the statute of limitations with respect to right of the Commissioner of Internal Revenue to assess deficiencies. *Miller v. C.I.R.*, C.A.5 (Ga.) 1956, 237 F.2d 830. Internal Revenue ☞ 4570

55. ---- Excise tax returns, forms constituting returns, filing of returns

Filing by taxpayers of excise tax return reflecting liability for admission taxes was not sufficient to constitute cabaret tax return in order to start running of statute of limitations. *Rausaw v. U.S.*, C.A.5 (Tex.) 1967, 376 F.2d 154. Internal Revenue ☞ 5048

Excise tax on club initiation fees is a tax divisible from the excise tax on membership dues, and a return for the tax on initiation fees must be filed before statute of limitations may commence to run against government. *Jackson v. U.S.*, E.D.N.Y.1969, 305 F.Supp. 982. Internal Revenue ☞ 4310; Internal Revenue ☞ 4570

56. ---- Exempt organizations tax returns, forms constituting returns, filing of returns

Filing, by trust which erroneously supposed itself exempt from tax, of information returns required of exempt organizations did not start running of three-year limitation period for assessment of taxes so as to bar collection of income tax deficiencies. *John Danz Charitable Trust v. C.I.R.*, C.A.9 1955, 231 F.2d 673, certiorari denied 77 S.Ct. 43, 352 U.S. 828, 1 L.Ed.2d 50, rehearing denied 77 S.Ct. 858, 353 U.S. 951, 1 L.Ed.2d 860. Internal Rev-

enue  4572

Where petitioner, trust forming part of employee profit-sharing plan, filed Form 5500-C, Annual Return/Report of Employee Benefit Plan for 1979-80, that it contended started running of period of limitation on assessments and collection, pursuant to subsec. (g)(2) of this section; Commissioner conceded petitioner determined its tax-exempt status in good faith; and contributions allocated to account of plan participant that exceeded funding limitation in section 415 of this title resulted in disqualification of petitioner's exempt status for years at issue; and one of petitioner's trustees signed Form 5500-C for 1980, under penalty of perjury, in his capacity as secretary rather than as trustee, Court determined optional trust statement filed with petitioner's informational returns constituted sufficient compliance with Commissioner's regulations to satisfy filing requirement, since form contained sufficient data to calculate petitioner's liability, was "honest and reasonable" effort to comply with requirement, and was signed by trustee under penalty of perjury; consequently, this section barred assessment for 1980. *Martin Fireproofing Profit Sharing Plan and Trust v. C.I.R.*, U.S.Tax Ct.1989, 92 T.C. 1173.

Although some misleading statements were made by cemetery corporation in applying for 1958 exempt ruling, they were made at time of unsettled judicial climate as to exempt status of cemetery corporations and more out of fear of stricter interpretation by Commissioner, so that corporation carried burden of proving good faith in determining it was exempt organization under prevailing law, and filing of exempt organization return for 1958 was sufficient to start statute of limitations to bar assessment of deficiencies for that year. *Knollwood Memorial Gardens v. C. I. R.*, Tax Ct.1966, 46 T.C. 764.

Forms filed under § 54(f) [I.R.C.1939] by a trust which supposed itself exempt from tax were not sufficient to start the running of the period fixed by § 275(a) [I.R.C.1939] for the assessment and collection of taxes due from such trust. *Danz v. C. I. R.*, Tax Ct.1952, 18 T.C. 454, affirmed 231 F.2d 673, certiorari denied 77 S.Ct. 43, 352 U.S. 828, 1 L.Ed.2d 50, rehearing denied 77 S.Ct. 858, 353 U.S. 951, 1 L.Ed.2d 860.

57. ---- Federal Insurance Contribution Act returns, forms constituting returns, filing of returns

Federal Insurance Contribution Act returns filed by owner of facility which employed longshoremen, while sufficiently similar to Railroad Retirement Tax Act returns not to constitute separate and distinct taxes, did not include adequate information from which Internal Revenue Service could compute RRTA tax liability, and thus FICA returns were not returns for RRTA purposes and assessment by IRS therefore was not barred by statute of limitations on assessment for unpaid RRTA liability. *Atlantic Land & Imp. Co. v. U.S.*, C.A.11 (Fla.) 1986, 790 F.2d 853, rehearing denied 798 F.2d 1420. Internal Revenue  4477; Internal Revenue  4569

58. ---- Fiduciary returns, forms constituting returns, filing of returns

A "fiduciary return" in which trust company reported income for 1932 from investment fund, and which was concededly a "return" within venue statute, Revenue Act 1926, § 1002, was also a "return" within Revenue Act 1932, § 275, requiring tax to be assessed within two years after filing of "return." *Germantown Trust Co. v. Commissioner of Internal Revenue*, U.S.1940, 60 S.Ct. 566, 309 U.S. 304, 84 L.Ed. 770. Internal Revenue  4570

59. ---- Information returns, forms constituting returns, filing of returns

"Form 990 returns" are merely information returns in furtherance of a congressional program to secure information useful in a determination whether legislation should be enacted to subject to taxation certain tax-exempt

corporations competing with taxable corporations, and are not “tax returns” within contemplation of this section providing deficiencies in income taxes shall not be assessed within three years after filing of a return. *Automobile Club of Mich. v. C.I.R.*, U.S.1957, 77 S.Ct. 707, 353 U.S. 180, 1 L.Ed.2d 746, rehearing denied 77 S.Ct. 1279, 353 U.S. 989, 1 L.Ed.2d 1147. Internal Revenue  4570

Three-year statute of limitations for assessing tax liability against shareholder of Subchapter S corporation begins to run from date that individual files tax return, and not date that S corporation files its return. *Green v. C.I.R.*, C.A.5 1992, 963 F.2d 783, certiorari denied 113 S.Ct. 1251, 507 U.S. 908, 122 L.Ed.2d 650. Internal Revenue  4570

Three-year limitations period for assessing a deficiency against individual taxpayer, attributable solely to his investment in a subchapter S corporation, commences from the date individual files his own return, and not from date that Subchapter S corporation files its informational return, considering that no tax liability can be assessed based on corporation's return. *Fehlhaber v. C.I.R.*, C.A.11 1992, 954 F.2d 653. Internal Revenue  4570

Filing of Form 990 information returns setting forth all income received, without filing Form 990-T, was sufficient in providing facts on which liability could be determined for tax on business income of exempt organization, and constituted return to start period of limitations under plain language of subsec. (g)(2) of this section and by Congressional intent, so that asserted deficiency was untimely and barred. *California Thoroughbred Breeders Ass'n v. C. I. R.*, Tax Ct.1966, 47 T.C. 335, acq. in result.

Information returns filed by building and loan association merely provided data to determine tax-exempt status and lacked data to compute and assess deficiencies, so they did not start running of statute of limitations and Commissioner was not barred from assessing and collecting deficiencies more than 3 years after such filing when taxpayer did not file regular returns after notification by Commissioner to do so when he retroactively ruled taxpayer was not entitled to exempt status under § 101(4) [I.R.C.1939 (now § 501 of this title)], and § 302(b), of the Revenue Act of 1950, Act Sept. 23, 1950, c. 994, Title III, 64 Stat. 953, providing that information returns were to be considered as returns for limitations purpose of § 275 [I.R.C.1939 (now this section)], was not applicable, this provision having been enacted to cover cases of organizations which would be exempt were they not carrying on trade or business for profit. *Perpetual Bldg. and Loan Ass'n of Columbia v. C. I. R.*, Tax Ct.1960, 34 T.C. 694, acq. ., affirmed 291 F.2d 831, certiorari denied 82 S.Ct. 241, 368 U.S. 919, 7 L.Ed.2d 135.

60. ---- Series 1040 forms, forms constituting returns, filing of returns

W-2 Form filed by taxpayer's employer, showing taxpayer's wages and withholding, did not qualify as “return” that would begin running of statute of limitations on assessment and collection of taxes; filing was not made by taxpayer, was not in proper form, did not include taxpayer's signature, and, in any event, was not independently sufficient for tax computation. *Bachner v. C.I.R.*, C.A.3 1996, 81 F.3d 1274, on remand 109 T.C. 125. Internal Revenue  4570; Internal Revenue  4891

Where taxpayer on his 1976 Form 1040 failed to disclose required information regarding income and tax due, in his petition pleaded statute of limitations, and in response to Commissioner's motion for summary judgment, contended motion was invalid because of affidavit of Commissioner's trial attorney and requested hearing in his own domicile, Tax Court granted motion for summary judgment, since (1) affidavits of counsel representing party are permitted to be submitted where made on personal knowledge and based on facts which would be admissible in evidence; (2) Form 1040 did not constitute “return,” and statute of limitations did not bar assessment

of deficiencies under subsec. (c)(3) of this section; and (3) oral hearing on summary judgment motion is not required where taxpayer has notice and the opportunity to respond and submit affidavits. *Jarvis v. Commissioner of Internal Revenue*, U.S.Tax Ct.1982, 78 T.C. 646.

Form 1040C filed by nonresident alien on leaving United States for short taxable year 1966, which Commissioner terminated and issued therefor certificate of compliance with income tax laws although alien had not filed Form 1040B as required by regulations constituted return to commence running of limitations period on assessment and collection, since year was not reopened by either party under 6851(b) of this title, so that period expired before Commissioner mailed deficiency notice and assessment of additional tax was barred. *Sanzogno v. Commissioner of Internal Revenue*, U.S.Tax Ct.1973, 60 T.C. 947.

61. ---- S corporation returns, forms constituting returns, filing of returns

Provision of the Internal Revenue Code establishing a limitations period of three years after the "return" was filed does not bar adjustments to an entity's return that do not result in a tax assessment on that entity and an adjustment to the return of an S corporation that does not impose tax liability on that S corporation is not barred by the statute more than three years after it has filed its return, even though that might result in a change in the liability of a shareholder. *Bufferd v. C.I.R.*, C.A.2 1992, 952 F.2d 675, certiorari granted 112 S.Ct. 2990, 505 U.S. 1203, 120 L.Ed.2d 868, affirmed 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306. Internal Revenue  4568

62. ---- Social security tax returns, forms constituting returns, filing of returns

Railroad real estate affiliate, which filed social security tax returns based on sincere and reasonable belief that it was subject to social security tax rather than to railroad retirement tax applicable to employers that perform service in connection with rail transportation, was entitled to benefit of three-year statute of limitations in Government's action to recover past-due Railroad Retirement Tax Act taxes, notwithstanding claim that filing of social security tax return was equivalent of filing no return, which would preclude running of limitations period. *Standard Office Bldg. Corp. v. U.S.*, C.A.7 (Ill.) 1987, 819 F.2d 1371. Internal Revenue  4892

63. ---- Miscellaneous cases, forms constituting returns, filing of returns

"Protest type" returns filed by taxpayer who claimed the protection of the self-incrimination clause of U.S.C.A. Const. Amend. 5 on most relevant line entries were not valid returns and did not activate the period of limitations provided by this section. *Edwards v. C. I. R.*, C.A.9 1982, 680 F.2d 1268. Internal Revenue  4477; Internal Revenue  4570

A blank return and affidavit filed by receiver of an insolvent national bank in 1935, did not constitute a "return" which started the running of the three year statute of limitations against collection of tax, assessed for 1934, nor a "return" which was required to be filed to obtain abatement of tax on ground that the tax diminished assets necessary for payment of depositors. *Kavanagh v. First Nat. Bank of Wyandotte*, C.C.A.6 (Mich.) 1943, 139 F.2d 309. Internal Revenue  4636; Internal Revenue  4885

Income tax returns labeled "Tentative" do not start statutory period running. *Matter of I. J. Knight Realty Corp.*, E.D.Pa.1977, 431 F.Supp. 946. Internal Revenue  4892

Where petitioners were individual beneficiaries of two grantor trusts, and, more than 3 years after trusts had filed information returns pursuant to applicable regulation, Commissioner sent petitioners notices of deficiency

for 1983 and 1985; and petitioners argued any assessments of deficiencies resulting from disallowance of losses from property held by trusts were barred, because time had expired for making assessments, Court determined deficiency notices were timely, since “the return”, for purposes of 3-year period of limitations under this section, was petitioners' return, not grantor trusts' return. *Lardas v. C. I. R.*, U.S.Tax Ct.1992, 99 T.C. 490.

Where taxpayer filed a return for 1924 which showed the income and deductions of its predecessor for the first 10 months and its income and deductions for the last 2 months of 1924, from which Commissioner made computation of the tax liabilities of both companies for 1924, the return was a sufficient return of the predecessor to start the running of the statute. *Harvey Coal Corp. v. C.I.R.*, Tax Ct.1949, 12 T.C. 596.

Taxpayer's return did not constitute valid tax return, as would not trigger statute of limitations period, where he included disclaimer statement and altered Form 1040 jurat; taxpayer's disclaimer declined to volunteer tax assessments and denied tax liability, even though as a doctor he had substantial income. *Trowbridge v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21278414, Unreported, affirmed 101 Fed.Appx. 3, 2004 WL 1254242. Internal Revenue  4477; Internal Revenue  4572

64. Incomplete forms, filing of returns

Tax returns that lack data necessary for computation and assessment of deficiencies should not be regarded as triggering period of assessment. *Bufferd v. C.I.R.*, U.S.1993, 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306. Internal Revenue  4570

A trust company which filed a “fiduciary return” for the year 1932 in which it reported income from investment fund, the participants in which included their shares of the income in their respective returns, could not be held to have filed no return within Revenue Act 1932, § 275, allowing four years for assessment if corporation makes no return, but participants in fund return distributive share of income, irrespective of whether company was treated as a corporation or not, and notwithstanding that return may have been incomplete in that it failed to compute a tax. *Germantown Trust Co. v. Commissioner of Internal Revenue*, U.S.1940, 60 S.Ct. 566, 309 U.S. 304, 84 L.Ed. 770. Internal Revenue  4568

Where country club filed its quarterly federal excise tax return for quarter ending September 30, 1959, and amount of \$5,398.57 appeared on line marked “Club Dues, initiation fees, life memberships” and this amount included tax collected by club from member with respect to dues paid by him during quarter but did not include tax on payment by member to another member for transfer of membership, statute of limitations did not begin to run with respect to assessment of excise tax on transfer of membership on date of filing of return in that figure that was placed on such line did not include this item. *Bicknell v. U. S.*, C.A.5 (Tex.) 1970, 422 F.2d 1055. Internal Revenue  4572

Where taxpayer's joint income tax return and schedules contained therein made no reference to subchapter S corporation or to distribution made by such corporation to one taxpayer, adequate disclosure, such as would prevent six-year period of limitation from being applicable to assessment by government of tax deficiency on such distribution was not made. *Taylor v. U.S.*, C.A.5 (Fla.) 1969, 417 F.2d 991. Internal Revenue  4572

Failure of social club to report in its excise tax return the taxpayer's purchase of stock as an initiation fee constituted a failure to file a return, so that the tax could be assessed at any time. *U.S. v. Bailey*, C.A.5 (Miss.) 1967, 383 F.2d 9. Internal Revenue  4572

Wife did not substantially comply with purposes of regulations requiring gift tax returns, so as to start running of limitations against assessment of taxes, though she signed husband's return which gave information concerning trust agreements involved and copies of the agreements were furnished, where husband did not make full disclosure in that he did not describe prior taxable gifts. *True v. U.S.*, Ct.Cl.1965, 354 F.2d 323, 173 Ct.Cl. 706. Internal Revenue  4570

Where social club member did not pay excise taxes due on purchase of common stock of club or additional payment made to club as condition precedent to class A membership certificate and payments were not reported in quarterly excise returns filed by club for periods involved, assessment for excise taxes against member was not barred by four year statute of limitations. *Hulette v. U.S.*, C.A.6 (Ky.) 1963, 315 F.2d 826. Internal Revenue  4546

Where returns filed by corporation represented that taxpayer had made disposition of its income-bearing property, and that it had no gross income, was entitled to no deductions or credits, and had no net income, and returns did not disclose that income-bearing property had been conveyed in trust with power of revocation reserved to taxpayer, which provision would have rendered taxpayer liable for tax on income, and there was nothing to put the Commissioner on notice that disposition was not made in ordinary manner, returns failed to disclose requisite information essential to making of assessments and were not effective to start period of limitation running so as to bar deficiency assessments. *John D Alkire Inv Co v. Nicholas*, C.C.A.10 (Colo.) 1940, 114 F.2d 607. Internal Revenue  4572

To start statute of limitations running, income tax returns must be sufficiently complete to enable Internal Revenue Service to determine the correct tax liability. *Matter of I. J. Knight Realty Corp.*, E.D.Pa.1977, 431 F.Supp. 946. Internal Revenue  4892

Failure of taxpayers to make an affirmative entry on tax return to reflect a denial of liability for cabaret taxes resulted in a failure to file a cabaret tax return for first two quarters of 1957, so that assessment of such taxes was not barred by statute of limitations. *Rausaw v. U.S.*, S.D.Tex.1966, 253 F.Supp. 528, affirmed 376 F.2d 154. Internal Revenue  4477; Internal Revenue  4572

Limitations had not begun to run against collection of excise taxes on charges for skipper's card issued by yacht club to member for certain years, where yacht club did not include requisite amounts in its return, and combined tax return was used. *Cohan v. U.S.*, E.D.Mich.1961, 198 F.Supp. 591. Internal Revenue  4892

A tax return, which does not disclose requisite information necessary for taxing authorities to determine tax liability, does not start statute of limitation running because taxing authorities have not had a fair opportunity to determine whether a claim against taxpayer exists. *Dubuque Packing Co. v. U.S.*, N.D.Iowa 1954, 126 F.Supp. 796, affirmed 233 F.2d 453. Internal Revenue  4892

Subsidiary was not entitled under § 1501 of this title to determine its income tax on basis of consolidated return filed with its parent for taxable year ending Oct. 31, 1957, because it did not file timely consent and parent did not obtain Commissioner's permission to change from calendar to fiscal year basis for reporting its income, but as consolidated return was filed in good faith on Jan. 20, 1959, and contained sufficient information to enable Commissioner to compute subsidiary's taxable income, it constituted subsidiary's separate return sufficient to start running of statute of limitations on assessment under this section, so that deficiency notice dated Sept. 5, 1963, was untimely filed and assessment was therefore barred. *General Mfg. Corp. v. C. I. R.*, Tax Ct.1965, 44 T.C. 513, acq. ..

65. Time of filing returns--Generally

Limitation period for assessing tax liability of shareholder in Subchapter S corporation, who claimed as "pass-through" items portions of deduction and tax credit reported on corporation's return, began to run from filing date of individual return and not date of corporate return. *Bufferd v. C.I.R.*, U.S.1993, 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306. Internal Revenue  4570

Three-year limitations period applied to responsible person penalty assessed against corporate employee for unpaid employment taxes. *Howard v. U.S.*, N.D.Cal.1994, 868 F.Supp. 1197. Internal Revenue  5230

Under this section's provision that, if a return of tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, the return shall be considered filed on April 15 of the calendar year, return of employment taxes withheld by partnership which was filed on November 11, 1971, would be deemed filed on April 15, 1972, not April 15, 1971, so that assessment made on the partnership on March 26, 1975, was made within three years of the date that the return was deemed to be filed. *Leshner v. U. S.*, N.D.Ind.1977, 440 F.Supp. 372. Internal Revenue  4570

Limitations period for assessment of tax ran from filing of return, not from time when return was due, and thus, as to taxpayer who failed to file return and received notice of deficiency, limitations period for assessment remained open indefinitely; moreover, limitations period did not apply to deficiency notices. *Ho Ching Cheng v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 954991, Unreported. Internal Revenue  4570

Three-year period for assessing tax did not begin to run, where taxpayer did not file tax returns for applicable years. *Rodriguez v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21213099, Unreported. Internal Revenue  4572

Substitute for return prepared by IRS did not constitute a return filed by taxpayer for purposes of tolling limitations period for requesting refund of overpayment, since substitute for return did not relieve taxpayer of the obligation to file a return; taxpayer did not sign IRS' substitute return, it was not received by IRS as the taxpayer's return, and taxpayer disputed each determination in notice of deficiency that appeared in IRS's substitute for return. *Healer v. C.I.R.*, U.S.Tax Ct.2000, 115 T.C. 316, 2000 WL 1520333, Unreported. Internal Revenue  4960

66. ---- Actual filing, time of filing returns

Limitations provided by this section on deficiency assessment of income taxes would not be deemed to begin to run from dates when, if there was a duty to file, said section required filing rather than on date of actual filing, on any theory that taxpayer-automobile club's failure to file on such dates was induced by Internal Revenue Commissioner's rulings, since said section expressly provides that it is to run against the United States from date of actual filing, and no action of the Commissioner could change or modify conditions under which United States consents to running of the statute of limitations against it. *Automobile Club of Mich. v. C.I.R.*, U.S.1957, 77 S.Ct. 707, 353 U.S. 180, 1 L.Ed.2d 746, rehearing denied 77 S.Ct. 1279, 353 U.S. 989, 1 L.Ed.2d 1147. Internal Revenue  4507

Where, although taxpayer's failure to file returns had been induced by Commissioner's erroneous extension of exemption, Commissioner later made a correct determination and ordered taxpayer to file returns for previous years, and taxpayer filed return three months later and obtained extensions of time for assessment of tax, limitations on government's action to recover taxes due ran from date return was actually filed, rather than from dates

returns should have been filed. *Automobile Club of Mich. v. C.I.R.*, C.A.6 1956, 230 F.2d 585, certiorari granted 77 S.Ct. 32, 352 U.S. 817, 1 L.Ed.2d 44, affirmed 77 S.Ct. 707, 353 U.S. 180, 1 L.Ed.2d 746, rehearing denied 77 S.Ct. 1279, 353 U.S. 989, 1 L.Ed.2d 1147. Internal Revenue  4892

Donor's income tax return provided government with sufficient notice of imputed gift of stock to trigger statute of limitations on all claims arising out of that gift, despite government's contention that it did not receive sufficient notice of imputed gift until donor filed gift tax return, where income tax return provided complete notice of installment sales of stock to donees, and designated them as related-party transactions, and gift tax return did not refer to donee. *U.S. v. Davenport*, S.D.Tex.2004, 327 F.Supp.2d 725, reversed 484 F.3d 321, certiorari denied 128 S.Ct. 805, 169 L.Ed.2d 606. Internal Revenue  4891

Period of limitations on assessment of taxes began to run from the date the five and six years late income tax returns were actually filed and not from the time they should have been filed. *U. S. v. Thompson*, S.D.Tex.1966, 262 F.Supp. 340. Internal Revenue  4570

Statute of limitations for assessment of tax under Internal Revenue Code begins to run on date that return is actually filed. *In re Dobisch*, Bkrtcy.W.D.Tenn.1993, 156 B.R. 546. Internal Revenue  4570

Assessment of excise taxes against sole trustee of qualified profit sharing plan for prohibited transaction was not time-barred, even though more than 3 years had passed from due date of most relevant returns which were required to be filed for subject years; returns were never filed, and thus, IRS could assess excise tax at any time. *Zacky v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 1172874, Unreported. Internal Revenue  4297

Period of limitations had not run for notice of deficiency, since taxpayers filed their tax return with IRS over two years after its due date, and IRS issued notice of deficiency within three years after date return was filed. *Huff v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 22000287, Unreported. Internal Revenue  4546

Taxpayer did not file his returns on date he hand delivered photocopies of his original returns with original signatures to office of District Director, as would constitute a return which would commence statute of limitations on assessment and collection, since letter accompanying returns stated he intended the original returns with original signatures, delivered to IRS' office of District Counsel, to be his filed returns; taxpayer did not treat photocopied returns as returns he intended to file, since he did not request a receipt, or ask for his cover letter to be date-stamped, or tell unidentified employee at office that the envelope contained his tax returns. *Allnutt v. C.I.R.*, U.S.Tax Ct.2002, 2002 WL 31875119, Unreported. Internal Revenue  4477; Internal Revenue  4570; Internal Revenue  4840

67. ---- Mailing, time of filing returns

The term "filed" in this section requiring that deficiency assessment be made within three years of the time a return is filed means mailed by the taxpayer, not received by the Internal Revenue Service. *Hotel Equities Corp. v. C. I. R.*, C.A.7 1976, 546 F.2d 725. Internal Revenue  4570

IRS had burden of proving that exception to three-year limit on time to assess tax applied, where notice of deficiency was mailed more than three years after taxpayer's filing date. *Shaw v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 1903446, Unreported. Internal Revenue  4616.1

68. ---- Receipt by post office, time of filing returns

Receipt of federal estate tax and remittance by post office on Saturday morning when district director's office was closed and the segregation of such mail from other mail did not give district director such dominion and control over return and remittance as to constitute a filing of the return on Saturday, and the 3 year statute of limitations for assessment commenced to run on following Monday morning when return and remittance, together with other mail for director, was delivered to his office. *Phinney v. Bank of Southwest Nat. Ass'n, Houston, C.A.5 (Tex.) 1964, 335 F.2d 266. Internal Revenue*  4570

69. ---- Receipt by Secretary, time of filing returns

Assessment of gift tax was not barred by three-year limitation where notice of deficiency was dated over three years after filing of return with internal revenue agent in charge but less than three years after return was received by Collector. *O'Bryan Bros. v. Commissioner of Internal Revenue, C.C.A. 6 1942, 127 F.2d 645, certiorari denied 63 S.Ct. 41, 317 U.S. 647, 87 L.Ed. 521. Internal Revenue*  4570

70. Unsigned returns, filing of returns

Where defendant did not sign a return of taxes withheld from employees, return did not start statute of limitations running as against any person responsible for it, despite defendant's contention that it was not his return and that he was not aware that it was unsigned. *Kalb v. U. S., C.A.2 (N.Y.) 1974, 505 F.2d 506, certiorari denied 95 S.Ct. 1981, 421 U.S. 979, 44 L.Ed.2d 471. Internal Revenue*  4570

This section did not bar assessment of tax deficiency for taxable year 1954 where neither taxpayer had signed the return. *Doll v. C.I.R., C.A.3 1966, 358 F.2d 713. Internal Revenue*  4570

Where taxpayer did not sign his 1944 tax return as required by § 51 [I.R.C.1939 (now this section)], the statute of limitations did not apply and deficiency assessment was timely. *Haring v. U.S., N.D.Ohio 1956, 142 F.Supp. 782. Internal Revenue*  4572

Tax return will be deemed "filed," so as to trigger statute of limitations on assessment of tax deficiency, only if return contains all of the information necessary for a determination of tax liability and is properly signed or verified. *In re Dobisch, Bkrtcy.W.D.Tenn.1993, 156 B.R. 546. Internal Revenue*  4570

71. Unsworn returns, filing of returns

Limitation period did not begin to run against claim for 1918 income and profits tax on date of tentative return unsupported by oath of proper corporate officers. *Lucas v. Pilliod Lumber Co., U.S.1930, 50 S.Ct. 297, 281 U.S. 245, 74 L.Ed. 829. Internal Revenue*  4572

The two-year limitation period for assessment of income taxes does not begin to run on a tax return which is unverified. *Uhl Estate Co. v. Commissioner of Internal Revenue, C.C.A. 9 1940, 116 F.2d 403. Internal Revenue*  4572

Commissioner's failure to reply to taxpayer agent's letter, and further amplify previous explicit directions that gift tax return filed by agent must be ratified under oath by donor within reasonable time, could not be considered a waiver of such requirement, and taxpayer's unsworn return was not sufficient to start running of period of limitation. *Rohmer v. C.I.R., Tax Ct.1954, 21 T.C. 1099, acq. ,.*

72. Willful attempt to evade tax, filing of returns

Filing of an untimely but substantially accurate return, without a showing that willful attempt to evade taxes had ended, did not trigger the running of statute of limitations on assessment and collections. *Woolf v. U. S.*, C.A.5 (Fla.) 1978, 578 F.2d 1103. Internal Revenue 🔑 4570

73. Miscellaneous cases, filing of returns

Where real estate formerly owned by corporation and transferred as part of corporate assets to succeeding partnership was sold by partnership which reported the gain on the sale and all pertinent data relating thereto, return was sufficient to set three-year statute of limitation in motion in respect of the corporation, and no valid assessment could be made against the corporation after such three-year period. *Chilhowee Mills v. C.I.R.*, App.D.C.1945, 152 F.2d 137, 80 U.S.App.D.C. 269. Internal Revenue 🔑 4568; Internal Revenue 🔑 4570

Under Revenue Acts 1918, 1921, 1924, 1926, § 227(b), imposing federal income tax upon United States citizens residing in Philippines, and requiring returns of a taxpayer not having a place of business in United States to be filed with Collector at Baltimore, Maryland, the filing of returns by taxpayers with Philippine Collector under Philippine income tax law was not sufficient to start running of statute of limitations on deficiency assessments. *Helvering v. Campbell*, C.C.A. 4 1944, 139 F.2d 865. Internal Revenue 🔑 4891

Internal Revenue Service's (IRS) signature was required for effective waiver of three-year statute of limitations for assessing responsible person penalty against corporate employee for unpaid employment taxes. *Howard v. U.S.*, N.D.Cal.1994, 868 F.Supp. 1197. Internal Revenue 🔑 5230

Filing of form 1099 rather than form 941 did not start the running of the statute of limitations on imposition of employment taxes, even though taxpayer had filed form 1099 on the basis that the employees were independent contractors. *Ginter v. U.S.*, W.D.Mo.1993, 815 F.Supp. 1289. Internal Revenue 🔑 4570

An action to recover amount allegedly due as documentary stamp taxes in connection with merger of two of New York corporation's wholly-owned subsidiaries which was commenced before 5 years after filing of certificate of consolidation had elapsed was not barred by five-year statute of limitations, although action was commenced more than 5 years after date of approval of plan of reorganization or date of execution of the certificate of consolidation. *U.S. v. Niagara Hudson Power Corporation*, S.D.N.Y.1944, 53 F.Supp. 796. Internal Revenue 🔑 4880

III. FALSE OR FRAUDULENT RETURNS

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101. False or fraudulent returns generally

Lapse of three years between assessment of unpaid taxes and filing of returns for prior years was immaterial as to liability if returns were false or fraudulent, with intent to evade tax. *U. S. v. England*, C.A.7 (Ill.) 1967, 376 F.2d 381, certiorari denied 88 S.Ct. 237, 389 U.S. 912, 19 L.Ed.2d 260. See, also, *Price v. U.S.*, C.A.Al.1964, 335 F.2d 671; *Jenkins v. U.S.*, C.A.Ga.1963, 313 F.2d 624; *Fuller v. C.I.R.*, C.A.Ohio 1963, 313 F.2d 73; *Spriggs v. C.I.R.*, C.A.9, 1961, 290 F.2d 181; *Lowy v. C.I.R.*, C.A.2, 1961, 288 F.2d 517, certiorari denied 82 S.Ct. 596, 368 U.S. 984, 7 L.Ed.2d 523; *Jaeger Motor Car Co. v. C.I.R.*, C.A.7, 1960, 284 F.2d 127, certiorari denied 81 S.Ct. 826, 365 U.S. 860, 5 L.Ed.2d 823; *Shahadi v. C.I.R.*, C.A.3, 1959, 266 F.2d 495, certiorari denied 80 S.Ct. 137, 361 U.S. 874, 4 L.Ed.2d 113; *Forman v. U.S.*, C.A.Wash.1958, 261 F.2d 181, rehearing denied 264 F.2d 955, affirmed 80 S.Ct. 481, 361 U.S. 416, 4 L.Ed.2d 412, rehearing denied 80 S.Ct. 749, 362 U.S. 937, 4 L.Ed.2d 751; *Lusk v. C.I.R.*, C.A.7, 1957, 250 F.2d 591, certiorari denied 78 S.Ct. 1376, 357 U.S. 932, 2 L.Ed.2d 1375. Internal Revenue  5263.35

Filing of incorrect corporate tax return commenced running of statute of limitations for assessments, where government was able to use corporate tax returns to prepare and file substitute partnership tax returns. *Mason v. U.S.*, N.D.Ga.1992, 801 F.Supp. 718. Internal Revenue  4572

“Badges of fraud” that may be considered in determining whether taxpayer filed fraudulent returns, and, thus, that proceeding to collect tax may be commenced at any time, include the following: understatement of income; inadequate records; failure to file tax return; implausible or inconsistent explanations of behavior; concealing assets; failure to cooperate with taxing authority; and engagement in illegal activities. In re *Grassgreen*, *Bkrtcy.M.D.Fla.*1994, 172 B.R. 383. Internal Revenue  4893

102. Elements of fraud, false or fraudulent returns

“Fraud”, within §§ 276, 293 [I.R.C.1939] means actual, intentional wrongdoing, and the intent required is the specific purpose to evade a tax believed to be owing, and mere negligence, whether slight or great, is not equivalent. *Mitchell v. C. I. R.*, C.C.A.5 (Ga.) 1941, 118 F.2d 308.

Before legal conclusion of tax fraud tolling limitations against assessment can be drawn, a tax must have been owing, and the taxpayer must have failed to pay the tax believing it to be owing with the specific intention of cheating or deceiving the government. In re *Parr*, *S.D.Tex.*1962, 205 F.Supp. 492. Internal Revenue  4572

Taxation is a practical matter, and a taxpayer cannot terminate his duty to pay income taxes or avoid liability for failure to pay taxes by neglecting to keep account of his income or familiarize himself with the necessary procedures for everyday business operations, but failure to observe the established rules of everyday business is not enough in itself to prove fraud, within exceptions to statute of limitations upon assessment of income tax. *Conger v. U.S.*, D.C.Neb.1960, 188 F.Supp. 769. Internal Revenue  4572

103. Amount of deficiency attributable to fraud, false or fraudulent returns

For imposition of fraud penalty and avoidance for bar of limitations, Commissioner need only prove that some portion of the tax deficiency is due to fraud. *Toledano v. C.I.R.*, C.A.5 1966, 362 F.2d 243. Internal Revenue  4625; Internal Revenue  5234

The Commissioner is not required to show that the fraud relied on to permit the assessment after the three-year

limitation period has elapsed is responsible for the entire deficiency asserted; the Commissioner need only show that part of the asserted deficiency is due to the fraud on which the Commissioner relies. *Kreps v. C.I.R.*, C.A.2 (N.Y.) 1965, 351 F.2d 1. Internal Revenue  4616.1

Even though, on face of return, there would have been no income to tax, even if concealed income had been disclosed, there was such fraud as would toll statute of limitations where audit which disclosed concealed income also disclosed innocently omitted income in such large amount as to erase income deficiency apparent on face of return. *Lowy v. C.I.R.*, C.A.2 1961, 288 F.2d 517, certiorari denied 82 S.Ct. 596, 368 U.S. 984, 7 L.Ed.2d 523. Internal Revenue  4572

To avoid three-year statute of limitations on assessment of tax, it was government's burden to prove by clear and convincing evidence that failure to report income generated by at least one of four transactions in year in question constituted fraud, but proof of fraud as to any one of the alleged deficiencies would permit general reaudit of the return in its entirety and statute of limitations would be tolled as to all deficiencies. *U.S. v. Diehl*, S.D.Tex.1978, 460 F.Supp. 1282, affirmed 586 F.2d 1080. Internal Revenue  4572; Internal Revenue  4911

For purposes of enhanced limitations period for assessment based on substantial underreporting of gross income, taxpayer should have reported 66.7%, not 100%, of gross income of subchapter S corporation, where taxpayer owned 66.7% of corporation's shares; reporting 100% improperly lowered percentage of reported income composed by conceded unreported items. *Benson v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 770577, Unreported. Internal Revenue  4572

Evidence was clear and convincing that disposal corporation's underpayment of tax was attributable to the fraudulent actions of its officers who worked in concert to divert corporate funds to the major shareholder/officer, and thus no limitations period applied to tax assessments and penalties. *Butler v. C.I.R.*, U.S.Tax Ct.2002, 2002 WL 31882859, Unreported. Internal Revenue  4625

104. Civil fraud penalty, false or fraudulent returns

Exception from statute of limitations in case of false or fraudulent return filed with intent to evade tax was applicable to government's suit seeking imposition of 50% civil fraud penalty. *Considine v. U. S.*, C.A.9 (Cal.) 1982, 683 F.2d 1285. Internal Revenue  5230

In view of findings that taxpayer filed his return falsely and fraudulently with an intent to evade, statute of limitations tolled on the collection of the entire tax, including the 50% penalty. *Considine v. U. S.*, Ct.Cl.1981, 645 F.2d 925, 227 Ct.Cl. 77, certiorari denied 103 S.Ct. 79, 459 U.S. 835, 74 L.Ed.2d 76. Internal Revenue  5230

Fraud penalty did not apply, such that open period of limitations did not apply, since taxpayer relied on return preparer to accurately prepare his returns and believed that travel and entertainment expense reimbursements had been taken into account in his tax reporting. *Carter v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21805877, Unreported. Internal Revenue  4572

105. Illegal income as evidence of fraud, false or fraudulent returns

Deceased taxpayer's failure to declare as income monies he diverted to himself from school funds controlled by

him could not be considered as having been done with fraudulent intent to evade taxes such as would render his estate liable for deficiencies beyond period of limitations where, during years in question, money so illegally diverted was not taxable income. *Adame's Estate v. C.I.R.*, C.A.5 (Tex.) 1963, 320 F.2d 811. Internal Revenue  4572

106. Investigation into closed years, false or fraudulent returns

Three-year period of limitations for ordinary assessment deficiencies did not bar enforcement of third-party summonses, even though no fraud, such as would remove limitations on assessment, was alleged in petitions for enforcement. *U.S. v. Lask*, C.A.8 (Mo.) 1983, 703 F.2d 293, certiorari denied 104 S.Ct. 104, 464 U.S. 829, 78 L.Ed.2d 107. Internal Revenue  4499

Running of normal three-year statute of limitations for assessments on one or more of years involved did not terminate authority of government to use summons that taxpayer appear and give testimony and to produce corporate records even though there was no allegation or evidence of fraud. *U. S. v. Giordano*, C.A.8 (Mo.) 1969, 419 F.2d 564, certiorari denied 90 S.Ct. 1355, 397 U.S. 1037, 25 L.Ed.2d 648. Internal Revenue  4495

The power of Commissioner to investigate for purpose of "determining the liability of any person for any internal revenue tax" includes liability which may be assessed on a finding of fraud, and even if no fraud exists, investigation of barred years may be useful or even essential to establish a sound starting point for checking accuracy of returns filed in years that remain open, and a preliminary showing of probable cause is not necessary before initiating such investigations. *De Masters v. Arend*, C.A.9 (Or.) 1963, 313 F.2d 79, certiorari dismissed 84 S.Ct. 341, 375 U.S. 936, 11 L.Ed.2d 269. Internal Revenue  4498; Administrative Law And Procedure  344

Enforcement of Internal Revenue Service summonses for tax year 1978 was not improper on ground that tax year 1978 could not be investigated because three-year period of limitations had expired, in that 1978 tax year was not, according to special agent, under investigation but, rather, those records would be used to reconstruct net worth of taxpayer's tax years whose limitation periods had not yet expired. *Universal Life Church, Hidden Valley Congregation v. U.S.*, W.D.Va.1983, 573 F.Supp. 181. Internal Revenue  4498

Internal Revenue Service summons were enforceable even if tax years in question were covered by three-year statute of limitations for recovery of taxes, since Service may investigate through summons procedure to determine whether any exceptions to three-year statute of limitations applied. *U. S. v. Devon Bank*, N.D.Ill.1981, 529 F.Supp. 40. Internal Revenue  4498

Information sought by the Internal Revenue Service through subject summons did not relate to a closed tax year for which the normal civil statute of limitations had expired inasmuch as the tax could be assessed at any time under this title when a fraudulent return had been filed with the intent to evade the tax. *U. S. v. Will*, S.D.Ohio 1980, 527 F.Supp. 361, affirmed 671 F.2d 963. Internal Revenue  4498

Running of general limitations statute with respect to tax year in question did not preclude enforcement of summons as to that tax year, in light of longer period of limitation with respect to substantial omissions of items from tax or absence of limitation in event of fraud, despite contention that running of general statute demonstrated purpose of the Internal Revenue Service to seek information relating to tax year in question solely for use in connection with a criminal prosecution. *U. S. v. Ladd*, N.D.Tex.1979, 471 F.Supp. 1150. Internal Revenue  4498

Section 275 [I.R.C.1939 (now this section)], which fixes certain general time limitations upon the assessment, or suit for collection, of income taxes, has no applicability upon need for an investigation for the detection of false or fraudulent returns, nor does it have any relation to the period which may be covered by such investigation. *U.S. v. Peoples Deposit Bank & Trust Co.*, E.D.Ky.1953, 112 F.Supp. 720, affirmed 212 F.2d 86, certiorari denied 75 S.Ct. 37, 348 U.S. 838, 99 L.Ed. 661. Internal Revenue  4498

In order to justify an examination by the government concerning tax liability in connection with tax years as to which the statute of limitations has run, the government should not be required to prove actual fraud, but is required to set forth facts which lead it to believe that there may have been fraud so that the court can then determine whether the suspicion of fraud has sufficient basis in fact to justify the examination. *In re Brooklyn Pawnbrokers, Inc.*, E.D.N.Y.1941, 39 F.Supp. 304. Internal Revenue  4498

107. Joint returns, false or fraudulent returns

Limitation under subsec. (c)(1) of this section may be lifted on tax assessments against both spouses when they file jointly even though only one has defrauded the government in the process. *Ballard v. C.I.R.*, C.A.8 1984, 740 F.2d 659. Internal Revenue  4572

Under this section, permitting assessment of tax at any time where taxpayer made false or fraudulent return to evade taxes, where wife intended to sign joint return with husband and return was fraudulent, three-year limitation was not bar to assessment. *Upshaw's Estate v. C.I.R.*, C.A.7 (Ind.) 1969, 416 F.2d 737, certiorari denied 90 S.Ct. 993, 397 U.S. 962, 25 L.Ed.2d 254. Internal Revenue  4572

Where joint income tax returns were filed by husband and wife, liability for taxes and penalty for deficiency due to fraud with attempt to evade was both joint and several, and there was no time limitation either upon assessment or upon court proceedings to collect tax from wife, notwithstanding that husband and not wife was moving spirit in the fraud. *Howell v. C.I.R.*, C.A.6 1949, 175 F.2d 240. Internal Revenue  4893; Internal Revenue  5207; Internal Revenue  5230

If government could show that joint return of taxpayer and her husband was false or fraudulent, taxpayer could be liable for deficiency, even though she did not actually commit the fraud, so that statute of limitations might not bar claim against the taxpayer. *Walsh v. U. S.*, D.C.Minn.1981, 507 F.Supp. 808. Internal Revenue  4812; Internal Revenue  4893

Affirmative proof that H filed fraudulent joint returns and that part of underpayment of tax was due to H's fraud was sufficient to lift bar of limitations under subsec. (c) of this section and sustain imposition of additions to tax for fraud under section 6653(b) of this title against W as jointly and severally liable under section 6013(d) (3) of this title notwithstanding absence of proof of fraud on her part. *Vannaman v. Commissioner of Internal Revenue*, U.S.Tax Ct.1970, 54 T.C. 1011, acq. ., nonacq. .,

On basis of separate 1945 income tax returns filed by husband and wife in which each declared half of husband's \$62,995 earnings as community property and each falsely claimed prepayment of \$12,000 to \$12,773 tax estimated due in 1945, proof of fraud on part of husband, and failure of Government to prove deceased wife did more than sign her return as prepared by husband without knowledge of its contents or that wife was sufficiently familiar with joint checking account to know what checks husband had drawn against it, Court sustained as not barred by limitations due to husband's fraud 1957 deficiency of addition to 1945 income tax assessed against him for failure to pay installment of estimated tax declared, but found Government failed in its attempt to prove

personal fraud against wife and refused to sustain as timely deficiency assessed against her. *Corbett v. C. I. R.*, Tax Ct.1963, 41 T.C. 96, acq. .,

Although assessment of deficiencies against husband and wife who filed joint return for 1942 was barred by limitations and husband's separate return for 1943 was not fraudulent, since wife's separate return for 1943 was fraudulent, full 25 per cent of difference between tax they reported for 1942 and correct tax for that year is includible in deficiency determined against her for 1943 under § 6(d)(2), Current Tax Payment Act of 1943. *Estate of Stein v. C. I. R.*, Tax Ct.1956, 25 T.C. 940, acq. ., affirmed 250 F.2d 798.

Evidence did not support taxpayer's claim that he and his wife filed joint return, and thus, assessment made more than three years after such purported filing was not time-barred; although taxpayer produced two different versions of Form 1040X that he and his wife allegedly jointly filed, neither version bore wife's signature, tax preparer's signature thereon did not qualify as signature of wife's duly authorized agent, and before joint return was purportedly filed, wife had filed "Single" return for year in question under name other than her married name and listed address other than taxpayer's address. *Downing v. C.I.R.*, U.S.Tax Ct.2007, 2007 WL 2768754, Unreported. Internal Revenue  4483

108. Subsequent correct returns, false or fraudulent returns

The plain and unambiguous language of this section permits Internal Revenue Commissioner to assess "at any time" the tax for a year in which taxpayer has filed a false or fraudulent return, despite any subsequent nonfraudulent disclosure the taxpayer might make. *Badaracco v. C.I.R.*, U.S.N.J.1984, 104 S.Ct. 756, 464 U.S. 386, 78 L.Ed.2d 549.

Nonfraudulent amended returns for 1963 to 1966 filed by taxpayers in 1968 for prior years did not trigger three-year limitations period with respect to fraudulent returns previously filed for the same years as the Commissioner of Internal Revenue could assess the additional taxes for the years at any time. *Dowell v. C.I.R.*, C.A.10 1984, 738 F.2d 354. Internal Revenue  5230

Filing of fraudulent income tax return permitted deficiency to be assessed against taxpayers at any time, despite fact that nonfraudulent amended returns may have been filed more than three years prior to assessment. *Klemp v. C.I.R.*, C.A.9 1984, 725 F.2d 1488. Internal Revenue  4546

Filing of nonfraudulent amended income tax returns following the filing of fraudulent ones did not trigger three-year period of limitations for assessment of additional taxes. *Nesmith v. C.I.R.*, C.A.5 1983, 699 F.2d 712, certiorari denied 104 S.Ct. 994, 465 U.S. 1004, 79 L.Ed.2d 228. Internal Revenue  5230

Filing of nonfraudulent, amended income tax return subsequent to filing of fraudulent original return did not prevent Commissioner from issuing notice of deficiency more than three years after nonfraudulent, amended return was filed, as subsec. (c)(1) of this section permits Commissioner, in case of fraudulent return, to assess tax at any time and there is nothing in subsec. (c)(1) of this section, its legislative history or regulations to indicate that subsequent filing of amended return has any effect on it. *Badaracco v. C.I.R.*, C.A.3 (N.J.) 1982, 693 F.2d 298, certiorari granted 103 S.Ct. 2084, 461 U.S. 925, 77 L.Ed.2d 296, affirmed 104 S.Ct. 756, 464 U.S. 386, 78 L.Ed.2d 549. Internal Revenue  4546

109. Particular cases fraud established, false or fraudulent returns

Combination of facts that taxpayer who was responsible for maintenance of his employer's vessels employed five devious methods in extracting kickbacks from ship repairer, that he reported kickbacks from marine contractor which taxpayer knew was reporting its payments to taxpayer but concealed payments from ship repairer with knowledge that payments were not being reported by ship repairer, and deliberately misrepresented to revenue agent that taxpayer had received no money from ship repairer during the period in question, warranted inference of fraud for purpose of section 6653(b) of this title providing for 50% additions to tax and subsection (c) (1) of this section lifting bar of statute of limitations for assessment of deficiencies. *McGee v. C. I. R.*, C.A.5 (Tex.) 1975, 519 F.2d 1121, rehearing denied 523 F.2d 1055, certiorari denied 96 S.Ct. 1463, 424 U.S. 967, 47 L.Ed.2d 734. Internal Revenue  5077; Internal Revenue  5234

Statute of limitations did not bar assessment and collection of deficiency in income taxes for 1957, even though no assessments for 1957 had been made within three years from filing of return for that year, where sufficient basis existed for sustaining determination of Commissioner that taxpayer filed false and fraudulent income tax returns for 1957 through 1959, and where subsec. (c) (1) of this section provided that in case of a false or fraudulent return, with intent to evade tax, the tax deficiency could be assessed at any time. *Plunkett v. C. I. R.*, C.A.7 (Ill.) 1972, 465 F.2d 299. Internal Revenue  4572

Where 1956 Tax Court decision, which included a finding of fraud on part of taxpayer with respect to 1943 and 1944 returns, was reversed by Court of Appeals in 1957, and cause was remanded for further proceedings, but remand was occasioned only for unfairness in absence of a realistic beginning cash figure and was limited in scope to ascertainment of such figure and presentation of any evidence bearing on taxpayer's net worth as of certain date, and remand did not leave open issue of fraud for determination in further proceedings in Tax Court, issue of fraud was decided and became *res judicata*, and hence, in view of then applicable code provision eliminating any limitation period where fraud is present, subsequent assessment was not barred by statute of limitations and was valid, and taxpayer could not successfully claim limitations as bar to subsequent suit for amount of such assessments. *Gunn v. U.S.*, C.A.8 (Ark.) 1960, 283 F.2d 358. Internal Revenue  4755

Where fraud was established in view of the amounts of net income omitted from the petitioner's tax returns, and the circumstances under which the omissions occurred, statute of limitations against deficiency assessments did not apply and did not bar income tax deficiencies for 1942, 1943 and 1944. *Lias v. C.I.R.*, C.A.4 1956, 235 F.2d 879, certiorari denied 77 S.Ct. 810, 353 U.S. 935, 1 L.Ed.2d 758. Internal Revenue  4572

Evidence that taxpayer, a lawyer, admitted before grand jury that he underreported his income, that his widow and son failed to provide innocent explanation for taxpayer's conduct, and that taxpayer understated his income nearly tenfold was sufficient to establish taxpayer's intent to defraud government, making statute of limitations permitting Internal Revenue Service (IRS) to assess false or fraudulent return at any time applicable to IRS' action against widow and son to collect taxes owed. *U.S. v. Bushlow*, E.D.N.Y.1993, 832 F.Supp. 574. Internal Revenue  4572

Where corporation's income tax returns for years 1948 through 1952 contained deductions which were not deductible as proper or necessary business expenses and were fraudulently claimed, fraud tolled running of three-year statute of limitations and government's assessment of delinquency tax and fraud penalties, in 1957, constituted a valid assessment and a valid claim against corporation in reorganization proceedings. *In re Frank Fehr Brewing Co.*, W.D.Ky.1958, 160 F.Supp. 631, affirmed 274 F.2d 824, certiorari denied 80 S.Ct. 1595, 363 U.S. 830, 4 L.Ed.2d 1525. Internal Revenue  4572; Internal Revenue  5230

Where taxpayer had willfully attempted to defeat and evade by fraudulent means the tax due on high-test beer manufactured by taxpayer, assessment of such tax some ten years after it became due and suit for collection of tax commenced six years after assessment were not barred by limitations. *U.S. v. Kehoe*, M.D.Pa.1951, 94 F.Supp. 570. Internal Revenue  4565; Internal Revenue  4880

Where there was a failure for more than seven years to report importation of liquor and a nonpayment of tax thereon for all that time and until after assessment by Commissioner, facts authorized reasonable inference that importer did not intend to pay tax, but intended to defraud the government thereof, and sufficiently established "fraud", and therefore assessment was not barred by statute of limitations. *McClure v. U.S.*, Ct.Cl.1943, 48 F.Supp. 531, 98 Ct.Cl. 381. Internal Revenue  4572

Taxpayer's tax returns reflected "false" withholding tax credits to which he knew that he was not entitled, pursuant to scheme by which taxpayer, employed as accountant, instructed employer to overwithhold federal income taxes so that taxpayer could receive refund to be used as repayment for taxpayer's loan to employer, for purposes of waiving three-year limitations period for assessing taxes, in view of evidence that taxpayer knew that excess taxes had not been paid and that employer did not have funds to pay them, and that, by collecting refund for nonexistent overwithholding, he attempted to extinguish employer's obligation to him and thus transfer to Internal Revenue Service (IRS) task of collecting his personal debts from employer. *Brister v. U.S.*, Fed.Cl.1996, 35 Fed.Cl. 214. Internal Revenue  4572

Even though taxpayer and his accountant were deceased at time of trial, Court determined on inferences drawn from circumstantial evidence, including taxpayer's affirmative conduct, conduct of his business, his consistent and substantial understatements of income, and circumstances surrounding preparation of fraudulent returns, that decedent-taxpayer fraudulently understated his income during 1964, 1965, and 1966 with intent to evade taxes, so that bar to assessment and collection of deficiencies was lifted, and petitioner was liable for additions to tax under section 6653(b) of this title and Commissioner's determinations of amounts of deficiencies were sustained. *Temple's Estate v. Commissioner of Internal Revenue*, U.S.Tax Ct.1976, 67 T.C. 143.

Various claimed business expense deductions on family-dominated X corporation's income tax returns for 1950 and 1951, including substantial amounts of overstated costs charged on related corporation's purchase invoices for purported commissions channeled to president's son, personal expenses to maintain Florida home and yacht, and purported compensation paid son's friend, were fictitious, unrelated to X's business operations, and benefited X's president and family by having funds diverted for their personal use, so that returns were false and fraudulent with intent to evade tax, president's fraud being imputed to X, and assessment was not barred by limitations, as adjusted for some items by Tax Court. *American Lithofold Corp. v. Commissioner of Internal Revenue*, U.S.Tax Ct.1971, 55 T.C. 904, acq. .,

Taxpayer had mental capacity to and did file false and fraudulent returns for 1948-54 and part of underpayment was due to fraud with intent to evade tax. *Farber v. C. I. R.*, Tax Ct.1965, 44 T.C. 408.

Fraud exception applied to allow Internal Revenue Service (IRS) to assess income tax liability more than three years after returns were filed, where life insurance company paid commissions on policy sales in names of both taxpayer and his son, commission checks paid in taxpayer's name and his son's name were deposited into taxpayer's brokerage business account and used by taxpayer to operate his business, taxpayer reported commission income showing up in his name on forms W-2 or 1099, but commissions paid in son's name were not reported, and taxpayer accepted full responsibility and criminal liability for failure to report this income. In re *Roberson*, Bkrt-

cy.M.D.Tenn.1994, 165 B.R. 620. Internal Revenue  4572

Filing of false and fraudulent return extended indefinitely period during which IRS could assess additional tax based on misrepresentations in return, even though taxpayer's preparer alone had acted with fraudulent intent, while taxpayer had not; governing statute imposed no requirement for taxpayer's fraudulent intent, but instead keyed time extension only to fraudulent nature of return itself. *Allen v. C.I.R.*, U.S.Tax Ct.2007, 128 T.C. 37, 2007 WL 654357, Unreported. Internal Revenue  4572

Taxpayers committed fraud in filing of their tax returns, and thus, there was no limitation on assessment; taxpayers made underpayments of tax, and intent to evade taxes was demonstrated by taxpayers' practice of cashing checks for small jobs at check-cashing store. *Payne v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 1277227, Unreported, affirmed 211 Fed.Appx. 541, 2007 WL 45858. Internal Revenue  4572

Income tax assessed more than three years after taxpayers filed their return for relevant year was not time-barred, where underpayment was due to fraud. *Graham v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 730078, Unreported, affirmed 257 Fed.Appx. 4, 2007 WL 3332753. Internal Revenue  4572

Time period to assess deficiency in civil tax case remained open past general three-year period due to taxpayers' false or fraudulent return. *Ford v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 225287, Unreported. Internal Revenue  4572

Open period of limitations applied to tax underpayments, some portions of which were result of fraud. *Medlin v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21743513, Unreported, affirmed 138 Fed.Appx. 298, 2005 WL 850363, certiorari denied 126 S.Ct. 146, 546 U.S. 826, 163 L.Ed.2d 72. Internal Revenue  4572

Assessment of taxpayers' tax liabilities was not barred by statute of limitations, where taxpayers filed false or fraudulent return with intent to evade tax, and thus, tax could be assessed at any time. *Le v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21694433, Unreported. Internal Revenue  4572

110. Particular cases fraud not established, false or fraudulent returns

Deficiency income tax assessment with respect to return more than three years old and based on alleged overclaiming of deductions was, where no question of fraud was involved, barred by the three-year statute of limitations. *Phoenix Electronics, Inc. v. U. S.*, D.C.Mass.1958, 164 F.Supp. 614. Internal Revenue  4572

No part of deficiencies for taxable years was due to fraud under § 276(a) [I.R.C.1939], where taxpayer fisherman, who had third-grade education and no training in bookkeeping and was unfamiliar with tax matters, failed to keep proper records and to report certain income, since there was a scarcity of competent clerical help during war years and accountant who prepared the returns had complete access to all information bearing on taxpayer's income tax liability; taxable years were therefore barred by statute of limitations. *Marinzulich v. C. I. R.*, Tax Ct.1958, 31 T.C. 487, acq. .,

Returns for 1941-1944, prepared and filed on taxpayer's behalf by his wife because of his inability to do so and greatly understating his income, were not false or fraudulent with intent to evade tax, since deficiencies were result of inefficiency, incompetence, and negligence of his wife in handling his business accounts and preparing his returns, so that assessment and collection of deficiencies and §§ 291(a) and 293(b) [I.R.C.1939] additions for such years were barred by limitations. *Booher v. C.I.R.*, Tax Ct.1957, 28 T.C. 817, acq. .,

Internal Revenue Service (IRS) failed to show by clear and convincing evidence that Chapter 11 debtor possessed requisite fraudulent intent to evade taxes when he filed returns, and, accordingly, IRS' claim that debtor filed fraudulent returns did not provide basis for exception to three-year limitation period for assessment of tax or for proceeding for collection of tax without assessment, even though debtor understated his gross income by at least 25% for each of the three years in issue and pled guilty to two counts of securities fraud, where debtor filed all required tax returns, and debtor's explanation for understatement of income was credible. In re Grassgreen, Bkrcty.M.D.Fla.1994, 172 B.R. 383. Internal Revenue  4624; Internal Revenue  4911

Liabilities determined after 3-year and 6-year periods of limitations were time-barred due to IRS' failure to show fraud, as evidence did not show that taxpayer intended to evade tax, but rather, that taxpayer and his accountant failed to coordinate their activities and effectively communicate relating to accounting and record keeping matters; taxpayer kept adequate records, made all pertinent information available to his accountant and subsequently to IRS, cooperated with IRS' investigation, and did not employ any scheme to conceal income, and, while taxpayer and his secretaries recorded, in handwritten ledger, receipt of all customer checks, accountant did not use that ledger to prepare taxpayer's returns. McGowan v. C.I.R., U.S.Tax Ct.2004, 2004 WL 1381223, Unreported, affirmed 187 Fed.Appx. 915, 2006 WL 1761127. Internal Revenue  4572

Taxpayer was not liable for fraud by trading in his employer's stock through account in third party's name, precluding application of open limitations period, since he did not intend to evade tax, but was negligent and inattentive regarding his record keeping and tax filing obligations; taxpayer intended to evade company rules on insider trading and not tax rules. Carter v. C.I.R., U.S.Tax Ct.2003, 2003 WL 21805877, Unreported. Internal Revenue  4572

Period for tax assessment did not remain open on fraud grounds, since IRS failed to prove by clear and convincing evidence that taxpayer intended to evade taxes known to be owing by conduct intended to conceal, mislead, or otherwise prevent collection of taxes, and IRS' facts of income rested on information taxpayer provided to lenders; there was no showing that taxpayer knowingly concealed income or assets, failed to cooperate with IRS, engaged in illegal activities, attempted to mislead, dealt in cash, lacked credibility, or knowingly filed false documents. Christians v. C.I.R., U.S.Tax Ct.2003, 2003 WL 21000920, Unreported. Internal Revenue  4625

IV. OMISSIONS FROM GROSS INCOME

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131. Omissions from gross income generally

Where unreported income was received more than three years before action and no deficiency assessment was made and income was not equivalent to 25% of taxpayer's gross income as shown by returns, collection of tax on income was barred. *Knop v. U.S.*, C.A.8 (Neb.) 1956, 234 F.2d 760. Internal Revenue  4565

Section 275(a) [I.R.C.1939 (now this section)], barring collection of taxes after three years in absence of prior assessment, is modified by subsection (c) of said section which authorizes collection at any time within five years where the taxpayer has omitted from gross income a sum exceeding 25 per cent of the amount reported. *U.S. v. United Distillers Products Corp.*, C.C.A.2 (Conn.) 1946, 156 F.2d 872. Internal Revenue  4893

To satisfy Revenue Act 1936, § 275(c), permitting assessment within five rather than three years after filing of income tax return if taxpayer omits from gross income an amount in excess of 25 per cent., the figure which represents gross income, from which net income is derived, must not be understated by amount in excess of 25 per cent. of the figure. *O'Bryan v. C.I.R.*, C.C.A. 9 1945, 148 F.2d 456. Internal Revenue  4572

Section 275(c) [I.R.C.1939 (now this section)], permitting assessment of tax or court proceeding without assessment within five years after filing of return if taxpayer omitted from gross income an amount properly includable therein in excess of 25 per cent. of amount of gross income stated in return, was intended to and does limit subsections (a) and (b) of said section providing a three-year and a 18-month limitation. *Foster's Estate C. C I R*, C.C.A.5 (Fla.) 1942, 131 F.2d 405. Internal Revenue  4568; Internal Revenue  4880

Where amount of gross income which taxpayer was charged with omitting from its income and declared value excess-profits tax return and from its excess-profits tax return was less than 25 per cent of gross income, § 275(a) [I.R.C.1939 (now this section)] required the deficiency to be assessed within three years and 150 days after return was filed rather than within five years and 150 days. *Washington Farms, Inc. v. U.S.*, M.D.Ga.1953, 116 F.Supp. 142, motion denied 122 F.Supp. 31. Internal Revenue  4572

Rule that an item must be entirely omitted to trigger section of the Internal Revenue Code which applies a six-year assessment limitations period to any taxpayer that nonfraudulently "omits from gross income an amount properly includible therein which is in excess of 25 percent" of the reported gross income, is not limited to items derived from the sale of goods and services by a trade or business. *Grapevine Imports, Ltd. v. U.S.*, Fed.Cl.2007, 77 Fed.Cl. 505. Internal Revenue  4572

Gross income, not gross receipts, determines the 25 per cent. omission for extension of the 5-year statute of limitations provided in § 275(c) [I.R.C.1939 (now this section)]. *Edenfield v. C.I.R.*, Tax Ct.1952, 19 T.C. 13.

If taxpayer made substantial omission of income from its corporate return, period of limitations for assessment

of any tax with respect to taxpayer would be six years, rather than three years. *Rhone-Poulenc Surfactants and Specialties, L.P. v. C.I.R.*, U.S.Tax Ct.2000, 114 T.C. 533, 2000 WL 863142, Unreported, appeal dismissed and remanded 249 F.3d 175. Internal Revenue  4572

132. Omission as fraud, omissions from gross income

Mere omission of income is not in itself sufficient to establish fraud necessary to create exception to this section, but repeated omission of reportable income or omission of exceptionally large item is not a mere omission. *Jenkins v. U.S.*, C.A.5 (Ga.) 1963, 313 F.2d 624. Internal Revenue  4625

133. Determination of omissions from gross income--Generally

Statement by taxpayer in income tax return of the gross profit from his business was a statement of his "gross income" within meaning of § 275 [I.R.C.1939 (now this section)], that if taxpayer omits from "gross income" an amount properly includible therein and in excess of 25% of amount of gross income stated in the return, tax may be asserted, or proceeding in court for collection of such tax may be begun without assessment, within five years after return was filed, and five-year limitation was applicable to deficiency assessment rather than three-year limitation. *Carew v. C.I.R.*, C.A.6 1954, 215 F.2d 58. Internal Revenue  4572; Internal Revenue  4892

Under § 275(c) [I.R.C.1939 (now this section)], permitting deficiency assessment five years after filing of return if taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of amount of gross income stated in return, the exception to the three year statute of limitations applies only to situations where the taxpayer has failed to make a return of some taxable gain, and consequently the three and not the five year statute of limitations applied to a taxpayer whose gross sales were correctly stated, but who made deduction for a subsequently disallowed retroactive wage increase, with resultant understatement of total income by more than 25%. *Uptegrove Lumber Co. v. C.I.R.*, C.A.3 1953, 204 F.2d 570. Internal Revenue  4568

134. ---- Computation of gross income, determination of omissions from gross income

Where understatement of income did not result from omission of receipts but from erroneous overstatement of "basis" of land sold by taxpayer, the three-year, rather than the five-year, period of limitation upon assessment of income tax deficiencies was applicable. *Colony, Inc. v. C.I.R.*, U.S.1958, 78 S.Ct. 1033, 357 U.S. 28, 2 L.Ed.2d 1119, on remand 259 F.2d 270. Internal Revenue  4572

An overstatement of taxpayer's opening inventory resulting in an understatement of gross profits from taxpayer's farm business did not constitute an "omission" from gross income within § 275 [I.R.C.1939 (now this section)], extending normal three year period of limitations on assessments to five years where omissions from gross income are in excess of 25 per cent of reported gross income. *Goodenow v. C.I.R.*, C.A.8 1956, 238 F.2d 20. Internal Revenue  4572

Where widow became beneficiary of corporation's obligation to pay \$30,000 per year in 10 annual payments, and entire value of corporation's obligation was given commuted value of \$243,326.70 for estate tax purposes, and allocation of annual payment between return of capital already taxed under estate tax and income in ratio of commuted value to face value of entire obligation caused income from such annual payments to amount to less than 25% of annual gross income of widow, and annual payments were not included in widow's return, claims of government for deficiencies were barred by three year statute of limitations as to claims prior to such period. *Hatch v. C.I.R.*, C.A.2 1951, 190 F.2d 254. Internal Revenue  4569

Overclaiming deductions was not an “omission from gross income” within meaning of this section providing a five-year statute of limitations in such cases. *Phoenix Electronics, Inc. v. U. S.*, D.C.Mass.1958, 164 F.Supp. 614. Internal Revenue  4572

With regard to section of the Internal Revenue Code extending limitations period for assessment of partnership items to six years “[i]f 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,” an “omission from gross income” may occur when there is an omission of gain due to an overstatement of basis. *Salman Ranch Ltd. v. U.S.*, Fed.Cl.2007, 79 Fed.Cl. 189, amended 2007 WL 4707751, appeal granted 2008 WL 907515. Internal Revenue  4572

Where Commissioner, who had used net income plus cash expenditures method, in attempting to come within limitation-extending provisions of § 275(c) [I.R.C.1939 (now this section)], showed that net income was understated by more than 25 per cent of amount reported, this was insufficient to meet requirement of said section of a showing of 25 per cent omission of gross income. *H. A. Hurley, Petitioner v. Commissioner of Internal Revenue, Respondent* H. A. and *Opal Hurley, Petitioner v. Commissioner of Internal Revenue, Respondent*, Tax Ct.1954, 22 T.C. 1256, acq. ,, affirmed 233 F.2d 177.

IRS was not barred by 3-year limitations period from assessing taxpayers' taxes; taxpayers were each liable for fraud penalty, so that limitations period for assessing their taxes was extended indefinitely, and, in any event, limitations period would be extended to 6 years because both taxpayers omitted from gross income amounts vastly in excess of 25% of amounts stated on returns, and IRS issued deficiency notices within 6 years of due dates of returns. *Paterson v. C.I.R.*, U.S.Tax Ct.2007, 2007 WL 1364412, Unreported. Internal Revenue  4568; Internal Revenue  4572

135. ---- Inclusions in gross income, determination of omissions from gross income

For purpose of determining application of five-year period of limitations under § 275(c) [I.R.C.1939 (now this section)], that if taxpayer omits from gross income an amount properly includible therein, which is in excess of 25 per cent of amount of gross income stated in return tax may be assessed, or proceeding in court for collection of such tax may be begun without assessment, at any time within five years after return was filed, full amounts received by taxpayer from employer as reimbursement for amounts expended by taxpayer for travel entertainment and sales promotion activities on behalf of employer were not properly includible in gross income, and it was only amount which exceeded allowable deductions which was includible in gross income. *C.I.R. v. Johnson*, C.A.7 1960, 276 F.2d 110. Internal Revenue  4572; Internal Revenue  4892

Where Commissioner assessed deficiencies in income taxes based on taxpayers' failure to include in their gross incomes, which consisted in large part of partnership profits on operation of retail stores, credit sales in the year of sales, and taxpayers' returns already stated cost of goods sold, under circumstances of case, Commissioner in determining whether or not omitted gross income exceeded reported gross income by more than twenty-five percent so as to have made five-year statute of limitations applicable with respect to assessments, was entitled to compute omitted gross income as constituting gross receipts from credit sales without deduction of other alleged costs of sale. *Iverson's Estate v. C.I.R.*, C.A.8 1958, 255 F.2d 1, rehearing denied 257 F.2d 408, certiorari denied 79 S.Ct. 154, 358 U.S. 893, 3 L.Ed.2d 120. Internal Revenue  4572

In determining whether amount of gross income, which corporate farmer was charged from omitting from its income and declared value excess profits tax returns and from its excess profits tax return was less than 25 per

cent of gross income, so that § 275(a) [I.R.C.1939 (now this section)], requiring that deficiency be assessed within 3 years and 150 days after filing of return, was applicable rather than subsection (c) of said section, requiring that deficiency be assessed within 5 years and 150 days cost of operations should not be deducted from gross receipts of the farm in determining gross income. *Washington Farms v. U.S.*, M.D.Ga.1954, 122 F.Supp. 31. Internal Revenue  4572

In computing farmer's "gross income" for purposes of § 275(c) [I.R.C.1939 (now this section)], providing that if taxpayer omits from gross income an amount properly includible therein, which exceeds 25 per cent of amount of gross income stated in return, tax may be assessed or proceeding begun for collection at any time within five years after return was filed, farmer's costs of production are not to be deducted from gross receipts. *McCulley v. Kelm*, D.C.Minn.1953, 112 F.Supp. 832. Internal Revenue  4572

Petitioner's unreported gross receipts arising from sale of livestock were reduced by unreported cost or other basis of such livestock for purpose of determining amount of gross income not reported under § 275(c) [I.R.C.1939 (now this section)], since only profit from sale of livestock is includible in gross income. *Romine v. C. I. R.*, Tax Ct.1956, 25 T.C. 859, acq. ..

In determining whether taxpayer omitted an amount properly includible which was in excess of 25 per cent of gross income stated in his return, within meaning of § 275(c) [I.R.C.1939 (now this section)], reported gross income from business is the gross profit stated in the return without adjustments for any items incorrectly reported therein as part of cost of goods sold. *Lease v. C. I. R.*, Tax Ct.1955, 23 T.C. 1058.

Under Revenue Act 1934, § 275(c), in determining whether an amount in excess of 25 per centum of the income reported on the return of the taxpayer has been omitted, only the taxable portion of capital gains realized may be taken into account. *Maloy v. C.I.R.*, B.T.A.1941, 45 B.T.A. 1104.

Returns filed by trusts of which taxpayers were beneficiaries would be disregarded when determining amount of gross income omitted from taxpayers' individual returns, and thus, because amount of gross income omitted from individual returns exceeded 25% of gross income reported therein, 6-year period of limitations, rather than 3-year period, applied to deficiency assessment; individual returns did not make reference to or have attached to them returns of trusts, or disclose in any manner that taxpayers had any relationship with trusts, and thus, individual returns offered no "clue" as to existence, nature, or amount of omitted income. *Connell Business Co. v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 1194626, Unreported. Internal Revenue  4572

136. ---- Incorrect computations, determination of omissions from gross income

If taxpayer accurately fills in every blank space provided for his use in the income tax form and gives every "gross" or maximum figure called for but arrives at an incorrect computation of the tax only by reason of a difference between him and the Commissioner as to legal construction to be applied to a disclosed transaction, use of smaller figure than that ultimately found to be correct in one stage of the computation does not amount to an omission from "gross income" of difference between the correct and incorrect item and thereby extend the period of limitation from three to five years. *Davis v. Hightower*, C.A.5 (Ala.) 1956, 230 F.2d 549. Internal Revenue  4572

137. ---- Miscellaneous cases income omitted, determination of omissions from gross income

Statute of limitations for substantial omission of income applied to deficiency assessment of taxpayer by Com-

missioner of Internal Revenue where taxpayer failed to include in his gross income constructive dividends exceeding 200% of gross income actually reported on his return. *Pittman v. C.I.R.*, C.A.7 1996, 100 F.3d 1308. Internal Revenue  4568

Commissioner of Revenue met burden of establishing that, under applicable Oklahoma law, decedent retained "dominion and control" over checks throughout particular year and that checks therefore did not constitute gifts in that year but were instead properly includible in decedent's estate, for purposes of determining applicability of alternate six-year limitation period for initiating estate and gift tax deficiency assessments; decedent retained power to stop payment on checks and thereby defeat claims of noncharitable donees from time of checks' delivery until they were cashed in the following year. *Estate of Dillingham v. C.I.R.*, C.A.10 1990, 903 F.2d 760. Internal Revenue  4568

Taxpayer did not, by reporting face value of silver dollars as income, inform IRS of nature and amount of his income and, therefore, assessment of additional taxes based upon market value of silver dollars was not within exception to applicability of six-year limitations period, under which any amount that was sufficiently disclosed would not be taken into account in determining whether more than 25% was omitted from gross income on taxpayer's return, so that six-year, rather than three-year, statute of limitations applied. *Stoecklin v. C.I.R.*, C.A.11 1989, 865 F.2d 1221. Internal Revenue  5225

Six-year statute of limitations governing cases in which taxpayer has omitted from gross income an amount that is in excess of 25 percent of amount stated in the return [26 U.S.C.A. § 6501(e)(1)(A)] was applicable to assessment of deficiency whereby taxpayer omitted \$144,180 in gross income and taxpayer's total gross income was \$267,340.05. *Burbage v. C.I.R.*, C.A.4 1985, 774 F.2d 644. Internal Revenue  4546

Where taxpayer's understatement of gross income constituted more than 25% of gross income in year for which return was filed, the 6-year statutory limitation period was applicable. *Meyers v. C. I. R.*, C.A.3 1970, 435 F.2d 171, certiorari denied 91 S.Ct. 985, 401 U.S. 957, 28 L.Ed.2d 242. Internal Revenue  4572

This section providing six-year period in which a deficiency assessment might be made whenever there was an omission of more than 25% of gross income stated in return, was applicable to embezzler's taxable years 1954-56, inclusive, and assessments of deficiencies in April, 1961 to those years was not limited by three-year statute. *Geiger's Estate v. C.I.R.*, C.A.8 (Iowa) 1965, 352 F.2d 221, certiorari denied 86 S.Ct. 620, 382 U.S. 1012, 15 L.Ed.2d 527. Internal Revenue  4572

Five-year limitations period was applicable with respect to assessment of income taxes where taxpayer filed income tax returns showing gross income of about \$36,000 and omitted from his return an additional \$10,000 of gross income. *U.S. v. Shepard's Estate*, C.A.2 (N.Y.) 1963, 319 F.2d 699. Internal Revenue  4572

Where taxpayer reported gross income of \$8,473.70 and \$10,138.81 for the years 1946 and 1947 respectively, and omitted renewal commissions in the amount of \$24,581.38 and \$17,887.38 respectively, commissions omitted were more than 25% of the gross income reported, and five year statute of limitations was applicable to collection of deficiencies against widow rather than three year statute of limitations. *Latendresse v. C.I.R.*, C.A.7 1957, 243 F.2d 577, certiorari denied 78 S.Ct. 43, 355 U.S. 830, 2 L.Ed.2d 43. Internal Revenue  4886

Where although dividend on stock purchased by taxpayer who executed notes which were payable from dividends did not become unconditionally the taxpayer's until 1937, taxpayer claimed such dividend as his own in 1936, and 1936 dividend on stock was more than 25 per cent of taxpayer's 1936 gross income, deficiency assess-

ment against taxpayer for 1936 was governed by § 275(c) [I.R.C.1939 (now this section)], requiring deficiency to be assessed within five years and not three years provided for in subsection (a) of said section in cases where taxpayer omits from gross income an amount exceeding 25 per cent of amount of gross income stated in return. *De Guire v. Higgins*, C.C.A.2 (N.Y.) 1947, 159 F.2d 921, certiorari denied 67 S.Ct. 1752, 331 U.S. 858, 91 L.Ed. 1865. Internal Revenue  4568; Internal Revenue  4572

Where income tax returns, though showing total amounts of taxpayer's earnings, erroneously allocated 50 per cent. to wife on theory of community property notwithstanding separation agreement, and showed filing of separate returns in wife's name, returns omitted from gross income an amount in excess of 25 per cent. within Revenue Act 1936, § 275(a, c), permitting assessment within five rather than three years. *O'Bryan v. C.I.R.*, C.C.A. 9 1945, 148 F.2d 456. Internal Revenue  4572

Where divorced wife omitted from her gross income an amount which was in excess of 25 per cent. of amount of gross income stated in return for 1935 and 1936, deficiencies for such years were governed by five-year limitation, notwithstanding that wife attached schedules to her returns stating that she had received certain amounts as trust income in lieu of alimony but that such amount was taxable to husband. *Ketcham v. Commissioner of Internal Revenue*, C.C.A. 2 1944, 142 F.2d 996. Internal Revenue  4568

Where taxpayer, in computing taxable gain realized on sale of property, listed an excessive amount as his cost equal to amount realized from sale, taxpayer "omitted" from his gross income for years involved an amount properly includible therein, and, where such amount was in excess of 25 per cent. of amount of gross income stated in return, bar of five-year limitation period against assessment of deficiencies was removed. *Reis v. Commissioner of Internal Revenue*, C.C.A. 6 1944, 142 F.2d 900. Internal Revenue  4572

Where H died domiciled in Philippines in 1977; under Philippine law, relationship between husband and wife is classified as "conjugal partnership," concept substantially similar to relationship under community property laws of State of Washington; and his estate, which was probated in Utah, received and reported as income remaining three of five installment payments owed to "partnership"; and notice of deficiency for petitioner's taxable year 1978 was mailed Sept. 11, 1984, Court determined (1) petitioner W was taxable on one-half of installment payments received by H's estate, since, on H's death, W became sole owner of one-half of all community income received by H's estate; and (2) deficiency notice for 1978 was timely mailed under subsec. (e)(1)(A) of this section, since inclusion of one-half of installment payments in W's income meant she omitted amount exceeding 25 percent of gross income stated in return, so that 6-year limitations period applied. *Grimm (Maxine T.) v. Commissioner of Internal Revenue*, U.S.Tax Ct.1987, 89 T.C. 747, affirmed 894 F.2d 1165.

Six-year statute of limitations applied to assessment of income tax deficiency against debtor-taxpayer, given evidence that sales proceeds omitted from debtor's income tax return amounted to more than 25% of gross income stated on return. *In re Cluck*, W.D.Tex.1993, 165 B.R. 1005, affirmed 20 F.3d 1170. Internal Revenue  4568

Period of limitations for assessment of taxpayer's federal income taxes was six years, rather than three years, where he underreported his income by more than 25% of amount of gross income stated on his return. *Namyst v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2601545, Unreported, affirmed 435 F.3d 910. Internal Revenue  4572

Six-year, rather than three-year, statute of limitations applied to assessment of deficiencies, as taxpayers omitted from gross income amount properly includable that was in excess of 25% of gross income reported on return; although taxpayers' returns listed one trust as source of income, returns contained absolutely no reference to

second trust, omitted income from which exceeded 25% of gross income taxpayers reported. *Gouveia v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 2526251, Unreported. Internal Revenue  4572

Extended "substantial omission of income" six-year limitations period did not apply to IRS's assessment of deficiencies against limited partners arising from overstatement of partnership's basis in oil and gas properties and consequent understatement of income from sale of those properties; "omission" referred to something left out entirely, not to something put in and overstated, regardless of whether issue arose in context of goods and services, or real property. *Bakersfield Energy Partners, LP v. C.I.R.*, U.S.Tax Ct.2007, 128 T.C. 207, 2007 WL 1712543, Unreported. Internal Revenue  4568

138. ---- Miscellaneous cases income not omitted, determination of omissions from gross income

Where donee's gain on sale of gift stock was \$26,279, and gain reported was \$24,974, underpayment did not approach 25% of gross income, and deficiency assessment was subject to statute of limitations applicable in cases where underpayment does not amount to 25% of gross income. *Owen v. U. S.*, D.C.Neb.1955, 134 F.Supp. 31, appeal dismissed 232 F.2d 893, appeal dismissed 232 F.2d 894, modified on other grounds 234 F.2d 760. Internal Revenue  4572

H as trustee of irrevocable trust set up for W and children in divorce settlement was not estopped to give 10% step-up in basis to X and Y stock held by trust so as to reflect gain he thought was realized on 1955 transfer of X and Y stock to trust, in determining long-term capital gain to extent value of Z divestiture stock received in 1952-64 exceeded basis of X and Y stock, because he failed to report gain and pay tax on part sale to W by such transfer of appreciated stock now barred by limitations, since H as trustee could not be estopped by virtue of acts performed in individual capacity, but H was required to reduce increase in basis to reflect that part of transfer which was gift to children, computation of which showed value of Z stock was less than basis of X and Y stock so no gain was realized; accordingly, H as trustee did not omit over 25% gross income of trust reported for 1962 and applicable 3-year limitation barred assessment of any income tax due for 1962. *Spruance v. Commissioner of Internal Revenue*, U.S.Tax Ct.1973, 60 T.C. 141, affirmed 505 F.2d 731.

Deficiency for year ending June 30, 1961, as to principal family-controlled corporation was barred by limitations, 6-year period under subsec. (e) (1) of this section being inapplicable, since Commissioner failed to show amount of omitted gross income resulting from his proper allocation herein of 5 foreign sales corporations' net income to that of principal corporation to meet burden of proving there was requisite 25% omission, Tax Court noting that total gross income reported on 5 corporations' returns for taxable years ending in 1961 was about 21% of principal corporation's reported gross income. *Philipp Brothers Chemicals, Inc. v. Commissioner of Internal Revenue*, Tax Ct.1969, 52 T.C. 240, acq. ,, affirmed 435 F.2d 53.

There was no omission from transferor corporations' returns of specific income amounting to over 25% of gross income to extend limitations period from 3 to 5 years and make deficiency notices timely under section 275(c) [I.R.C.1939], but only understatement of total receipts from house sales, representing difference between amount of reported gross sales to stockholder-transferees and amount of their sales to public which Commissioner determined was taxable to corporations, so that assessment and collection of deficiencies from stockholder-transferees was barred. *Lesser v. C. I. R.*, Tax Ct.1967, 47 T.C. 564, acq. ,.

Where it was determined that individual taxpayers did not receive dividend as result of corporate taxpayer's assumption of their liability on certain notes, there was no omission of an amount exceeding 25 per cent of gross income reported on their returns; and consents executed more than 3, but less than 5, years after returns were

filed were ineffective to extend the period within which taxes could be assessed and collected. *Estate of Suter v. C. I. R.*, Tax Ct.1957, 29 T.C. 244, acq. ..

139. Disclosure of omitted income in return, omissions from gross income

Partnership return, when read with individual general partners' income tax return, did not adequately disclose gross income in excess of 25% of gross income stated in returns and, thus, tax could be assessed within six years after returns were filed; partnership return did not report any real estate assets and partners' individual return did not disclose any distributions to them with respect to partnership's payments for cost of constructing house on real property owned by partners. *White v. C.I.R.*, C.A.10 1993, 991 F.2d 657. Internal Revenue  4572

Taxpayer's failure to disclose on its return its capital gain income which constituted more than twenty-five percent of its income in taxable years in question rendered six-year statute of limitations applicable even though return which had been filed on forms provided for insurance companies had clue that taxpayer was acting as insurance company. *Cardinal Life Ins. Co. v. U. S.*, C.A.5 (Tex.) 1970, 425 F.2d 1328. Internal Revenue  4540

Where balance sheet attached to subchapter "S" corporation's return disclosed that beginning balance of undistributed income account was same as amount of distribution to stockholders during fiscal year, and that ending balance was same as taxable income reported for that year, Commissioner was given an adequate clue that there had been a distribution of shareholder's undistributed taxable income, and accordingly, attempted additional assessments by the Commissioner against the stockholders some five years later were barred by three-year statute of limitations, rather than being timely under six-year statute of limitations. *Benderoff v. U.S.*, C.A.8 (Iowa) 1968, 398 F.2d 132. Internal Revenue  4572

Reporting of final payment on an installment sale, 84% of which was gain and thus taxable during calendar year, as a sale of stock that had been acquired by fiduciary and sold at its basis in hands of fiduciary was not adequate to apprise the secretary of the nature and amount of such item so that there was an "omission of an amount" properly includable in the return and six-year statute of limitations on assessment of taxes was applicable since amount was in excess of 25% of gross income stated. *Phinney v. Chambers*, C.A.5 (Tex.) 1968, 392 F.2d 680, certiorari denied 88 S.Ct. 1848, 391 U.S. 935, 20 L.Ed.2d 854. Internal Revenue  4568

Where taxpayer had made such a disclosure of his gross income on his return as would arrest the attention of the Internal Revenue Service upon examination of return, but had not included the amount involved as taxable, Collector of Internal Revenue was subject to the ordinary three-year limitation on deficiency claims, rather than the special five-year limitation. *Lawrence v. C.I.R.*, C.A.9 1958, 258 F.2d 562. Internal Revenue  4572

Where income tax forms for years involved did not have places where the sums, which were claimed by taxpayer to be capital gains rather than ordinary income, could be listed as "gross income" unless taxpayer dropped his claim that the sums constituted capital gains, and such sums were accurately stated in the returns, three year, rather than five year, statute of limitations applied, and, therefore, additional tax assessment made more than three, but less than five, years after the returns were filed was barred. *Davis v. Hightower*, C.A.5 (Ala.) 1956, 230 F.2d 549. Internal Revenue  4572

A tax return, disclosing full amount of income during overseas service with American Red Cross, though erroneously claiming that such income was exempt from taxation, did not "omit" from gross income any amount properly includible therein within § 275(c) [I.R.C.1939 (now this section)], permitting assessment or commencement of proceedings for collection of tax on such omitted income within five years, and claim for unpaid

tax on such income was subject to three-year statute of limitations. *Slaff v. C.I.R.*, C.A.9 1955, 220 F.2d 65. Internal Revenue  4572

Where gross income for taxable years 1937 to 1941 of trustee was increased by an amount in excess of 25 per cent. resulting from disallowance of deductions from gross income for expenses of administering testamentary trust consisting in large part of government bonds wholly exempt from taxation, the deficiencies for such years were governed by five-year and not three-year statute of limitations, notwithstanding that trustee in its return set out entire trust income and deductions claimed. *Corrigan v. C.I.R.*, C.C.A. 6 1946, 155 F.2d 164. Internal Revenue  4572

Where schedules "L" and "M" of taxpayer's return provided a sufficient clue for the Commissioner to have realized that taxpayer was operating on an accrual basis, and that the return should have been filed on that basis, rather than a cash basis, and such error was apparent upon examination of the return, this section providing for assessment of deficiencies on account of omissions from gross income was not applicable. *Russell F. Davis, Inc. v. U.S.*, N.D.Ind.1959, 170 F.Supp. 185. Internal Revenue  4568

Where taxpayers could not have made any plainer disclosure on income tax return of alleged capital gains, which the government contended were not capital gains, than taxpayers did make, without putting them directly in income column and paying taxes on them, the government was not entitled to rely on provision of § 275(a, c) [I.R.C.1939 (now this section)], that if taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of amount of gross income stated in return, tax may have been assessed at any time within five years after return was filed. *Lazarus v. U.S.*, Ct.Cl.1956, 142 F.Supp. 897, 136 Ct.Cl. 283. Internal Revenue  4572

Section of the Internal Revenue Code extending period in which the Internal Revenue Service (IRS) may make assessments on partnership items if the partnership "omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return," was not applicable to partnership's overstatement of its basis which resulted in a claimed loss, as item was not omitted from face of return. *Grapevine Imports, Ltd. v. U.S.*, Fed.Cl.2007, 77 Fed.Cl. 505. Internal Revenue  4568

Partnership which made a substantial omission of gross income in partnership return due to overstatement of basis of ranch sold by partnership could not invoke safe harbor of adequate disclosure provision precluding application of extended six-year statute of limitations for assessment of partnership items if amount omitted is disclosed in return in a manner adequate to apprise the Internal Revenue Service (IRS), as the return gave no clue that partnership's calculation of a stepped-up ranch basis resulted from the transfer of proceeds of a Treasury note short-sale transaction to the partnership. *Salman Ranch Ltd. v. U.S.*, Fed.Cl.2007, 79 Fed.Cl. 189, amended 2007 WL 4707751, appeal granted 2008 WL 907515. Internal Revenue  4572

Where, in 1976, decedent was certified public accountant, chief accountant, and financial executive for corporation X, which conducted business in facilities owned by corporation Y; Y owned 80 percent of outstanding stock of X, while decedent and another individual each owned 10 percent of X common stock; decedent entered into agreements with trustee company, whereby Y purchased, for combination of land and cash, stock of X; but no appraisal of land was made until after decedent's death, Court determined that disclosure in decedent's 1976 income tax return was insufficient to invoke exception to 6-year statute of limitations, under subsec. (e)(1)(A)(ii) of this section, since statement of transaction was misleading, and failed to show redemption via payment to stockholder, or transfer of real property, so that deficiency notice was timely, and petitioners' motion for partial

summary judgment was accordingly denied. *Estate of Fry (William F.L.), Dauphin Deposit Bank & Trust Company, Fry (Grace H.) v. Commissioner of Internal Revenue*, U.S.Tax Ct.1987, 88 T.C. 1020.

Misleading disclosures in subchapter S corporation's information return concerning receipts from subchapter C corporation, which taxpayer also acted on behalf of, failed to satisfy "adequate to apprise" exception to enhanced limitations period for assessment based on substantial underreporting of gross income; return failed to disclose, e.g., source of royalties received, specifics as to payments for engineering services, and fact that rental payments exceeded subchapter C corporation's contractual obligation. *Benson v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 770577, Unreported. Internal Revenue  4572

140. Intent, omissions from gross income

The mere appearance of total amount of gross income somewhere on face of tax return does not prevent an omission from gross income within Revenue Act 1936, § 275(c), permitting assessment within five rather than three years, nor will care and good faith on part of taxpayer prevent applicability of said subsection. *O'Bryan v. C.I.R.*, C.C.A. 9 1945, 148 F.2d 456. Internal Revenue  4572

In enacting Revenue Act 1936, § 275(c), providing for assessment of tax at any time within five years after filing of return where taxpayer "omits" from gross income an amount properly includable therein which is in excess of 25 per cent. of the amount stated in return, it was not the intention of Congress to qualify the word "omit" so as to apply only to negligent omission, but to fix a longer period of limitation regardless of taxpayer's intention where sum omitted was 25 per cent. or more. *Meurer Steel Barrel Co. v. Commissioner of Internal Revenue*, C.C.A. 3 1944, 144 F.2d 282, certiorari denied 65 S.Ct. 864, 324 U.S. 860, 89 L.Ed. 1417, rehearing denied 65 S.Ct. 1182, 325 U.S. 892, 89 L.Ed. 2004. See, also, *Ewald v. C.I.R.*, C.A.6, 1944, 141 F.2d 750. Internal Revenue  4572

In determining whether executor was precluded from taking credit for paying a supplemental federal estate tax on ground that prior to filing the supplemental return the federal statute of limitations had run, the omission from original tax return of testatrix' vested remainder interest in a trust must be presumed to have been with no intent to defraud or evade a tax so as to preclude operation of the statute of limitations. *In re Phelps' Will*, N.Y.Sur.1966, 285 N.Y.S.2d 194, 55 Misc.2d 290, affirmed 286 N.Y.S.2d 224, 28 A.D.2d 1206, appeal denied 235 N.E.2d 926, 288 N.Y.S.2d 1026, 21 N.Y.2d 644. *Executors And Administrators*  506(1)

Despite taxpayer's laxity and inattention to administration of his construction business, he did not intend to evade tax by conduct intended to conceal, mislead, or prevent collection of tax, as would allow tax to be assessed at any time, by under-reporting his income, since his forte was the operation of construction business, he was young and inexperienced, he relied exclusively on his father for business administration, including tax reporting, he perfunctorily signed documents, including tax returns, that his father prepared, and he did not collaborate or collude with his father to defraud the government; unusual circumstances of taxpayer's inexperience, immaturity, and reliance on his father made his position plausible, tax returns were some of the first he filed, and it was his first self-employment business experience. *Christians v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21000920, Unreported. Internal Revenue  4625

141. Mistaken omissions, omissions from gross income

The mistaken omission by taxpayer from income of an amount properly includible does not nullify the statute of limitations on assessment and collection of income taxes. *C.I.R. v. Frame*, C.A.3 1952, 195 F.2d 166. See, also,

26 U.S.C.A. § 6501
I.R.C. § 6501

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Clifton Mfg. Co. v. C.I.R., C.A.4, 1943, 137 F.2d 290. Internal Revenue  4572

The mistaken omission from reported income of amount properly includible does not nullify limitations on assessment and collection of income taxes, and Commissioner may not circumvent limitations barring government's claim simply because otherwise income will escape taxation. C.I.R. v. Mnookin's Estate, C.A.8 1950, 184 F.2d 89. Internal Revenue  4572

Where taxpayer reported a loss from the sale of a lease and took a deduction through an innocent mistake of law, but, instead, the sale resulted in a profit in an amount in excess of 25 percent of the gross income reported in the return, and respondent's determination that a gain was realized and that there were resulting deficiencies in income and excess profits taxes was made after three years from the date the return was filed but within five years. Revenue Act 1934, § 275(c), was applicable and there is no bar of the statute of limitations against the deficiencies. American Liberty Oil Co. v. C. I. R., Tax Ct.1942, 1 T.C. 386.

142. Partnerships, omissions from gross income

Period for assessing deficiency related to partnership items was controlled by general period of limitations for assessing and collecting any tax imposed by Internal Revenue Code; statute setting forth a minimum period for assessing any income tax with respect to any person attributable to any partnership item or affected item was not independent limitations period for partnership items. Andantech L.L.C. v. C.I.R., C.A.D.C.2003, 331 F.3d 972, 356 U.S.App.D.C. 387, rehearing and rehearing en banc denied. Internal Revenue  4568

Whether income tax assessments were time barred was subject to de novo review. Wolf v. C.I.R., C.A.9 1993, 4 F.3d 709. Internal Revenue  4705

Statute of limitations for assessing additional tax against individual partner based on adjustments to partnership items was to be measured from date that income tax return of individual partner was filed, not from date that partnership return was filed. Siben v. C.I.R., C.A.2 1991, 930 F.2d 1034, certiorari denied 112 S.Ct. 429, 502 U.S. 963, 116 L.Ed.2d 449. Internal Revenue  4570

“Gross receipts” provision providing exception to definition of “gross income” in section of the Internal Revenue Code extending limitations period for assessment of partnership items to six years if taxpayer omits gross income in excess of 25 percent of gross income stated in return was not applicable to partnership's sale of ranch, as such sale did not qualify as the sale of goods or services by a trade or business. Salman Ranch Ltd. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 189, amended 2007 WL 4707751, appeal granted 2008 WL 907515. Internal Revenue  4572

Genuine issue of material fact as to whether a critical item of income was omitted from 1999 partnership and individual joint return of partners precluded summary judgment on issue of whether statute of limitations had run on 1999 individual partnership assessments. Grapevine Imports, Ltd. v. U.S., Fed.Cl.2006, 71 Fed.Cl. 324. Federal Courts  1120

Where petitioners claimed medical expense deduction and derivative share of loss from limited partnership A, for 1983; Commissioner disallowed partnership loss in notice of deficiency that was untimely, and Court entered decision that petitioners were not liable for 1983 income tax deficiency; petitioners, notice partners, did not receive timely notice of audit of A, and Court decision disallowing A's research and development deduction, for 1983, had become final when petitioners learned of it; petitioners did not elect to have Court's decision in part-

nership proceeding apply to them; and Commissioner issued second deficiency notice, disallowing petitioners' 1983 claimed loss from A and medical deduction, Court determined partnership loss deduction was improperly included in first deficiency notice, and general limitations of this section did not bar assessment of tax, since more specific partnership limitation provisions applied. *Boyd v. C.I.R.*, U.S.Tax Ct.1993, 101 T.C. 365, Unreported.

Taxpayers in community property state were not in fact partners in an enterprise but, at revenue agent's suggestion filed partnership returns to facilitate reporting community income. In computing omissions from gross income for purposes of § 275(c) [I.R.C.1939 (now this section)], invalid partnership return must be read as adjunct of individual returns. *Rose v. C.I.R.*, Tax Ct.1955, 24 T.C. 755, acq. .

Taxpayer acted fraudulently in underpaying income related to partnership, for purposes of statute prescribing a three-year period within which the Internal Revenue Service (IRS) may assess taxes attributable to a partnership item. *Graham v. C.I.R.*, C.A.9 2007, 257 Fed.Appx. 4, 2007 WL 3332753, Unreported. Internal Revenue  4572

Six year limitations period applied, where taxpayer partnership failed to provide enough information to allow an examining agent to reasonably identify its underreporting of gain on sale of its interest in twelve other partnerships, which included assumption of liabilities by buyers; disclosures on tax return had to be more directly related to omitted income than taxpayer's disclosure that sale of partnership interests had occurred with taxpayer using stated amount realized in reporting its gain. *CC & F Western Operations Ltd. Partnership v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1276708, Unreported, affirmed 273 F.3d 402. Internal Revenue  4572

Assuming inadequate disclosure of taxpayer's alleged omission of income, the period of limitations for assessment of any tax with respect to taxpayer would be six years rather than three years, and period would be suspended when final partnership administrative adjustment (FPAA) was issued to taxpayer/partner and during pendency of litigation in Tax Court. *Rhone-Poulenc Surfactants and Specialties, L.P. v. C.I.R.*, U.S.Tax Ct.2000, 114 T.C. 533, 2000 WL 863142, Unreported, appeal dismissed and remanded 249 F.3d 175. Internal Revenue  4572

143. Time of determination, omissions from gross income

In determining whether deficiency notice was timely filed against taxpayer, five-year statute of limitations applied rather than three-year statute if taxpayer understated his income by more than 25 per cent, but such fact could not be known until amount of asserted deficiency was agreed upon, or, if contested, finally redetermined by Tax Court, and if there had been an understatement of income of more than 25 per cent the five-year statute applied whatever might have been taxpayer's state of mind when he executed return or state consented to extension of period of limitations. *Gasper v. C.I.R.*, C.A.6 1955, 225 F.2d 284, on remand. Internal Revenue  4572

Where petitioners filed 1986 income tax return on Apr. 15, 1987, without including in income amount merged from qualified employee pension plan (plan 2) into unqualified plan (plan 1) whose assets were distributed to petitioners in 1987; on Mar. 31, 1993, Commissioner mailed deficiency notice for 1986; in earlier litigation for 1987, Commissioner had conceded on brief, without review or analysis, that 1987 taxable distribution had to be reduced by contributions to pension plan made on petitioners' behalf, for 1985 or 1986, including amount merged into plan 1 from plan 2; and, in present case, Commissioner conceded 1987 distribution of merged amount was not taxable in 1986, unless judicial estoppel doctrine applied, Court determined (1) petitioners'

share of merged amount was not taxable in 1986 merger year; (2) required elements of judicial estoppel were not present to estop petitioners from denying taxability of merged amount in 1986, since Court had not been misled or whipsawed by petitioners, and any revenue loss was caused by Commissioner's erroneous concession in earlier case; furthermore, (3) Commissioner failed to meet burden of showing 6-year limitations period applied, instead of 3-year period, because of concession that merged amount was properly includable in 1987, year of distribution. *Fazi v. C.I.R.*, U.S.Tax Ct.1995, 105 T.C. 436, Unreported.

Where, in Apr. 15, 1991, notice of deficiency, Commissioner determined deficiencies in petitioner's 1984 income tax, attributable to omission of gross income arising from transactions with corporation X; petition alleged notice was untimely under 3-year period of limitations prescribed in this section; Commissioner's answer alleged 6-year period of this section applied, because more than 25 percent of gross income was omitted from petitioner's 1984 return; Commissioner successfully moved to amend answer out of time to assert increased deficiency attributable to disallowed depreciation deductions; and petitioners filed motion for partial summary judgment, arguing that 3-year limitations period barred Commissioner from seeking increased deficiency and additions to tax raised in amendment to answer, Court determined increased deficiency attributable to disallowed deduction could be assessed pursuant to 6-year limitations period, so long as Commissioner could otherwise establish substantial omission from gross income, since applicable legislative history showed Congress intended extended period of limitations under predecessor of this section to apply broadly in same general matter as in case of fraudulent return; consequently, Court denied petitioner's motion for partial summary judgment. *Colestock v. C.I.R.*, U.S.Tax Ct.1994, 102 T.C. 380, Unreported.

Where petitioners were disqualified persons who borrowed money from their employer's qualified profit-sharing plan, and petitioners moved to dismiss for lack of jurisdiction on grounds that excise tax assessments attributable to prohibited loan transactions were barred by 3-year period of limitations, and Commissioner contended that 6-year period of limitations applied, Court determined 6-year period applied, since failure to disclose, on return, prohibited transactions giving rise to excise taxes exceeding 25 percent of excise taxes attributable to disclosed transactions was tantamount to omitting excise taxes attributable to that transaction, and Court denied motion to dismiss. *Thoburn v. C. I. R.*, U.S.Tax Ct.1990, 95 T.C. 132.

For purposes of enhanced limitations period for assessment based on substantial underreporting of gross income, IRS was not required to examine income tax returns of subchapter C corporation, which taxpayer controlled, in order to determine whether taxpayer had disclosed items of gross income, so as to fall within "adequate to apprise" exception. *Benson v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 770577, Unreported. Internal Revenue  4572

Understatements of income on tax returns for certain years were due to fraud, and thus collection of such taxes was not subject to any statute of limitations; taxpayer took possession of his business's cash receipts for his own personal use with intent to evade taxes on that income. *Jondahl v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 675444, Unreported. Internal Revenue  4572

Six-year period for IRS to assess omitted income applied, where taxpayers received in excess of 25 percent of amount of gross income stated in return. *Basile v. C.I.R.*, U.S.Tax Ct.2005, 2005 WL 615685, Unreported. Internal Revenue  4568

Taxpayer's tax liability could be assessed at any time, due to his felony conviction for fraud and false statements on tax returns, statements, or other documents. *Peyton v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 21205250, Unre-

ported. Internal Revenue  4572

Six-year period to assess tax applied, since taxpayer omitted more than 25% of his gross income; “gross income” for purposes of limitations period included amounts received or accrued from sale of goods or services, without considering cost of those sales or services. *Shaw v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 1903446, Unreported. Internal Revenue  4572

Period for assessment had not expired for taxable years, since six-year period for assessment applied where omitted income was in excess of 25% of reported gross income for each taxable year. *Williams v. C.I.R.*, U.S.Tax Ct.2003, 2003 WL 1823356, Unreported, affirmed 120 Fed.Appx. 289, 2005 WL 165444. Internal Revenue  4572

144. Subsequent correct returns, omissions from gross income

Omission of over 25% of 1953 gross income in original 1953 return, timely filed by petitioner's wife with his authorization, invoked 5-year period of limitations, notwithstanding his presence in combat zone permitted him to postpone filing and he filed later return within 180 days of cessation of hostilities and included omitted income. *Houston v. C.I.R.*, Tax Ct.1962, 38 T.C. 486.

Where taxpayers filed original returns for the calendar year 1945 which omitted more than 25 per cent of their gross income and fifteen months later they filed amended returns which purported to correct, in part, the original omission so as to reduce it below 25 per cent, Commissioner did not err in asserting the deficiency under § 275(c) [I.R.C.1939 (now this section)]. *Goldring v. C.I.R.*, Tax Ct.1953, 20 T.C. 79.

Amended returns do not correct omission of income from original return, for purposes of enhanced limitations period for assessment based on substantial underreporting of gross income. *Benson v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 770577, Unreported. Internal Revenue  4572

V. EXTENSION BY AGREEMENT

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171. Extension by agreement generally

Statutory provision for taxpayers' waivers which, if accepted by Commissioner, extend time within which Commissioner may assess taxes was designed solely for benefit of Commissioner. *Walsonavich v. U.S.*, C.A.3 (Pa.) 1964, 335 F.2d 96. Internal Revenue  4575

If taxpayer wishes to avoid immediate payment of tax assessment, he may simply agree to prolong limitations period, and if he chooses to keep limitations period running, he can do so and thereby force government to seek recovery out of his exempt or after-acquired property. *U.S. v. Tomasello*, W.D.N.Y.1983, 569 F.Supp. 1. Internal Revenue  4575; Internal Revenue  4589.1

Purpose of allowing extension of time to collect taxes by federal government is to enable taxpayer to seek compromises or agreements to make the necessary payments and an extension of the time to collect taxes constitutes an extension of the lien on those taxes. *U.S. v. Herman*, E.D.N.Y.1960, 186 F.Supp. 98. Internal Revenue  4793

Since purpose of a waiver in connection with an offer in compromise is to enable Government to consider offer without suffering prejudice because of running of statute of limitations against collection of income tax while offer is being considered, courts should generally give effect to intention of taxpayer and of Government, and where successive waivers have been given to toll the statute, the parties are deemed to have intended that the suspension of the statute should extend over the entire period covered by the waivers. *U.S. v. Wilson*, D.C.N.J.1960, 182 F.Supp. 567. Internal Revenue  4900

Definite and unambiguous statements made by a taxpayer in a written waiver of statute of limitations must be given effect where made for the purpose of affording the taxpayer opportunity for favorable action on his claim for credit on his tax. *U.S. v. Bank of Commerce & Trust Co.*, W.D.Tenn.1940, 32 F.Supp. 942, affirmed 124 F.2d 187. Internal Revenue  4898

172. Construction, extension by agreement--Generally

Agreement between taxpayer and Internal Revenue Service which explicitly allowed for assessment after normal statutory period was broad enough to incorporate either the concept of extension or waiver of statute of limita-

tions. *Centennial Sav. Bank FSB v. U.S.*, C.A.5 (Tex.) 1989, 887 F.2d 595, rehearing denied 894 F.2d 1335, certiorari granted 111 S.Ct. 40, 498 U.S. 808, 112 L.Ed.2d 17, affirmed in part, reversed in part on other grounds 111 S.Ct. 1512, 499 U.S. 573, 113 L.Ed.2d 608, concurring and dissenting opinions 111 S.Ct. 1519, 113 L.Ed.2d 589, on remand 933 F.2d 1285. Internal Revenue  4581

Typewritten statement in offer for compromise of claim for federal estate taxes that taxpayer did not waive defense of statute of limitations did not conflict with printed language that taxpayer agreed to suspension of running of statute of limitations on assessment and/or collection, so that the suspension remained in effect and the waiver was not in effect. *U. S. v. Harris Trust and Sav. Bank*, C.A.7 (Ill.) 1968, 390 F.2d 285. Internal Revenue  4581; Internal Revenue  4896

District court would not interpret phrase "it is decided" in taxpayer's conditional waiver of statute of limitations defense, which government drafted and which stated that taxpayer's case was subject to reopening at request of Department of Justice in event refund litigation was initiated and "it is decided" to interplead potentially responsible persons, to mean only that government had to reach decision and not that government had to succeed in adding party to refund action. *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Internal Revenue  4589.1

Where parties executed Form 872-A consent, extending time for assessment respecting petitioners' 1978 taxable year; consent was intended to apply only to assessments arising out of petitioners' investment in specific subch. S corporation; and restrictive language in agreement referred to completely unrelated corporation, which was not basis of Commissioner's deficiency notice, Court determined Form 872-A was not ambiguous; parties' written agreement mistakenly failed to express their mutual intent; and this section did not bar assessment, since principle of reformation applied to reform parties' written agreement to reflect their intent. *Woods v. C.I.R.*, U.S.Tax Ct.1989, 92 T.C. 776.

173. ---- Forms, construction, extension by agreement

Language of Internal Revenue Service (IRS) form by which defendant agreed to waive limitations, subject to proviso that government could only reopen his case by filing interpleader action, was not effective to remove limitations bar to IRS action against defendant for willful failure to pay employer's withholding obligations, despite claim that IRS meant to condition reopening case on its decision to "implead" defendant in future refund litigation, rather than to "interplead" him. *U.S. v. Hodgekins*, C.A.7 (Ind.) 1994, 28 F.3d 610. Internal Revenue  4589.1

Fact that Internal Revenue Service (IRS) form, conditioning taxpayer's waiver of his statute of limitations defense on situation in which someone else filed refund action and government interpleaded potentially responsible parties into that action, was not executed by government, as was accompanying form regarding waiver, did not render condition of waiver inapplicable; both forms were executed by taxpayer, and government and taxpayer clearly agreed to waiver and manifested mutual assent to conditions in form not executed by government, which were reiterated in IRS letter to taxpayer. *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Internal Revenue  4586.1

Notice of income tax deficiency specifically referring to three prior tax years did not invoke termination clause of Form 872-A, special consent to extend time to assess tax, for subject tax year not listed in notice of deficiency, though deficiency resulted from adjustments to net operating loss in subject tax year. *Mulder v. U.S.*, Fed.Cl.1996, 37 Fed.Cl. 60, affirmed 132 F.3d 52. Internal Revenue  4591

Where petitioners had executed Forms 872-A, indefinitely extending period to assess income taxes for 1975-77 and 1980; petitioners executed Form 906 closing agreement, relating to interest in tax shelter limited partnership, and providing that any amount of tax “may be assessed * * * on or before the expiration of the one year * * * period” following finality of decision in test case involving tax shelter, “notwithstanding the expiration of any period of limitation on assessment” under this section; and more than 1 year after decision in test case became final, petitioners filed Form 872-T for each year terminating indefinite extensions, and notices of deficiency were issued, but notices were sent less than 90 days after petitioners' Forms 872-T were submitted, Court determined Form 872-A indefinite extensions were not terminated by closing agreement, and period of limitation had not expired to bar assessment, since closing agreement language permitted assessment for 1 year after decision in test case, regardless of whether period of limitation had otherwise expired, but agreement did not limit Commissioner to assessing solely during that year. *Silverman v. C.I.R.*, U.S.Tax Ct.1995, 105 T.C. 157, Unreported, affirmed 86 F.3d 260.

174. Nature of agreement, extension by agreement

Waiver is not contract, though requiring Commissioner's signature. *Stange v. U.S.*, U.S.1931, 51 S.Ct. 145, 282 U.S. 270, 75 L.Ed. 335.

Consent to extend three-year statute of limitations for assessing tax deficiency is essentially a voluntary, unilateral waiver of a defense by the taxpayer and not a contract; however, because both taxpayer and Commissioner of Internal Revenue must consent in writing to the extension, contract principles are useful in assessing mutual assent. *Feldman v. C.I.R.*, C.A.11 1994, 20 F.3d 1128. Internal Revenue  4589.1

Section 276 [I.R.C.1939], requiring a written agreement extending the time within which federal income taxes may be collected, is for administrative purposes, and not to convert into a contract what is essentially a voluntary unilateral waiver of a defense by the taxpayer, and, in construing such waivers, the intention of the parties is an important factor. *Shambaugh v. Scofield*, C.C.A.5 (Tex.) 1942, 132 F.2d 345. Internal Revenue  5037

Waiver, signed by taxpayer and representative of Commissioner of Internal Revenue, and extending time for collection of income tax, is not contract. *Lorain Journal Co. v. U.S.*, N.D.Ohio 1962, 201 F.Supp. 752. Internal Revenue  4898

While taxpayer's “waiver” of limitations regarding collection of income tax is not a “contract” but essentially a voluntary, unilateral waiver of a defense, rules applicable to contracts apply. *U.S. v. Wigmore*, S.D.Cal.1943, 48 F.Supp. 250. Internal Revenue  4898

175. Agreements constituting extensions, extension by agreement

Statute of limitations for 1976 tax year against which alleged tax deficiency was assessed remained open at time of commissioner's motion to amend his answer to assert increased deficiency resulting from subsequent disallowance of loss carryback from 1979 tax year, pursuant to agreement between taxpayer and tax commissioner to extend indefinitely statutory period of limitations for 1976 relating to adjustments to distributor shares from taxpayer's partnership. *Smith v. C.I.R.*, C.A.8 1991, 925 F.2d 250. Internal Revenue  4591

Notation on taxpayer's computer record “ASED-093082,” was sufficient record to establish that taxpayer had consented to extension of statute of limitation periods for tax year in question; entry had been sufficiently explained by nonhearsay affidavit of records custodian. *U.S. v. Morgan*, E.D.Mich.1991, 781 F.Supp. 1219. Intern-

al Revenue  4582

Action granting taxpayer an extension of time for filing his 1961 return was not an “agreement” under this section providing that any tax imposed shall be assessed within three years after tax becomes due unless extended by agreement, and thus such extension was not effective to extend the ordinary 40-month period for refund of carry-back claims. *Stevens v. U.S.*, S.D.Ohio 1967, 274 F.Supp. 280. Internal Revenue  4578; Internal Revenue  4960

Taxpayer's stipulation with government that taxpayer waived restrictions on assessment and collection of income tax deficiencies and penalties plus interest was not, standing alone, a waiver of the statute of limitations. *U.S. v. Gunn*, W.D.Ark.1960, 182 F.Supp. 623, affirmed 283 F.2d 358. Internal Revenue  4896

An income taxpayer's offer in compromise agreeing to “suspension of running of statutory period of limitations” on making of assessment in respect of any deficiency and collection thereof was not an agreement for suspension of expiration date of period of limitations only, but an agreement that limitation period should be arrested during time of suspension. *U.S. v. Markowitz*, N.D.Cal.1940, 34 F.Supp. 827. Internal Revenue  4589.1; Internal Revenue  4898

Income tax assessments for the 1978 and 1979 years were proper, even though the assessments were made beyond the applicable limitations period for 1978 and 1979 assessments, where the assessments were due to carry-back deductions earned in 1980, 1981 and 1982, and the taxpayers had signed agreements to extend the time for assessing taxes for the years 1980 through 1982. *In re Youngcourt*, M.D.Fla.1990, 117 B.R. 689. Internal Revenue  4591

Form 872-A signed by parties was unconditional and unrestricted, such that assessment period remained open, since cover letter from taxpayer's representative did not place conditions on form, and contained no statements which altered language of extension form; no reference was made to extension being contingent on acceptance of settlement offer. *Becker Holding Corp. v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 435056, Unreported. Internal Revenue  4591

Assessment periods of limitations for tax years were open at time IRS mailed notice of deficiency to taxpayers, since taxpayers signed Form 872 on which period of limitation was extended. *Hough v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1372852, Unreported. Internal Revenue  4589.1

Evidence did not support IRS's claim that taxpayer signed Form 87, Consent to Extend Time to Assess Tax, extending limitations period relating to taxpayer's return; IRS contended that it lost original Form 872, and even though IRS offered copy of Form 872 that was undated and allegedly signed by taxpayer, taxpayer credibly testified that he did not sign any document extending limitations period, and testimony of IRS's witnesses, i.e., IRS agent and handwriting expert, was not convincing. *Steingold v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1036369, Unreported, affirmed 13 Fed.Appx. 209, 2001 WL 814992. Internal Revenue  4625

176. Limitations to which applicable, extension by agreement

This section providing that limitation on assessment and collection of deficiencies in income taxes may be extended by taxpayer's consent given before expiration of time prescribed in this section encompasses not only the normal three-year limitation but the five-year limitation where deficiency exceeds 25 per cent of gross income as well. *Azevedo v. C.I.R.*, C.A.9 1957, 246 F.2d 196. Internal Revenue  4575

Internal Revenue Service (IRS) Appeals Officer's application of both Sunset Provision and Suspension Provision of 1998 Reform Act to taxpayer's offer in compromise to extend limitations period for trust fund penalty recovery was not abuse of discretion; provisions were two separate and distinct statutory amendments addressing two different issues and related to two different time periods. *Staso v. U.S.*, D.Kan.2008, 2008 WL 612693. Internal Revenue  5230

Chevron deference to interpretation of statutes and regulations by Internal Revenue Service (IRS) was not warranted with respect to IRS's position in refund action that consent agreements signed by taxpayers to extend limitations period for assessment of income taxes applied also to self-employment taxes; IRS had not issued opinion supporting its position, and thus, there was no official action which was thorough and well enough reasoned to merit deference. *Ambur v. U.S.*, D.S.D.2002, 206 F.Supp.2d 1021. Internal Revenue  4592

Second extension agreement could not extend three-year statute of limitations for assessing responsible person penalty against corporate employee for unpaid employment taxes, where first extension agreement was invalid so that limitations period expired prior to second agreement. *Howard v. U.S.*, N.D.Cal.1994, 868 F.Supp. 1197. Internal Revenue  5230

177. Consideration, extension by agreement

Where taxpayer's compromise offer had been approved for acceptance, but final acceptance had been suspended until taxpayer had paid installments agreed upon, there was sufficient "consideration" for taxpayer's subsequent waiver of statute of limitations of Revenue Act 1928, § 276(c). *U S v. Gayne*, C.C.A.2 (N.Y.) 1943, 137 F.2d 522. Internal Revenue  4896

Tax collection waivers of statutes of limitations on the collection of taxes are not contracts and do not require consideration to establish their validity. *U.S. v. Harris*, S.D.Fla.1963, 223 F.Supp. 309, affirmed 337 F.2d 856. Internal Revenue  4583

178. Default, extension by agreement

Where taxpayer entered into agreement with United States for compromise of income taxes, so as to waive statute of limitations, and agreement provided for suit for full amount of precompromise liability in case of default by taxpayer on compromised amount, and taxpayer defaulted, and United States sued under default provision, statute of limitations would be deemed waived as to action under default provision. *U.S. v. Feinberg*, C.A.3 (Pa.) 1965, 372 F.2d 352. Internal Revenue  4589.1

179. Duress, extension by agreement

Waiver of limitations on assessment of income and profits taxes under Revenue Act 1924 was not inoperative as secured by duress, though time for threatened jeopardy assessment had expired. *Burnet v. Chicago Ry. Equipment Co.*, U.S.Ill.1931, 51 S.Ct. 137, 282 U.S. 295, 75 L.Ed. 349. Internal Revenue  4584.1

Evidence sustained finding of Tax Court that written consents extending time allowed Commissioner to assess income tax deficiencies were not secured by duress and therefore did in fact toll the general three-year statute of limitations for assessments. *Willhoit v. C.I.R.*, C.A.9 1962, 308 F.2d 259. Internal Revenue  4732

Where taxpayer claimed duress and threats caused him to sign waivers extending the time for assessing income taxes, the Court of Appeals could not accept his unsupported statements with reference thereto in view of the

Tax Court's approval of the validity of the waivers. *Lusk v. C.I.R.*, C.A.7 1957, 250 F.2d 591, certiorari denied 78 S.Ct. 1376, 357 U.S. 932, 2 L.Ed.2d 1375. Internal Revenue  4731

If tax collection waivers, which extended time to collect federal taxes for 1942 by distraint or by judicial proceeding to and including December 31, 1952, were procured by coercion and were invalid, action by the United States to foreclose liens to collect tax assessments for 1942 would not be timely, in view of provision of this section requiring collection by court proceedings within six years after assessment, or prior to expiration of any period agreed on in writing before expiration of six year period. *Graham v. U.S.*, C.A.9 (Cal.) 1957, 243 F.2d 919. Internal Revenue  4794.1

Internal Revenue agent's statement to taxpayer of intention to file suit unless taxpayer executed waivers extending statute of limitations for collection of unpaid withholding taxes did not constitute "duress" and waivers were valid. *U.S. v. Martin*, E.D.Mo.1967, 274 F.Supp. 1002, affirmed 411 F.2d 1164. Internal Revenue  4582

180. Duration, extension by agreement

For written agreement extending statute of limitations on income tax assessment (Form 872-A) to be terminated, either taxpayers or Internal Revenue Service (IRS) must supply notice of termination of special consent to extend time to assess tax (Form 872-T), or IRS must send notice of deficiency in taxes for relevant period. *Bilski v. C.I.R.*, C.A.5 1995, 69 F.3d 64. Internal Revenue  4591

Taxpayers' consent to assessment of income tax more than three years after filing of return did not terminate, by operation of law, after expiration of reasonable period following execution of form consenting to extension. *St. John v. U.S.*, C.A.9 (Mont.) 1991, 951 F.2d 232. Internal Revenue  4591

Form 872-A agreement, pursuant to which taxpayers agreed to open-ended extension of limitations period for assessing federal income tax deficiencies, did not terminate upon expiration of reasonable time after its execution; duration of agreement was expressly provided for and was as definite as taxpayers needed it to be, since they were empowered to commence 90-day termination period at any time by filing Form 872-T. *Stenlik v. C.I.R.*, C.A.2 1990, 907 F.2d 25, certiorari denied 111 S.Ct. 516, 498 U.S. 984, 112 L.Ed.2d 528. Internal Revenue  4581

Indefinite waiver of three-year limitations period on income tax assessment did not terminate upon expiration of a "reasonable time"; thus, notice issued five years after taxpayer executed indefinite waiver and ten years after first request for extension of time in which to review taxpayer's return was valid. *Wall v. C.I.R.*, C.A.10 1989, 875 F.2d 812. Internal Revenue  4901

Form signed by taxpayers providing for extension of statute of limitations for specified tax years until 90 days after either the Commissioner or taxpayers gave written notice to the other revoking the extension was not rendered ineffective because it did not set definite time when limitations period would run, and where assessments were filed 11 months after the statutory three-year limitations period and before written notice revoking the extension was given, such assessments were timely. *McManus v. C. I. R.*, C.A.9 1978, 583 F.2d 443, certiorari denied 99 S.Ct. 1501, 440 U.S. 959, 59 L.Ed.2d 773. Internal Revenue  4581

Where Government accepted taxpayer's offer of settlement on May 11, 1954, pursuant to agreement which stated that statute of limitations was to be suspended for period during which offer was pending or period during which any installment remained unpaid, and for one year thereafter, and Government advised taxpayer by letter

on April 18, 1956, that agreement was terminated because of failure to make payments, statute of limitations remained suspended until such letter and suit brought within three years thereafter was timely. *U.S. v. Wilson*, C.A.3 (N.J.) 1962, 304 F.2d 530. Internal Revenue  5037

Where taxpayer had consented to extension until June 30 for assessment of tax, this section and section 6213 of this title, relating to filing of petition and issuance of statutory notice of deficiency extended period of limitations for 150 days beyond June 30. *Goetz' Estate v. U.S.*, W.D.Mo.1968, 286 F.Supp. 128. Internal Revenue  4591

Execution of waiver by taxpayers extending time for collection of taxes extended the statute of limitations for the specified period and action by government brought within such extended period for collection of taxes was not barred by laches. *U.S. v. Herman*, E.D.N.Y.1960, 186 F.Supp. 98. Internal Revenue  4898

Where executrix of income taxpayer who had, 15 years before, executed unlimited waiver of six year statute of limitations in § 276 [I.R.C.1939], rejected claim against estate by Commissioner for taxes allegedly due, such rejection constituted notice to Commissioner which put to end reasonable time in which waiver could run. *U.S. v. Horne*, S.D.Cal.1953, 109 F.Supp. 935. Internal Revenue  4902

Where taxpayer who admitting owing income taxes gave an unlimited waiver of benefit of any statute of limitations in order to induce government to refrain from drastic collection procedure which would imperil taxpayer's means of livelihood, taxpayer's liability for taxes was not barred when government collected taxes about seven years later, on ground that waiver was no longer in effect because a reasonable time had elapsed, since the government had not waited an unreasonable time to collect the taxes. *Simmons v. Westover*, S.D.Cal.1948, 76 F.Supp. 442, affirmed 172 F.2d 556. Internal Revenue  4901

Extension agreements for limitations period on assessment that contain specific termination provisions do not expire by operation of law after a reasonable time, but rather, such agreements terminate only by express provisions of agreement. *Muir v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1387998, Unreported, affirmed 11 Fed.Appx. 701, 2001 WL 669265. Internal Revenue  4591

181. Equitable considerations, extension by agreement

Tax Court did not go beyond its statutorily prescribed jurisdiction by applying equitable principle of reformation to reform taxable year stated in consent form extending statute of limitations for assessment of tax deficiencies; determination of whether tax deficiency existed was within ambit of Tax Court's jurisdiction and Court simply applied equitable principle of reformation to case over which it had jurisdiction. *Buchine v. C.I.R.*, C.A.5 1994, 20 F.3d 173, rehearing and suggestion for rehearing en banc denied 26 F.3d 1117. Internal Revenue  4647

Commissioner of Internal Revenue was not barred by equitable doctrines of estoppel or laches from relying on taxpayers' open-ended extension of limitations period for assessing federal income tax deficiencies; claims that Commissioner unreasonably and unjustifiably delayed in issuing notice of deficiency could not be sustained, in face of taxpayers' own failure to act as required by Form 872-A procedure. *Stenlik v. C.I.R.*, C.A.2 1990, 907 F.2d 25, certiorari denied 111 S.Ct. 516, 498 U.S. 984, 112 L.Ed.2d 528. Internal Revenue  4588

182. Execution, extension by agreement

Consent by Commissioner to written waiver for assessment and collection of tax need not be embodied in single

paper. *R.H. Stearns Co. of Boston, Mass., v. U.S.*, U.S.1934, 54 S.Ct. 325, 291 U.S. 54, 78 L.Ed. 647. Internal Revenue  4586.1; Internal Revenue  4896

Under § 276(c) [I.R.C.1939], authorizing collection of federal income taxes after the expiration of period of limitation and within any extended period agreed upon by Commissioner and taxpayer, no particular formula of words is necessary to constitute such an agreement, but any writing made for the purpose of evidencing Collector's approval, and from which his approval may be gathered by reasonable inference, is sufficient and effective to toll the statute of limitations. *Shambaugh v. Scofield*, C.C.A.5 (Tex.) 1942, 132 F.2d 345. Internal Revenue  5037

Taxpayer's letter asking that collection of tax be withheld and his appeal to Board were sufficient to extend period of limitation, although not strictly conformable to the statutes and regulations. *Collins v. Woodworth*, C.C.A.6 (Mich.) 1940, 109 F.2d 628. Internal Revenue  4565

Taxpayer's offer in compromise, submitted on Internal Revenue Service form provided for use in such an eventuality, served to extend applicable statute of limitations for one year following date upon which the offer was rejected. *U.S. v. Harris*, S.D.Fla.1963, 223 F.Supp. 309, affirmed 337 F.2d 856. Internal Revenue  4580

The fact that tax collection waiver was signed only by taxpayer did not make the waiver inoperative. *U.S. v. Bosk*, S.D.Fla.1960, 180 F.Supp. 869. Internal Revenue  4896

Where Collector asserted a claim for unpaid taxes against bankrupt taxpayer after expiration of the three-year period, in order to maintain a claim, a valid written consent or waiver beyond such period was required to be proved and such waivers could not be by an oral admission or by an expired written waiver, but were required to be by a waiver in writing. In re *Wolslagel*, N.D.Ohio 1952, 104 F.Supp. 68. Bankruptcy  2830

A waiver of benefit of statute of limitations in taxpayer's offer of compromise was binding on taxpayer, notwithstanding Commissioner did not sign the offer. *U.S. v. Markowitz*, N.D.Cal.1940, 34 F.Supp. 827. Internal Revenue  4898

Commissioner was not barred from assessment and collection of deficiencies against petitioner as successor in interest to corporation X, which merged into petitioner, since 6-year statute of limitations was applicable because X, which was determined to be personal holding company in 1968-72, failed to attach to its returns schedule enumerating items of gross income and adjusted ordinary gross income; consecutive consents were executed while statute of limitations was open; and consents were validly executed by petitioner. *Pleasanton Gravel Co. v. C.I.R.*, U.S.Tax Ct.1985, 85 T.C. 839.

Where approximately 3 years after X corporation's dissolution, X's treasurer on X's behalf signed Form 872 consent to extend statute of limitations as trustee in dissolution, later consent was signed by certified public accountant acting under power of attorney (Form 2848) signed by 2 of X's directors without indicating their capacity to act on X's behalf, and both consents were signed by Commissioner's agents who were orally designated as "acting group supervisors," Tax Court determined that both consents were valid and extended statute of limitations, since (1) under State law X's treasurer had requisite authority to bind taxpayer which was not negated by fact that he misstated his fiduciary relationship to X, (2) failure of directors to designate capacity in power of attorney did not negate accountant's authority to bind X and did not indicate that they acted in other than correct capacity, (3) under case law, Commissioner's agents had valid authority from oral designation to bind Commissioner, and (4) consents were not invalid because they referred to taxable year different from that covered in de-

iciency notice. *Sanderling, Inc. v. Commissioner of Internal Revenue*, U.S.Tax Ct.1976, 66 T.C. 743, affirmed in part 571 F.2d 174.

Where prior proceedings for taxable year were dismissed for lack of jurisdiction because petition was not that of taxpayer estate, consents extending period for those years signed by administratrix of estate who had notified Commissioner of fiduciary capacity, one of which consents was signed after she was discharged by probate court without notice to Commissioner, were signed on behalf of estate; in absence of any notification of discharge to Commissioner, estate was bound by both consents; and despite petition's dismissal, prior proceedings operated to suspend running of limitations period under § 277 [I.R.C.1939 (now § 6503(a) of this title)], to make notices of assessment to transferees timely. *Eversole v. C. I. R.*, Tax Ct.1966, 46 T.C. 56.

Statute of limitations did not bar proceedings against transferee to whom notices of transferee liability were sent before date to which Commissioner and transferor had extended period of limitations by execution of consents where one of such consents was validly executed although signed by only 1 of 2 attorneys named in a power of attorney, since power did not require 2 named attorneys to act jointly. *Spaulding v. C.I.R.*, Tax Ct.1956, 27 T.C. 479, affirmed 255 F.2d 759.

Assessment of taxpayer's taxes and penalties was not barred by statute of limitations, where taxpayer executed extension agreement for limitations period and did not send a form to IRS terminating the agreement. *Muir v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1387998, Unreported, affirmed 11 Fed.Appx. 701, 2001 WL 669265. Internal Revenue  4591; Internal Revenue  5230

183. Persons bound, extension by agreement--Generally

Where father and son, who owned capital stock of corporation, caused corporation, in 1944, to transfer assets to them and then transferred assets to partnership, Commissioner in 1947, assessed deficiencies for income and excess profits taxes for 1942 and 1943 against corporation, and assessment was made within period as extended by waivers signed by son, acting as president of corporation, and in 1952, son, acting as president, extended period for collection of taxes by suit to 1956, waivers executed by son tolled statute of limitations as to son individually and as executor of deceased father, and suit brought by government in 1954 was timely against all. *Dardi v. U.S.*, C.A.9 (Cal.) 1958, 252 F.2d 670. Internal Revenue  4898

Where taxpayer after demand for payment of delinquent income taxes transferred assets without consideration and before six years had expired from date of assessment of taxes he submitted offer of compromise in which he waived statutory period of limitations while compromise was under consideration and for one year thereafter, and Government rejected compromise and commenced action against transferees of assets, waiver of statutory period of limitations by taxpayer was binding upon transferees and suit commenced against transferees within period of limitations plus time during which statute was tolled, was timely. *U.S.v. City of New York*, S.D.N.Y.1955, 134 F.Supp. 374. Internal Revenue  4898

Extension by taxpayer of time within which federal government may make a tax assessment is a matter between the government and taxpayer, and third parties may not challenge the government's right to make an assessment during the extended time. *U.S. v. Canadian Am. Co.*, E.D.N.Y.1952, 108 F.Supp. 206, affirmed 202 F.2d 751. Internal Revenue  4565

Where deficiency for income taxes owing from decedent had been assessed against decedent's estate, waivers filed by executrix of decedent's estate had effect of suspending the running of statute of limitations as to collec-

tion of taxes assessed, the same as if waivers had been signed by taxpayer. *U.S. v. Munroe*, W.D.Pa.1946, 65 F.Supp. 213. Internal Revenue  4898

Waiver signed by taxpayer and her husband, dated Feb. 12, 1951, and giving Commissioner right to assess taxes against them for 1947 at any time before June 30, 1952, was binding on taxpayer, so that 3-year statute of limitations did not bar assessment of deficiencies. *Douglas v. C.I.R.*, Tax Ct.1956, 27 T.C. 306, nonacq. , affirmed 256 F.2d 4.

Under Form 872-A extension procedure for assessing and collecting taxes, time length of extension is irrelevant, since period is necessarily acquiesced in by taxpayer who does not file Form 872-T, extension termination form, to bring extension period to a close. *Muir v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 1387998, Unreported, affirmed 11 Fed.Appx. 701, 2001 WL 669265. Internal Revenue  4591

184. ---- Joint taxpayers, persons bound, extension by agreement

Where agreement between taxpayer and his wife and Commissioner was that time be extended for assessment of any tax "due under any return or returns made by or on behalf of the above-named taxpayer, or taxpayers for the taxable year or years 1933," and return contained a statement below signatures of taxpayer and his wife that if consent was executed with respect to the year for which a joint return was filed, it must be signed by both spouses, etc., and only return filed for 1933 was a joint return, an assessment for 1933 was authorized against the wife, notwithstanding that only taxpayer's name was written in the body of the consent. *U.S. v. Smith*, C.C.A.9 (Cal.) 1944, 140 F.2d 110. Internal Revenue  4592

Where husband and wife signed joint income tax return in 1933, and in 1936 executed waiver of limitations affecting collection of the tax but neither husband nor wife was named in waiver, wife's estate was not liable for 1933. *U.S. v. Wigmore*, S.D.Cal.1943, 48 F.Supp. 250. Internal Revenue  4898

Where on June 15, 1977, taxpayers filed joint income tax return for 1976, and on Nov. 15, 1977, were divorced; on May 30, 1980, only H signed consent Form 872-R, extending assessment and collection period 30 days to July 15, 1980; and on July 11, 1980, Commissioner issued deficiency notice to taxpayers, Tax Court determined assessment and collection of deficiency from W was barred by this section, but statute of limitations did not bar assessment and collection from H, since H and W were separate taxpayers with authority to extend period of limitations independent of each other, and only H signed consent to extend. *Tallal v. Commissioner of Internal Revenue*, U.S.Tax Ct.1981, 77 T.C. 1291.

185. Scope, extension by agreement

Consent form for assessment of taxes after normal statute of limitations had run applied to assessment for amounts attributable to carryback years. *Centennial Sav. Bank FSB v. U.S.*, C.A.5 (Tex.) 1989, 887 F.2d 595, rehearing denied 894 F.2d 1335, certiorari granted 111 S.Ct. 40, 498 U.S. 808, 112 L.Ed.2d 17, affirmed in part, reversed in part on other grounds 111 S.Ct. 1512, 499 U.S. 573, 113 L.Ed.2d 608, concurring and dissenting opinions 111 S.Ct. 1519, 113 L.Ed.2d 589, on remand 933 F.2d 1285. Internal Revenue  4898

By consenting in writing to extension of the time limited for assessment of income tax deficiencies for the years 1947 through 1951, taxpayers waived right to early assessment of deficiencies, and mere fact that income tax deficiencies for such years were not assessed until April 13, 1956, did not preclude collection of interest on the deficiencies assessed from date tax should have been paid to March 28, 1956. *Ingannamorte v. U.S.*, D.C.N.J.1960,

189 F.Supp. 341. Internal Revenue  4589.1; Internal Revenue  4831

Where taxpayers filed timely returns on March 15, 1948 in which 1947 amount of income tax was correctly stated but in computing balance payable taxpayers falsely claimed payment of certain amount on their taxes during preceding 12 months, waivers filed by taxpayers within three years after March 15, 1948, whereby each taxpayer agreed that amount of income tax due under 1947 returns could be assessed at any time on or before June 30, 1955, did not limit assessments to merely deficiency, and assessments made on December 23, 1954, were valid and action commenced November 22, 1957, to collect 1947 income tax was not barred by limitations. *Goldsmith v. Scanlon*, E.D.N.Y.1958, 157 F.Supp. 307. Internal Revenue  4899

Consent waiving period of limitations for assessment and collection of income, excess profits, and war profits taxes executed by taxpayer also waived limitations on assessment and collection of addition for failure to timely file declaration of estimated tax under § 294(d)(1)(A) [I.R.C.1939]. *Picard v. C.I.R.*, Tax Ct.1957, 28 T.C. 955.

Special consents extending time for assessment of taxes for particular tax years also extended time for assessing any deficiency attributable to carryback from those tax years to earlier tax years for which extension of time for assessments had not been consented to; such deficiency claims attributable to carrybacks from tax years for which extension of time for assessments had been consented to were assessable and therefore nondischargeable in bankruptcy of debtor taxpayers. *In re Crist*, Bkrtcy.N.D.Iowa 1988, 85 B.R. 807. Internal Revenue  4575

186. Timeliness, extension by agreement

Waiver extending period for assessment of income and profits tax, notwithstanding assessment was barred by limitation at time of execution of waiver, was effective to waive defense of statute of limitations and to reinstate tax liability. *Helvering v. Newport Co.*, U.S.1934, 54 S.Ct. 480, 291 U.S. 485, 78 L.Ed. 929. See, also, *Helvering v. Wiese*, 1934, 54 S.Ct. 862, 292 U.S. 614, 78 L.Ed. 1473. Internal Revenue  4589.1

Where income tax deficiency for 1917 was assessed within five-year limitation period, waiver given December 7, 1925, after such limitation period expired, extended time for collection. *Pacific Coast Steel Co. v. McLaughlin*, U.S.Cal.1933, 53 S.Ct. 422, 288 U.S. 426, 77 L.Ed. 873. Internal Revenue  4897

Revenue Act 1924, § 278, inhibiting assessment or collection of taxes already barred and authorizing waiver of statutory bar, did not invalidate waiver of bar to making of additional assessments, notwithstanding time for making such assessments had expired before passage of such act. *McDonnell v. U.S.*, U.S.1933, 53 S.Ct. 410, 288 U.S. 420, 77 L.Ed. 869. Internal Revenue  4576

Prior to 1926 waiver of limitations on assessment of income tax was effective, though executed more than five years after filing of return. *Stange v. U.S.*, U.S.1931, 51 S.Ct. 145, 282 U.S. 270, 75 L.Ed. 335. See, also, *Burnet v. Chicago Ry. Equipment Co.*, 1931, 51 S.Ct. 137, 282 U.S. 295, 75 L.Ed. 349. Internal Revenue  4994

The three-year limitations period for assessment of tax deficiencies of individual tax returns began on filing of return by individual taxpayer against whom deficiency was assessed so that, where deficiencies stemmed from errors in limited partnership return not discovered until more than three years later, assessment was not time barred in light of taxpayer's consent to extension on assessment of individual returns. *Charlton v. C.I.R.*, C.A.9 1993, 990 F.2d 1161. Internal Revenue  4570

Taxpayer's remittances pursuant to agreement settling tax dispute were payments of principal and interest prior

to closing of assessment period, rather than deposits, and, thus, Internal Revenue Service (IRS) failure to make assessments within three years did not entitle taxpayers to return of money; taxpayers' agreements were not conditioned on timely assessment. *Ewing v. U.S.*, C.A.4 (N.C.) 1990, 914 F.2d 499, rehearing denied, certiorari denied 111 S.Ct. 1683, 500 U.S. 905, 114 L.Ed.2d 78. Internal Revenue  4810

Commissioner of Internal Revenue's notice of deficiency to taxpayer issued pursuant to this section providing for extension by agreement of three-year limitations period generally applicable under deficiency procedures was timely since it was issued well before expiration of last extension agreement between taxpayer and Commissioner. *Beer v. C.I.R.*, C.A.6 1984, 733 F.2d 435, certiorari denied 105 S.Ct. 185, 469 U.S. 857, 83 L.Ed.2d 119. Internal Revenue  4546

Proceeds from redemption in 1956 of all shares of stock owned by taxpayer-wife in husband's company were entitled to capital gain treatment, though husband retained stock in company and required agreement to notify tax authorities in event wife reacquired stock in company within ten years following redemption was inadvertently not filed with joint return for 1956, where agreement was submitted prior to deficiency assessment and within time limited by this section and § 6502 of this title for assessment and collection of tax. *U.S. v. Van Keppel*, C.A.10 (Kan.) 1963, 321 F.2d 717. Internal Revenue  3810; Internal Revenue  4479

Fact that taxpayers' consents to waive statute of limitations for assessment was terminated by assessments of tax deficiencies did not entitle taxpayers to have entire assessment invalidated on claim that assessments were illegal or erroneous; taxpayers did not prove that they overpaid taxes and were entitled to refund of that overpayment and were not entitled to have entire assessment invalidated. *Andrews v. U.S.*, W.D.N.Y.1992, 805 F.Supp. 126. Internal Revenue  4589.1

Assessment of penalty for willful failure to pay federal withholding taxes was not barred by three-year statute of limitations where individual assessed and Internal Revenue Service agent executed agreement extending time within which to assess penalty until December 31, 1979, and assessment was made on July 17, 1978. *Hutchinson v. U.S.*, N.D.Ohio 1982, 559 F.Supp. 890. Internal Revenue  5230

Waiver extending time for collection of income tax and signed by taxpayer six years after date of assessment of income taxes by Commissioner was valid, and failure of Commissioner of Internal Revenue to sign waiver until three days later when six-year statute of limitations had run, did not render waiver invalid, where delay of three days did not prejudice taxpayer. *Lorain Journal Co. v. U.S.*, N.D.Ohio 1962, 201 F.Supp. 752. Internal Revenue  4896

Where taxpayers' final 1947 return was filed on Jan. 15, 1948, in which it was determined there was omission of gross income in excess of 25 per cent of amount shown on such return and since, under § 275(f) [I.R.C.1939 (now this section)], Mar. 15, 1948 (last day for filing 1947 return), was regarded as filing date, consent extending period of limitations executed on Feb. 11, 1953, was executed within permitted 5-year period and thus constituted effective waiver. *Romer v. C.I.R.*, Tax Ct.1957, 28 T.C. 1228, acq. .,

Notice of deficiency in additions to income tax for 1950 and 1951, under § 294(d)(1)(A) and (d)(2) [I.R.C.1939], mailed Sept. 24, 1954, by Commissioner to taxpayers who on Jan. 15, 1954, filed consent to assessment at any time on or before June 30, 1955, of any income tax due under any return for 1950, was timely filed and not in error and Commissioner's determination was sustained, in absence of showing of reasonable cause for failure to file. *Marbut v. C.I.R.*, Tax Ct.1957, 28 T.C. 687.

Commissioner's notice of deficiency issued forty-five days after expiration of last period of extension of period of assessment was untimely. *Ruud Mfg. Co. (N. J.) v. C. I. R.*, Tax Ct.1950, 15 T.C. 374.

Tax assessment was timely even though statute of limitations to assess taxes expired before Commissioner of Internal Revenue issued notice of deficiency, where taxpayers consented in writing to extension of three-year statute of limitations, and Commissioner's notice of deficiency was mailed to and received by taxpayers prior to expiration of newly designated limitation periods. *King v. C.I.R.*, C.A.11 2007, 252 Fed.Appx. 951, 2007 WL 3193173, Unreported. Internal Revenue  4575

Lack of dates on taxpayers' signatures on Forms 872, Consent to Extend the Time to Assess Tax, did not invalidate consents; forms were signed before time to assess tax had expired. *King v. C.I.R.*, U.S.Tax Ct.2006, 2006 WL 1731293, Unreported, affirmed 252 Fed.Appx. 951, 2007 WL 3193173. Internal Revenue  4581

Given taxpayer's consent to a waiver of the statute of limitations for certain tax years, Commissioner of Internal Revenue's collection actions for those tax years were timely. *Rivera v. C.I.R.*, C.A.9 2004, 102 Fed.Appx. 594, 2004 WL 1398584, Unreported. Internal Revenue  4896

187. Validity, extension by agreement

Any written waiver for assessment and collection of taxes, whether formal or informal, is sufficient if made for purpose of recording approval by Commissioner and if approval may be gathered therefrom as reasonable inference. *R.H. Stearns Co. of Boston, Mass., v. U.S.*, U.S.1934, 54 S.Ct. 325, 291 U.S. 54, 78 L.Ed. 647. Internal Revenue  4896; Internal Revenue  4580

Waiver of limitations on assessment of income tax was valid and constituted waiver of limitations on collection, though not using statutory language. *Stange v. U.S.*, U.S.1931, 51 S.Ct. 145, 282 U.S. 270, 75 L.Ed. 335. Internal Revenue  4994

Waiver executed by taxpayer before Revenue Act 1921 and by Commissioner in 1922, which failed to make express reference to collections, was nevertheless valid and operative to extend time for deficiency assessment. *W.P. Brown & Sons Lumber Co. v. Burnet*, U.S.1931, 51 S.Ct. 140, 282 U.S. 283, 75 L.Ed. 343. Internal Revenue  4581

Waiver of limitations on assessment of income and profits taxes under Revenue Act 1924 was not invalid because given and signed by Commissioner while appeal to Board was pending. *Burnet v. Chicago Ry. Equipment Co.*, U.S.III.1931, 51 S.Ct. 137, 282 U.S. 295, 75 L.Ed. 349. Internal Revenue  4584.1

Taxpayers' consents to extend three-year statute of limitations for assessing tax deficiencies were valid. *Feldman v. C.I.R.*, C.A.11 1994, 20 F.3d 1128. Internal Revenue  4581

Parties to agreement to extend period for assessment of tax are free to determine terms of extension, and fact that extension granted by Form 872-A does not expire on date certain does not undermine its validity under Internal Revenue Code. *Stenlik v. C.I.R.*, C.A.2 1990, 907 F.2d 25, certiorari denied 111 S.Ct. 516, 498 U.S. 984, 112 L.Ed.2d 528. Internal Revenue  4581; Internal Revenue  4616.1

Where taxpayers intended and all parties understood that waivers of time within which federal income tax could be collected were submitted as a part of taxpayer's efforts to effect a compromise adjustment and to suspend the running of the statute while the offers were under consideration, and Commissioner wrote letters rejecting such

offers, the rejection letters, when considered together with the offers, constituted presumptive proof of Commissioner's agreement to the waiver, were sufficient to satisfy § 276(c) [I.R.C.1939], and effective to toll the statute of limitation. *Shambaugh v. Scofield*, C.C.A.5 (Tex.) 1942, 132 F.2d 345. Internal Revenue  5037

Where taxpayer at different times made two offers to compromise his income tax liabilities for certain years and offers contained provisions whereby taxpayer waived benefit of the statute of limitations applicable to collections and agreed to the suspension of the running of the statutory period of limitations on collections for the period during which the offer was pending and for one year thereafter, the fact that first offer was rejected by the Commissioner of Internal Revenue and that taxpayer withdrew the second offer did not make the waivers as to the statute of limitations inoperative. *U.S. v. Bosk*, S.D.Fla.1960, 180 F.Supp. 869. Internal Revenue  4900

Waivers of time for assessment or institution of proceedings for collection of taxes are valid though executed with compromise offers, and are cumulative in extending the time for collection, and do not cancel each other out. *U.S. v. Maddas*, W.D.Pa.1953, 109 F.Supp. 607. Internal Revenue  4896; Internal Revenue  4902

Where taxpayers executed (and Commissioner accepted) single Form 872, Consent to Extend Time to Assess Tax, extending period of assessment, for taxable years 1974 and 1975, to Dec. 31, 1980; taxpayers subsequently executed new Form 872, purporting to extend assessment period for 1974, 1975, and 1977, to June 30, 1981; and 55 days before expiration of first Form 872, but before accepting second Form 872, Commissioner struck reference to 1977 taxable year, without consent of taxpayers, Tax Court determined (1) striking reference to 1977 was material alteration that rendered form invalid, since parties did not manifest mutual assent, and no written agreement was reached, as required by subsec. (c)(4) of this section; and (2) taxpayers' "silence" did not estop them from asserting invalidity of form, since it was altered by Commissioner, no information regarding alteration was communicated to taxpayers' authorized attorney, and taxpayers informed Commissioner of objection to alteration, and of desire to conclude examination for 1974 and 1975, soon as possible. *Piarulle v. Commissioner of Internal Revenue*, U.S.Tax Ct.1983, 80 T.C. 1035, acq. ..

Where taxpayer authorized C.P.A. to represent her before Service regarding her tax returns for 1970-72 with power to receive confidential information and execute consents extending statutory periods for assessment and collection of taxes, representative twice executed consents extending statute of limitations for 1970, and Commissioner requested taxpayer on Sept. 4, 1975, to sign consents extending statute of limitations for 1971 and 1972, which taxpayer did without knowledge of her representative, Tax Court determined periods of limitations on assessment had not expired when Commissioner issued notice of deficiency on July 28, 1976, since consents comported with provisions of subsec. (c) (4) of this section and were obtained without deception. *Neuhoff v. Commissioner of Internal Revenue*, U.S.Tax Ct.1980, 75 T.C. 36, affirmed 669 F.2d 291.

Taxpayer, on advice of accountant concurred in by attorney, on Mar. 24, 1961, while his 1957 income tax return was under investigation, signed and submitted to Commissioner Form 872 which purported to extend statute of limitations for year ended "6-30-62," photostatic copies having been made and retained by accountant and forwarded to attorney; and after receipt of Form 872 and at least 15 days prior to expiration of statute of limitations for 1957, someone in Commissioner's office altered Form 872 by striking out "6-30-62" and inserting "12-31-57," thereby making Form 872 appear to extend statute of limitations for 1957, and without discussing such change with taxpayer or his representatives, mailed copy of altered form to petitioner's accountant without directing attention to alteration or requesting consent thereto and under these circumstances Form 872 was not effective to extend statute of limitations for 1957. *Cary v. C.I.R.*, Tax Ct.1967, 48 T.C. 754, acq. ..

Tax Court did not clearly err in finding that taxpayer's signature on consent form, indicating waiver of limitations period, was genuine, despite taxpayer's speculation that his ex-wife forged his signature. *Malachinski v. C.I.R.*, C.A.7 2001, 268 F.3d 497. Internal Revenue  4662

188. Successive extensions, extension by agreement

Successive tax waivers extending period for assessment, where given within extended period, were valid, though given after five years from filing return. *W.P. Brown & Sons Lumber Co. v. Burnet*, U.S.1931, 51 S.Ct. 140, 282 U.S. 283, 75 L.Ed. 343. Internal Revenue  4584.1

Where taxpayer made compromise offer accompanied by statute of limitations waiver and waiver was still in force when second waiver was executed, the statute of limitations of Revenue Act 1928, § 276(c), was tolled during whole period from beginning of first waiver to rejection of offer during life of second waiver, so that, where what remained of total elapsed period between date when deficiency assessment was made and date when action was brought was less than six years, action to recover deficiency was not barred. *U S v. Gayne*, C.C.A.2 (N.Y.) 1943, 137 F.2d 522. Internal Revenue  4900

Unlimited tax collection waiver wherein taxpayer agreed that income tax might be collected by distraint or by proceeding in court begun at any time, was not terminated by the subsequent giving of a limited waiver by taxpayer to Collector in connection with a new compromise offer. *Simmons v. Westover*, S.D.Cal.1948, 76 F.Supp. 442, affirmed 172 F.2d 556. Internal Revenue  4902

189. Miscellaneous cases, extension by agreement

Collection of 1918 income and profits tax within 6 years after assessment made within statutory period after return was extended by written consent was not barred. *Florsheim Bros. Drygoods Co. v. U.S.*, U.S.La.1930, 50 S.Ct. 215, 280 U.S. 453, 74 L.Ed. 542. Internal Revenue  4898

Agreement existed between Internal Revenue Service (IRS) and taxpayer and his wife to extend statute of limitations for assessment of tax deficiencies in taxable year 1981, despite fact that consent form listed 1984 and not 1981 as the taxable year; taxpayer had good working knowledge of income tax law and procedure based on facts that he had degree in accounting, worked in public accounting, prepared income tax returns for himself and others and sold tax shelters and was a tax matters partner or general partner for some of them when he received consent form to extend limitations period, taxpayer knew that consent form could not have been extension for 1984 because taxpayer and his wife had not yet filed their return for that year, cover letter accompanying consent form referred to 1981, when taxpayer called IRS telephone number on cover letter, he identified taxable year as 1981, wife admittedly signed all relevant documents and wife knew of erroneous reference to 1984 on consent form before she signed it. *Buchine v. C.I.R.*, C.A.5 1994, 20 F.3d 173, rehearing and suggestion for rehearing en banc denied 26 F.3d 1117. Internal Revenue  4592

Even if Form 906 Closing Agreement between taxpayer and Internal Revenue Service (IRS) as to final determination covering specific matters could terminate Form 872-A extension of limitations period for assessing tax deficiencies, closing agreement between IRS and limited partner-taxpayer did not terminate that extension where closing agreement stated only that IRS "may" assess taxes against limited partner within one year after decision involving limited partnership became final notwithstanding the expiration of any period of limitations prescribed by Internal Revenue Code. *DeSantis v. U.S.*, S.D.N.Y.1992, 783 F.Supp. 165. Internal Revenue  4591

Statute of limitations on collection from principal officer of taxpayer corporation, of withholding taxes which had not been paid over to Internal Revenue Service (IRS), was properly extended by extension agreements with officer. *U.S. v. Spurlin*, M.D.Fla.1990, 763 F.Supp. 563. Internal Revenue  5230

Where assessments for unpaid federal income taxes for the years 1944 and 1945 were made on September 17, 1947 and taxpayer on June 9, 1952 filed tax collection waivers extending the limitations period on collection for such years up to and including December 31, 1957, and December 31, 1958 for the respective years, and taxpayer filed an offer to compromise on August 14, 1952 whereby taxpayer waived the statute of limitations and agreed to the suspension of the running of the statutory period during the time the offer was pending and for one year thereafter, and offer was rejected on October 7, 1954, and taxpayer submitted a second offer and compromise with the same conditions as to the statute of limitations and such offer was withdrawn on July 15, 1957, action by the United States filed on September 28, 1959 for the unpaid balance of the income taxes for the years 1944 and 1945 was timely. *U.S. v. Bosk*, S.D.Fla.1960, 180 F.Supp. 869. Internal Revenue  4900

Where taxpayer, on January 26, 1929, executed a written waiver wherein it consented that period for assessment of any income tax deficiency for 1924 should be extended to December 31, 1929, assessment of deficiency tax on May 25, 1929, and collection on June 7, 1929, were timely. *Union Bleachery v. U.S.*, W.D.S.C.1947, 73 F.Supp. 496, affirmed 176 F.2d 517, certiorari denied 70 S.Ct. 998, 339 U.S. 964, 94 L.Ed. 1373. Internal Revenue  4581; Internal Revenue  4589.1

An action commenced on February 14, 1939, for recovery of 1925 deficiency income tax assessed against corporation, from stockholder to whom assets of corporation were in part transferred, was not barred by limitations, where on January 12, 1931, prior to expiration of statutory period of limitations for commencement of action, stockholder signed tax collection waiver in which he agreed that assessment could be collected at any time prior to December 31, 1938, and on August 4, 1936, made an offer in compromise, in which he waived benefit of statute of limitations and agreed to suspension of running of statutory period of limitation for period during which offer was pending and for one year thereafter, and pendency of offer in compromise was terminated by its rejection on March 30, 1937. *U.S. v. Markowitz*, N.D.Cal.1940, 34 F.Supp. 827. Internal Revenue  4898

Where date of assessment of 1931 income tax was May 12, 1932, but taxpayer signed waiver on October 6, 1937, stating that running of statute of limitations was suspended for period during which offer was pending and for one year thereafter, and taxpayer's offer was rejected March 31, 1938, action instituted on November 1, 1939, to recover fourth quarterly installment of income tax for year 1931 was not barred by six-year statute of limitations. *U.S. v. Bank of Commerce & Trust Co.*, W.D.Tenn.1940, 32 F.Supp. 942, affirmed 124 F.2d 187. Internal Revenue  4898

Where, in 1983 gift tax return, H's mother M valued real estate parcels given to petitioners H and W at \$84,139; H and W were transferees as result of gift; Commissioner challenged M's valuation of gift to B, while M and Commissioner signed timely consent agreements extending 3-year period of limitations; 68 days prior to expiration of extended assessment period on Apr. 18, 1990, Commissioner sent M notice of gift tax deficiency; on Feb. 25, 1992, Tax Court entered stipulated decision settling M's liability without changing value of gift to H and W, and M waived restrictions on assessment and collection of deficiency before Tax Court decision became final; on Apr. 7, 1992, Commissioner assessed additional gift tax against M, and, on Sept. 17, 1993, issued notice of transferee liability to each petitioner for \$93,300 of M's unpaid gift taxes; and H and W argued notices of transferee liability were issued after expiration of limitations period, Court determined (1) notices of liability to H and W were timely, since they were issued within 1 year after expiration of M's limitations period on Oct. 1,

1992, which had been extended by consent agreements and suspension during pendency of Tax Court litigation that ended with Feb. 25 stipulated decision, plus 150 days (consisting of 90 days for appeal after entry of decision and 60 days thereafter), plus 68 days tacked on from unexpired time remaining when limitations period was interrupted by issuance of deficiency notice to *M. Ripley v. C.I.R.*, U.S.Tax Ct.1995, 105 T.C. 358, Unreported, reversed 103 F.3d 332.

Where Commissioner's agent auditing petitioner's 1979 income tax return sent transmittal letter and unrestricted Form 872-A consenting to extend period for assessment for 1979 which referenced need for additional time regarding specific return item and petitioner signed and returned consent form without restriction, and form was signed on Commissioner's behalf by someone other than auditing agent who sent transmittal letter, Court determined, on facts, period for assessment for petitioner's 1979 taxable year remained open for all issues, since the unrestricted consent was complete and unambiguous on its face and represented agreement of parties. *Schulman v. C.I.R.*, U.S.Tax Ct.1989, 93 T.C. 623.

Where each taxpayer executed "unlimited waiver" (Form 872-A) which extended period of limitation for not more than 90 days after Internal Revenue Service mailing of notice of termination of Appellate Division consideration, and Commissioner's agent sent letters announcing inability to reach settlement and that statutory deficiency notices would be sent, court determined that such letters constituted notice which triggered running of 90-day period and in turn vitiated deficiency notices mailed after that period. *Johnson v. Commissioner of Internal Revenue*, U.S.Tax Ct.1977, 68 T.C. 637.

Assessment and collection of any deficiency in income tax for taxable year was not barred, since petitioner, in failing to include in gross income in his return amount paid on his behalf by corporation, omitted more than 25% of gross income, and since, prior to expiration of 5 years from time he filed his return, he entered into valid consent extending time within which assessment and collection could be made. *Sachs v. C.I.R.*, Tax Ct.1959, 32 T.C. 815, affirmed 277 F.2d 879, certiorari denied 81 S.Ct. 63, 364 U.S. 833, 5 L.Ed.2d 59.

Where on February 27, 1951, and prior to expiration of 3 year period for assessment of tax for 1947, taxpayer filed consent extending period to June 30, 1952, and deficiency notice was mailed on March 5, 1952, period for assessment of tax for 1947 had not expired. *Charles E. Sorensen*, Tax Ct.1954, 22 T.C. 321.

190. Estoppel, extension by agreement

Internal Revenue Service (IRS) was not estopped from reinstating erroneously abated assessment against person responsible for unpaid withholding taxes, though statute of limitations had run for filing assessment, absent showing of detrimental reliance; financial commitments allegedly made in reliance on abatement were in fact undertaken after IRS had asserted reinstated assessment. In re *Becker*, C.A.2 (N.Y.) 2005, 407 F.3d 89. Internal Revenue  4560

Internal Revenue Service's (IRS) letter stating that taxpayer's account was "resolved" did not equitably estop IRS from contending that W-2 Form submitted by taxpayer's employer was not valid return, which would start running of statute of limitations on assessment and collection of taxes; letter included explicit reservation that further issues could arise and concluded that no further response was required "at present," taxpayer, who repeatedly emphasized his ideological objections to collection of taxes, did not show any detrimental reliance on letter, and no affirmative misconduct was shown on part of government. *Bachner v. C.I.R.*, C.A.3 1996, 81 F.3d 1274, on remand 109 T.C. 125. Internal Revenue  4588; Internal Revenue  4884

Taxpayer was not estopped in tax case from asserting statute of limitations defense, pursuant to taxpayer's waiver of statute of limitations defense which had been limited to situations in which someone else filed refund action and government interpleaded potentially responsible parties into that action, by virtue of taxpayer's alleged strategy of laying in wait and springing defense upon government when it was too late for taxpayer to be joined as party in separate case; taxpayer maintained consistently that waiver was conditional and did not mislead any parties or court as to his theory of present case and taxpayer was asked to agree to consolidate present action with separate related refund action, brought by another taxpayer, long after deadline for amendments in separate action. *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Limitation Of Actions ☞ 175

Premature assessment and subsequent abatement of deficiencies did not equitably estop IRS from reasserting deficiencies for years in question; taxpayers did not show detrimental reliance, and, in any event, abatement of assessment was not binding action that could estop IRS from reassessing deficiency. *Connell Business Co. v. C.I.R.*, U.S.Tax Ct.2004, 2004 WL 1194626, Unreported. Internal Revenue ☞ 4560

191. Burden of proof, extension by agreement--Generally

Taxpayer met his burden of establishing that waiver of his statute of limitations defense had been conditional and limited to situations in which someone else filed refund action and government interpleaded potentially responsible parties and, thus, waiver was not effective in action against taxpayer alone to reduce to judgment any liability for unpaid withholding taxes; taxpayer executed Internal Revenue Service (IRS) forms regarding waiver of statute of limitations defense, government forbade taxpayer from modifying waiver language, waiver language used term "interplead," and IRS letter informed taxpayer that closing of earlier case against him was subject to reopening "in the event litigation is initiated and it is decided to interplead potentially responsible persons." *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Internal Revenue ☞ 4589.1

192. ---- Shifting of burden, burden of proof, extension by agreement

Once taxpayer shows that assessment occurred outside of statutory period, burden shifts to Commissioner of Internal Revenue to show existence of consent to extend statute of limitations and if Commissioner makes this showing, burden shifts back to taxpayer to prove that waiver was invalid. *Feldman v. C.I.R.*, C.A.11 1994, 20 F.3d 1128. Internal Revenue ☞ 4616.1

After taxpayer demonstrated prima facie case of nonliability in action against taxpayer to reduce to judgment any liability for unpaid withholding taxes by showing filing of statutory return and expiration of statutory period, government had to come forward with countervailing evidence. *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Internal Revenue ☞ 4909

193. Prima facie case, extension by agreement

Taxpayer had to demonstrate prima facie case of nonliability, in action against taxpayer to reduce to judgment any liability for unpaid withholding taxes, by showing filing of statutory return and expiration of statutory period. *U.S. v. Hodgekins*, N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. Internal Revenue ☞ 4909

26 U.S.C.A. § 6501, 26 USCA § 6501

26 U.S.C.A. § 6501
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**Proposed Legislation**

- 1 2007 CONG US S 3125, 110th CONGRESS, 2d Session, (Jun 12, 2008), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 2 2007 CONG US HR 6049, 110th CONGRESS, 2d Session, (Jun 05, 2008), Placed on Calendar Senate, PROPOSED ACTION: Technical or conforming amendment.
- 3 2007 CONG US S 3044, 110th CONGRESS, 2d Session, (May 21, 2008), Placed on Calendar Senate, PROPOSED ACTION: Technical or conforming amendment.
- 4 2007 CONG US HR 6049, 110th CONGRESS, 2d Session, (May 20, 2008), Reported in House, PROPOSED ACTION: Technical or conforming amendment.
- 5 2007 CONG US HR 6049, 110th CONGRESS, 2d Session, (May 14, 2008), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 6 2007 CONG US S 2991, 110th CONGRESS, 2d Session, (May 08, 2008), Placed on Calendar Senate, PROPOSED ACTION: Technical or conforming amendment.
- 7 2007 CONG US HR 6001, 110th CONGRESS, 2d Session, (May 08, 2008), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 8 2007 CONG US HR 5746, 110th CONGRESS, 2d Session, (Apr 09, 2008), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 9 2007 CONG US HR 5351, 110th CONGRESS, 2d Session, (Feb 28, 2008), Engrossed in House, PROPOSED ACTION: Technical or conforming amendment.
- 10 2007 CONG US HR 5351, 110th CONGRESS, 2d Session, (Feb 28, 2008), Referred in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 11 2007 CONG US S 2642+, 110th CONGRESS, 2d Session, (Feb 14, 2008), Introduced in Senate, PROPOSED ACTION: Amended.
- 12 2007 CONG US HR 5437+, 110th CONGRESS, 2d Session, (Feb 14, 2008), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 13 2007 CONG US HR 5351, 110th CONGRESS, 2d Session, (Feb 12, 2008), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 14 2007 CONG US HR 4839, 110th CONGRESS, 1st Session, (Dec 26, 2007), Enrolled Bill, PROPOSED ACTION: Amended.
- 15 2007 CONG US HR 3997, 110th CONGRESS, 1st Session, (Dec 20, 2007), Engrossed Amendment

Senate, PROPOSED ACTION: Amended.

- 16 2007 CONG US HR 3997, 110th CONGRESS, 1st Session, (Dec 20, 2007), Engrossed Amendment House, PROPOSED ACTION: Technical or conforming amendment.
- 17 2007 CONG US HR 4839, 110th CONGRESS, 1st Session, (Dec 20, 2007), Engrossed in House, PROPOSED ACTION: Amended.
- 18 2007 CONG US HRES 884, 110th CONGRESS, 1st Session, (Dec 20, 2007), Engrossed in House, PROPOSED ACTION: Amended.
- 19 2007 CONG US HR 4839, 110th CONGRESS, 1st Session, (Dec 19, 2007), Received in Senate, PROPOSED ACTION: Amended.
- 20 2007 CONG US HR 4839, 110th CONGRESS, 1st Session, (Dec 19, 2007), Considered and Passed House, PROPOSED ACTION: Amended.
- 21 2007 CONG US HR 4690, 110th CONGRESS, 1st Session, (Dec 13, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 22 2007 CONG US S 2366, 110th CONGRESS, 1st Session, (Nov 15, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 23 2007 CONG US S 2368, 110th CONGRESS, 1st Session, (Nov 15, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 24 2007 CONG US S 2374, 110th CONGRESS, 1st Session, (Nov 15, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 25 2007 CONG US HR 4192, 110th CONGRESS, 1st Session, (Nov 15, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 26 2007 CONG US HR 4195, 110th CONGRESS, 1st Session, (Nov 15, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 27 2007 CONG US S 2345, 110th CONGRESS, 1st Session, (Nov 13, 2007), Placed on Calendar Senate, PROPOSED ACTION: Amended.
- 28 2007 CONG US HR 4088, 110th CONGRESS, 1st Session, (Nov 06, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 29 2007 CONG US HR 3820+, 110th CONGRESS, 1st Session, (Oct 10, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 30 2007 CONG US S 2129, 110th CONGRESS, 1st Session, (Oct 03, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 31 2007 CONG US HR 3664, 110th CONGRESS, 1st Session, (Sep 25, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.

- 32 2007 CONG US HR 3554, 110th CONGRESS, 1st Session, (Sep 17, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 33 2007 CONG US HR 3221, 110th CONGRESS, 1st Session, (Sep 05, 2007), Placed on Calendar Senate, PROPOSED ACTION: Technical or conforming amendment.
- 34 2007 CONG US HR 3221, 110th CONGRESS, 1st Session, (Aug 09, 2007), Engrossed in House, PROPOSED ACTION: Technical or conforming amendment.
- 35 2007 CONG US S 1973+, 110th CONGRESS, 1st Session, (Aug 02, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 36 2007 CONG US HR 3220, 110th CONGRESS, 1st Session, (Jul 30, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 37 2007 CONG US S 1849, 110th CONGRESS, 1st Session, (Jul 23, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 38 2007 CONG US HR 2954, 110th CONGRESS, 1st Session, (Jul 10, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 39 2007 CONG US HR 2776, 110th CONGRESS, 1st Session, (Jun 27, 2007), Reported in House, PROPOSED ACTION: Technical or conforming amendment.
- 40 2007 CONG US HR 2776, 110th CONGRESS, 1st Session, (Jun 19, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 41 2007 CONG US S 1617, 110th CONGRESS, 1st Session, (Jun 14, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 42 2007 CONG US S 1619, 110th CONGRESS, 1st Session, (Jun 14, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 43 2007 CONG US S 1554+, 110th CONGRESS, 1st Session, (Jun 06, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 44 2007 CONG US S 1527, 110th CONGRESS, 1st Session, (May 24, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 45 2007 CONG US HR 2481, 110th CONGRESS, 1st Session, (May 24, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 46 2007 CONG US HR 2296, 110th CONGRESS, 1st Session, (May 17, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 47 2007 CONG US S 1399, 110th CONGRESS, 1st Session, (May 15, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 48 2007 CONG US HR 2136, 110th CONGRESS, 1st Session, (May 03, 2007), Introduced in House, PRO-

POSED ACTION: Amended.

- 49 2007 CONG US HR 1945, 110th CONGRESS, 1st Session, (Apr 19, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 50 2007 CONG US S 1025+, 110th CONGRESS, 1st Session, (Mar 29, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 51 2007 CONG US HR 1618, 110th CONGRESS, 1st Session, (Mar 21, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.
- 52 2007 CONG US S 875+, 110th CONGRESS, 1st Session, (Mar 14, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 53 2007 CONG US S 768+, 110th CONGRESS, 1st Session, (Mar 06, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 54 2007 CONG US S 701, 110th CONGRESS, 1st Session, (Feb 28, 2007), Introduced in Senate, PROPOSED ACTION: Technical or conforming amendment.
- 55 2007 CONG US S 681, 110th CONGRESS, 1st Session, (Feb 17, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 56 2007 CONG US HR 25+, 110th CONGRESS, 1st Session, (Jan 04, 2007), Introduced in House, PROPOSED ACTION: Technical or conforming amendment.

Bill Drafts

- 1 2003 CONG US HR 4520+, 108th CONGRESS, 2d Session, To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home a, (Oct 21, 2004), Enrolled Bill, ACTION: Amended. Updating Legislation: **PL 108-357, October 22, 2004**
- 2 2003 CONG US HR 4520+, 108th CONGRESS, 2d Session, (Jul 15, 2004), Engrossed Amendment Senate, ACTION: Amended. Updating Legislation: **PL 108-357, October 22, 2004**
- 3 2003 CONG US HR 4520, 108th CONGRESS, 2d Session, (Jun 21, 2004), Placed on Calendar Senate, ACTION: Amended. Updating Legislation: **PL 108-357, October 22, 2004**
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→ § 6501. Limitations on assessment and collection

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 803; Sept. 2, 1958, Pub.L. 85-859, Title I, § 165(a), 72 Stat. 1313; Sept. 2, 1958, Pub.L. 85-866, Title I, §§ 80, 81, 72 Stat. 1662; June 25, 1959, Pub.L. 86-69, § 3(g), 73 Stat. 140; Sept. 14, 1960, Pub.L. 86-780, § 3(c), 74 Stat. 1013; Oct. 11, 1962, Pub.L. 87-794, Title III, § 317(c), 76 Stat. 890; Oct. 16, 1962, Pub.L. 87-834, § 2(e)(1), 76 Stat. 971; Oct. 23, 1962, Pub.L. 87-858, § 3(b)(4), 76 Stat. 1137; Feb. 26, 1964, Pub.L. 88-272, Title II, § 225(k)(6), 78 Stat. 94; Sept. 2, 1964, Pub.L. 88-571, § 3(b), 78 Stat. 857; June 21, 1965, Pub.L. 89-44, Title VIII, § 810(a), (b), 79 Stat. 169; Nov. 2, 1966, Pub.L. 89-721, §§ 2(f), 3(a), 80 Stat. 1150, 1151; Nov. 13, 1966, Pub.L. 89-809, Title I, § 105(f)(3), 80 Stat. 1568; Dec. 27, 1967, Pub.L. 90-225, § 2(c), 81 Stat. 731; Dec. 30, 1969, Pub.L. 91-172, Title I, § 101(g)(1) to (3), Title V, § 512(e)(1), 83 Stat. 525, 639; Dec. 31, 1970, Pub.L. 91- 614, Title I, § 102(d)(8), 84 Stat. 1842; Dec. 10, 1971, Pub.L. 92-178, Title V, § 504(c), Title VI, § 601(d)(1), (e)(2), 85 Stat. 551, 558, 560; Sept. 2, 1974, Pub.L. 93-406, Title II, § 1016(a)(14), 88 Stat. 930; Oct. 4, 1976, Pub.L. 94-455, Title X, §§ 1031(b)(5), 1035(d)(3), Title XIII, §§ 1302(b), 1307(d)(2)(F)(vi), Title XIX, § 1906(b)(13)(A), Title XXI, § 2107(g)(2)(A), 90 Stat. 1623, 1633, 1714, 1728, 1834, 1904; May 23, 1977, Pub.L. 95-30, Title II, § 202(d)(4)(A), (5)(B), 91 Stat. 149, 151; Feb. 10, 1978, Pub.L. 95-227, § 4(d)(4), (5), 92 Stat. 23; Nov. 6, 1978, Pub.L. 95-600, Title II, § 212(a), Title III, § 321(b)(2), Title V, 504(b)(3), Title VII, §§ 701(t)(3)(A), 703(n), (p)(2), 92 Stat. 2818, 2819, 2835, 2881, 2912, 2943, 2944; Nov. 10, 1978, Pub.L. 95-628, § 8(c)(1), 92 Stat. 3631; Apr. 1, 1980, Pub.L. 96-222, Title I, §§ 102(a)(2)(A), 103(a)(6)(G)(x), 94 Stat. 208, 210; Apr. 2, 1980, Pub.L. 96-223, Title I, § 101(g)(1), 94 Stat. 253; Sept. 3, 1982, Pub.L. 97-248, Title IV, § 402(c)(5), 96 Stat. 667; July 18, 1984, Pub.L. 98-369, Div. A, Title I, §§ 131(d)(2), 163(b)(1), Title II, § 211(b)(24), Title III, § 314(a)(3), Title IV, §§ 447(a), 474(r)(39), Title VII, § 714(p)(2)(F), Title VIII, § 801(d)(14), 98 Stat. 664, 698, 757, 787, 817, 846, 965, 997; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, §§ 1810(g)(3), 1847(b)(12) to (14), 100 Stat. 2828, 2857; Dec. 22, 1987, Pub.L. 100-203, Title X, §§ 10712(c)(2), 10714(c), 101 Stat. 1330-467, 1330-470; Aug. 23, 1988, Pub.L. 100-418, Title I, § 1941(b)(2)(H), 102 Stat. 1323; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1008(j)(1), Title IV, § 4008(c)(2), 102 Stat. 3445, 3653; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7814(e)(2)(E), 103 Stat. 2414; Nov. 5, 1990, Pub.L. 101-508, Title XI, §§ 11511(c)(2), 11602(b), 104 Stat. 1388-485, 1388-500; Aug. 20, 1996, Pub.L. 104-188, Title I, §§ 1702(e)(3), 1703(n)(8), 1704(j)(4)(B), 110 Stat. 1870, 1877, 1882; Aug. 5, 1997, Pub.L. 105-34, Title V, § 506(b), Title XI, § 1145(a), Title XII, §§ 1239(e)(2), 1284(a), Title XVI, § 1601(g)(2), 111 Stat. 855, 985, 1028, 1038, 1092; July 22, 1998, Pub.L. 105-206, Title III, § 3461(b), Title VI, §§ 6007(e)(2)(A), 6023(27), 112 Stat. 764, 809, 826; Oct. 22, 2004, Pub.L. 108-357, Title IV, § 413(c)(28), Title VIII, § 814(a), 118 Stat. 1509, 1581; Aug. 8, 2005, Pub.L. 109-58, Title XIII, §§ 1341(b)(4), 1342(b)(4), 119 Stat. 1049, 1051; Dec. 21, 2005,

Pub.L. 109-135, Title IV, § 403(y)Pub.L. 109-58, Title XIII, §§ 1341(b)(4) , 119 Stat. 2629; Dec. 29, 2007, Pub.L. 110-172, § 7(a)(2)(B), 121 Stat. 2482.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1954 Acts. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S. Code Cong. and Adm. News, p. 4561.

1958 Acts. Senate Report No. 2090 and Conference Report No. 2596, see 1958 U.S. Code Cong. and Adm. News, p. 4395.

Senate Report No. 1983 and Conference Report No. 2632, see 1958 U.S. Code Cong. and Adm. News, p. 4791.

1959 Acts. Senate Report No. 291 and Conference Report No. 520, see 1959 U.S. Code Cong. and Adm. News, p. 1575.

1960 Acts. Senate Report No. 1393 and Conference Report No. 2199, see 1960 U.S. Code Cong. and Adm. News, p. 1010.

1962 Acts. Senate Report No. 2059 and Conference Report No. 2518, see 1962 U.S. Code Cong. and Adm. News, p. 3110.

Senate Report No. 1881 and Conference Report No. 2508, see 1962 U.S. Code Cong. and Adm. News, p. 3297.

Senate Report No. 2109 and Conference Report No. 2542, see 1962 U.S. Code Cong. and Adm. News, p. 3890.

1964 Acts. House Report No. 749, Senate Report No. 830, Senate Supplemental Report No. 830, and Conference Report No. 1149, see 1964 U.S. Code Cong. and Adm. News, p. 1313.

Senate Report No. 1428 and Conference Report No. 1843, see 1964 U.S. Code Cong. and Adm. News, p. 3586.

1965 Acts. House Report No. 433, Senate Report No. 324, and Conference Report No. 525, see 1965 U.S. Code Cong. and Adm. News, p. 1645.

1966 Acts. Senate Report No. 1709, see 1966 U.S. Code Cong. and Adm. News, p. 3761.

Senate Report No. 1707 and Conference Report No. 2327, see 1966 U.S. Code Cong. and Adm. News, p. 4446.

1967 Acts. Senate Report No. 490 and Conference Report No. 1010, see 1967 U.S. Code Cong. and Adm. News, p. 2606.

1969 Acts. House Report No. 91-413, Senate Report No. 91-552, and Conference Report No. 91-782, see 1969 U.S. Code Cong. and Adm. News, p. 1645.

1970 Acts. Senate Report No. 91-1444, see 1970 U.S. Code Cong. and Adm. News, p. 5689.

1971 Acts. House Report No. 92-533, Senate Report No. 92-437, and House Conference Report No. 92-708, see 1971 U.S. Code Cong. and Adm. News, p. 1825.

1974 Acts. House Report Nos. 93-533, 93-807, Senate Report Nos. 93-127, 93-383, House Conference Report No. 93-1280, and Senate Conference Report No. 93-1090, see 1974 U.S. Code Cong. and Adm. News, p. 4639.

1976 Acts. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No.

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94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

1977 Acts. Senate Report No. 95-66 and House Conference Report No. 95- 263, see 1977 U.S. Code Cong. and Adm. News, p. 185.

1978 Acts. House Report No. 95-438 and Explanatory Statement, see 1978 U.S. Code Cong. and Adm. News, p. House Report No. 95-1445, Senate Report No. 95-1263, and House Conference Report No. 95-1800, see 1978 U.S. Code Cong. and Adm. News, p. 6761.

Senate Report No. 95-797, see 1978 U.S. Code Cong. and Adm. News, p. 9260.

1980 Acts. Senate Report No. 96-498, see 1980 U.S. Code Cong. and Adm. News, p. 316.

House Report No. 96-304, Senate Report No. 96-394, and House Conference Report No. 96-817, see 1980 U.S. Code Cong. and Adm. News, p. 410.

1982 Acts. Senate Report No. 97-494, House Conference Report No. 97-760, and Statements by Legislative Leaders, see 1982 U.S. Code Cong. and Adm. News, p. 781.

1984 Acts. House Report No. 98-432, House Conference Report No. 98-861, Statements by Legislative Leaders, and Two Related Reports, see 1984 U.S. Code Cong. and Adm. News, p. 697.

1986 Acts. House Conference Report No. 99-841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1987 Acts. House Report No. 100-391 and House Conference Report No. 100- 495, see 1987 U.S. Code Cong. and Adm. News, p. 2313-1.

1988 Acts. House Conference Report No. 100-576, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

Senate Report No. 100-445 and House Conference Report No. 100-1104, see 1988 U.S. Code Cong. and Adm. News, p. 4515.

1989 Acts. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

1990 Acts. House Report No. 101-881 and House Conference Report No. 101- 964, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1996 Acts. Senate Report No. 104-281 and House Conference Report No. 104- 737, see 1996 U.S. Code Cong. and Adm. News, p. 1474.

1997 Acts. House Report No. 105-148, Senate Report No. 105-33, House Conference Report No. 105-220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

1998 Acts. House Conference Report No. 105-599, see 1998 U.S. Code Cong. and Adm. News, p. 297.

2004 Acts. House Conference Report No. 108-755, see 2004 U.S. Code Cong. and Adm. News, p. 1341.

2005 Acts. House Conference Report No. 109-190, see 2005 U.S. Code Cong. and Adm. News, p. 448.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S17.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S47.

Codifications

Subsecs. (k) to (m). Pub.L. 99-514, § 1847(b)(12), inserted "(as amended by sections 211, 314, and 474 of this Act)" in the directory language of section 168(b)(1) of Pub.L. 98-369. That insertion of language resulted in no change in the text of subsecs. (k), (l), and (m) of this section as thus amended by section 168(b)(1) of Pub.L. 98-369 but served to remove an ambiguity which had resulted from the failure of the directory language as originally enacted to indicate that the amendments of this section by sections 211, 314, and 474 of Pub.L. 98-369 were prerequisite to the amendment of this section by section 168(b)(1) of Pub.L. 98-369.

Portion of section 1702(e)(3)(A) of Pub.L. 104-188, which provided that subsec. (m) of this section, relating to deficiency attributable to election under section 44B, was to be repealed, was incapable of execution, since such subsec. (m) had previously been repealed by Pub.L. 100-418.

Section 1703(n)(8) of Pub.L. 104-188, which provided that subsec. (m) of this section as redesignated by section 1602 of Pub.L. 104-188 was to be amended by substituting "45B, or 51(j)" for "or 51(j)", was executed by making such substitution in subsec. (m) as redesignated and amended by section 1702(e)(3) of Pub.L. 104-188, as the probable intent of Congress.

Section 1704(j)(4)(B) of Pub.L. 104-188, which provided that subsec. (m) of this section as redesignated by section 1602 of Pub.L. 104-188 was to be amended by substituting "sections 30(d)(4), 40(f)" for "section 40(f)", was executed by making such substitution in subsec. (m) as redesignated and amended by section 1702(e)(3) of Pub.L. 104-188, as the probable intent of Congress.

Amendment of subsec. (m) by section 11511(c)(2) of Pub.L. 101-508, directing that "43 or 44B" be substituted for "44B" each place it appears, was incapable of execution since subsec. (m) had previously been repealed by Pub.L. 100-418.

Section 1239(e)(2) of Pub.L. 105-34, which amended subsec. (o) by adding paragraph (3), was executed to subsec. (n), as so redesignated by section 1702(e)(3)(A) of Pub.L. 104-188, to reflect the probable intent of Congress.

Amendments

2007 Amendments. Subsec. (m). Pub.L. 110-172, § 7(a)(2)(B), inserted "45H(g)," following "45C(d)(4),".

2005 Amendments. Subsec. (c)(10)(B). Pub.L. 109-135, § 403(y), struck out "(as defined in section 6111)" following "the date that a material advisor".

Subsec. (m). Pub.L. 109-58, § 1341(b)(4), inserted "30B(h)(9)," following "30(d)(4),".

Pub.L. 109-58, § 1342(b)(4), inserted "30C(e)(5)" following "30B(h)(9),".

2004 Amendments. Subsec. (c)(10). Pub.L. 108-357, § 814(a), added par. (10).

Subsec. (e)(1)(B). Pub.L. 108-357, § 413(c)(28), rewrote subpar. (B), which formerly read: "**(B) Constructive dividends.**--If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), 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."

1998 Amendments. Subsec. (c)(4). Pub.L. 105-206, § 3461(b), added subpar. (A) designation and heading and added subpar. (B).

Subsec. (c)(9). Pub.L. 105-206, § 6007(e)(2)(A), struck out "The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a)."

Subsec. (m). Pub.L. 105-206, § 6023(27), substituted "election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any" for "election under sections 30(d)(4), 40(f), 43, 45B, or 51(j) (or any".

1997 Amendments. Pub.L. 105-34, § 1601(g)(2), amended directory language of Pub.L. 104-188, and so required no change in text.

Subsec. (a). Pub.L. 105-34, § 1284(a), added a sentence: "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)." at the end of subsec. (a).

Subsec. (c)(8). Pub.L. 105-34, § 1145(a), amended par. (8), which formerly read:

"(8) Failure to notify Secretary under section 6038B.--In the case of any tax imposed on any exchange or distribution by reason of subsection (a), (d), or (e) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange or distribution under section 6038B(a)."

Subsec. (c)(9). Pub.L. 105-34, § 506(b), amended par. (9), which formerly read:

"(9) Gift tax on certain gifts not shown on return.--If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

Subsec. (o)(3). Pub.L. 105-34, § 1239(e)(2), added par. (3) of subsec. (o), now redesignated (n).

Subsec. (n)(3). Pub.L. 105-34, § 1239(e)(2), added par. (3).

1996 Amendments. Subsec. (m). Pub.L. 104-188, § 1702(e)(3)(A), purported to strike out former subsec. (m) (which had already been repealed, see Codifications note set out under this section), and redesignated subsec. (n) as (m).

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Pub.L. 104-188, § 1702(e)(3)(B), inserted reference to section 43.

Pub.L. 104-188, § 1703(n)(8), inserted reference to section 45B. See Codifications note set out under this section.

Pub.L. 104-188, § 1704(j)(4)(B), substituted "sections 30(d)(4), 40(f)" for "section 40(f)". See Codifications note set out under this section.

Subsec. (n). Pub.L. 104-188, § 1702(e)(3)(A), redesignated subsecs. (n) and (o) as (m) and (n), respectively.

Subsec. (o). Pub.L. 104-188, § 1702(e)(3)(A), redesignated subsec. (o) as (n).

1990 Amendments. Subsec. (c)(9). Pub.L. 101-508, § 11602(b), added par. (9).

1989 Amendments. Subsec. (n). Pub.L. 101-239, § 7814(e)(2)(E), struck out ", 41(h)" after "section 40(f)".

1988 Amendments. Subsec. (m). Pub.L. 100-418 struck out subsec. (m), which related to special rules for wind-fall profit tax.

Subsec. (n). Pub.L. 100-647, § 4008(c)(2), substituted ", 41(h) or 51(j)" for "or 51(j)".

Subsec. (o)(3). Pub.L. 100-647, § 1008(j)(1), struck out par. (3), relating to the extension of period in the case of certain contributions in the aid of construction.

1987 Amendments. Subsec. (l)(1). Pub.L. 100-203, § 10712(c)(2), substituted "plan, trust, or other organization" for "plan, or trust".

Pub.L. 100-203, § 10714(c), substituted "by section 4912, by chapter 42 (other than section 4940)," for "by chapter 42 (other than section 4940)".

1986 Amendments. Subsec. (c)(8). Pub.L. 99-514, § 1810(g)(3), substituted "exchange or distribution" for "exchange" wherever appearing, and "subsection (a), (d), or (e)" for "subsection (a) or (d)".

Subsecs. (k) to (p). Pub.L. 99-514, § 1847(b)(12), inserted "(as amended by sections 211, 314, and 474 of this Act)" in directory language of section 163(b)(1) of Pub.L. 98-369, which resulted in no change in text but removed an ambiguity which had resulted from failure of directory language as originally enacted to indicate that amendments of this section by sections 211, 314, and 474 of Pub.L. 98-369 were to be executed before the amendment by section 163(b)(1) of Pub.L. 98-369. See 1984 Amendment notes below.

Subsec. (k). Pub.L. 99-514, § 1847(b)(14), substituted "or a credit carryback (as defined in section 6511(d)(4)(C))" for "an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback".

Subsec. (n). Pub.L. 99-514, § 1847(b)(13), added subsec. (n). Former subsec. (n) redesignated (o).

Subsec. (o). Pub.L. 99-514, § 1847(b)(13), redesignated former subsec. (n) as (o).

1984 Amendments. Subsec. (c)(6). Pub.L. 98-369, § 211(b)(24)(A), redesignated par. (7) as par. (6). Former par. (6), which had provided that, in the case of any tax imposed under section 802(a) by reason of section 802(b)(3)

on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applied, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applied, such tax could be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceased to be an insurance company, the second taxable year for which the taxpayer was not a life insurance company, or the taxable year in which the distribution was actually made, as the case might be, was struck out.

Subsec. (c)(7). Pub.L. 98-369, § 211(b)(24)(A), redesignated former par. (7) as par. (6).

Pub.L. 98-369, § 447(a), added par. (7).

Subsec. (c)(8). Pub.L. 98-369, § 131(d)(2), added par. (8).

Subsec. (g)(3). Pub.L. 98-369, § 801(d)(14), substituted "section 6011(e)(2)" for "section 6011(c)(2)".

Subsec. (k). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated subsec. (m) as subsec. (k).

Pub.L. 98-369, § 211(b)(24)(B), struck out former subsec. (k) which had provided that in the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency could be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2) could be assessed.

Subsec. (l). Pub.L. 98-369, § 163(b)(1), struck out subsec. (l), which read "For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4). Former subsec. (n) was redesignated subsec. (l).

Subsec. (l)(3). Pub.L. 98-369, § 314(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub.L. 98-369, § 163(b)(1).

Subsec. (m). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated former subsec. (p) as subsec. (m). Former subsec. (m) was redesignated subsec. (k).

Subsec. (n). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), added subsec. (n). Former subsec. (n) was redesignated subsec. (l).

Subsec. (n)(3). Pub.L. 98-369, § 314(a)(3) substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub.L. 98-369, § 163(b)(1).

Subsec. (o). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), struck out subsec. (o), which read: "For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229."

Subsec. (p). Pub.L. 98-369, § 163(b)(1), as amended by Pub.L. 99-514, § 1847(b)(12), redesignated subsec. (p) as subsec. (m).

Pub.L. 98-369, § 474(r)(39), redesignated subsec. (q) as (p). Former subsec. (p), which related to deficiencies

attributable to an election under section 44B, was struck out.

Subsec. (q). Pub.L. 98-369, § 474(r)(39), redesignated subsec. (q) as (p).

Subsec. (q)(3). Pub.L. 98-369, § 714(p)(2)(F), substituted cross reference direction to section 6229 as made applicable by section 6232 for extension of period for windfall profit tax items of partnerships for former provision which read:

"(3) Partnership items of federally registered partnerships.--Under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986."

1982 Amendments. Subsec. (o). Pub.L. 97-248 substituted "Special rules for partnership items" for "Special rules for partnership items of federally registered partnerships" as the subsection heading and, in text, substituted provisions directing that for extension of period in case of partnership items (as defined in section 6231(a)(3)), see section 6229, for provisions that had formerly directed that, (1) in the case of any tax imposed by subtitle A with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership did not expire before the later of (A) the date which was 4 years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or, later, if the date prescribed for filing the return), or (B) if the name or address of such person did not appear on the partnership return, the date which was 1 year after the date on which such information was furnished to the Secretary in such manner and at such place as he might prescribe by regulations, (2) for purposes of this subsection, the term "partnership item" meant (A) any item required to be taken into account for the partnership taxable year under any provision of subchapter K of chapter 1 to the extent that regulations prescribed by the Secretary provided that for purposes of this subtitle such item was more appropriately determined at the partnership level than at the partner level, and (B) and other item to the extent affected by an item described in subparagraph (A), (3) the extensions referred to in subsection (c)(4), insofar as they related to partnership items, could, with respect to any person, be consented to (A) except to the extent the Secretary was otherwise notified by the partnership, by a general partner of the partnership, or (B) by any person authorized to do so by the partnership in writing, and (4) for purposes of this subsection, the term "federally registered partnership" meant, with respect to any partnership taxable year, any partnership (A) interests in which had been offered for sale at any time during such taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission, or (B) which, at any time during such taxable year or a prior taxable year, had been subject to the annual reporting requirements of the Securities and Exchange Commission which related to the protection of investors in the partnership.

1980 Amendments. Subsec. (o). Pub.L. 96-222, § 102(a)(2)(A), redesignated former subsec. (q), relating to special rules for partnership items of Federally registered partnerships, as (o). Former subsec. (o), relating to work incentive program credit carrybacks, was repealed by Pub.L. 95-628, § 8(c)(1)(C), Nov. 10, 1978, 92 Stat. 3632.

Subsec. (p). Pub.L. 96-222, § 103(a)(6)(G)(x), redesignated former subsec. (q), relating to deficiency attributable to election under section 44B, as (p). Former subsec. (p), relating to new employee credit carrybacks, was repealed by Pub.L. 95-628, § 8(c)(1)(C), Nov. 10, 1978, 92 Stat. 3632.

Subsec. (q). Pub.L. 96-223 added subsec. (q). Former subsec. (q), as added by section 212(a) of Pub.L. 95-600, redesignated (o). Former subsec. (1), as added by section 321(b)(2) of Pub.L. 95-600, redesignated (p).

1978 Amendments. Subsec. (e)(3). Pub.L. 95-600, § 701(t)(3)(A), substituted "43, or 44" for "or 43".

Pub.L. 95-227, § 4(d)(4), added reference to chapter 44.

Subsec. (h). Pub.L. 95-600, § 703(n), (p)(2), substituted "section 6213(b)(3)" for "section 6213(b)(2)" and struck out provisions relating to the assessment of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c).

Subsec. (j). Pub.L. 95-628, § 8(c)(1)(A), substituted in the heading "Certain credit carrybacks" for "Investment credit carrybacks", designated existing paragraph as par. "(1) In general", substituted in such paragraph "credit carryback" for "investment credit carryback" in two instances and "unused credit" for "unused investment credit", inserted reference to other credit carryback, and substituted reference to section 6213(b)(3) for 6213(b)(2), and added par. (2).

Pub.L. 95-600, § 703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (m). Pub.L. 95-628, § 8(c)(1)(B), struck out references to subsecs. (o) and (p) in two instances.

Pub.L. 95-600, § 504(b)(3), added "and refund" following "tentative carryback".

Subsec. (n). Pub.L. 95-227, § 4(d)(5), in the subsec. catchline added "and similar" following "42", and par. (1) added reference to section 4975 and ", plan, or trust (as the case may be)" following "foundation".

Subsecs. (o), (p). Pub.L. 95-628, § 8(c)(1)(C), struck out provisions of subsecs. (o) and (p) for work incentive program credit carrybacks and new employee credit carrybacks.

Subsec. (o). Pub.L. 95-600, § 703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (q). Pub.L. 95-600, § 212(a), added subsec. (q), relating to special rules for partnership items of Federally registered partnerships.

Pub.L. 95-600, § 321(b)(2), added subsec. (q), relating to deficiency attributable to election under section 44B.

1977 Amendments. Subsec. (m). Pub.L. 95-30, § 202(d)(5)(B), added references to new employee credit carrybacks and to subsec. (p).

Subsec. (p). Pub.L. 95-30, § 202(d)(4)(A), added subsec. (p).

1976 Amendments. Subsecs. (b)(3), (c)(4), (d), (e)(1)(A)(ii), (e)(2). Pub.L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" following "secretary".

Subsec. (e)(3). Pub.L. 94-455, § 1307(d)(2)(F)(vi), substituted "chapter 41, 42, or 43" for "chapter 42 or 43".

Subsec. (i). Pub.L. 94-455, §§ 1031(b)(5), 1035(d)(3), substituted "section 904(c)" for "section 904(d)" wherever appearing and inserted "or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes)" following "excess foreign taxes)" and "or 907(f)" before "which results in such carryback".

Subsec. (n)(3). Pub.L. 94-455, § 1302(b), added subsec. (n)(3).

Subsec. (o). Pub.L. 94-455, § 2107(g)(2)(A), inserted ", an investment credit carryback," following "net operating loss carryback".

1974 Amendments. Subsec. (e)(3). Pub.L. 93-406 inserted reference to chapter 43.

1971 Amendments. Subsec. (g)(3). Pub.L. 92-178, § 504(c), added par. (3).

Subsec. (m). Pub.L. 92-178, § 601(e)(2)(A) and (B), substituted "an investment credit carryback, or a work incentive program carryback" for "or an investment credit carryback" and inserted reference to subsec. (o) in two instances, respectively.

Subsec. (o). Pub.L. 92-178, § 601(d)(1), added subsec. (o).

1970 Amendments. Subsec. (e)(2). Pub.L. 91-614 substituted "during the period for which the return was filed" for "during the year".

1969 Amendments. Subsec. (c)(7). Pub.L. 91-172, § 101(g)(2), added subsec. (c)(7).

Subsec. (e)(3). Pub.L. 91-172, § 101(g)(3), inserted provision excluding, in specified cases, chapter 42 taxes from those considered in determining the amount of taxes omitted from a return.

Subsec. (h). Pub.L. 91-172, § 512(e)(1)(A) to (D), substituted "loss or capital loss carrybacks" for "loss carrybacks" in subsec. catchline, "loss carryback or a capital loss carryback" for "loss carryback," "operating loss or net capital loss which" for "operating loss which," "assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed" for "assessed, or" and "if later than the date prescribed by the preceding sentence" for "whichever is later."

Subsec. (j). Pub.L. 91-172, § 512(e)(1)(E), substituted "loss carryback or a capital loss carryback" for "loss carryback."

Subsec. (m). Pub.L. 91-172, § 512(e)(1)(F), substituted "net operating loss carryback, a capital loss carryback, or an investment credit carryback" for "net operating loss carryback or an investment credit carryback."

Subsec. (n). Pub.L. 91-172, § 101(g)(1), added subsec. (n).

1967 Amendments. Subsec. (j). Pub.L. 90-225 added ", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed," following "the unused investment credit which results in such carryback may be assessed".

1966 Amendments. Subsec. (b). Pub.L. 89-809 inserted reference to chapter 3 in pars. (1) and (2) and "and tax imposed by chapter 3" in the heading of par. (2).

Subsec. (j). Pub.L. 89-721, § 2(f), substituted "investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2))," for "investment credit carryback".

Subsec. (m). Pub.L. 89-721, § 3(a), added subsec. (m).

1965 Amendments. Subsec. (b)(4). Pub.L. 89-44, § 810(a), added par. (4).

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Subsec. (e). Pub.L. 89-44, § 810(b)(2), substituted "Substantial omission of items" for "Omission from gross income" in the catchline.

Subsec. (e)(3). Pub.L. 89-44, § 810(b)(1), added par. (3).

1964 Amendments. Subsec. (f). Pub.L. 88-272 substituted "gross income and adjusted ordinary gross income, described in section 543" for "gross income, described in section 543(a)."

Subsec. (k). Pub.L. 88-571 added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub.L. 88-571 redesignated former subsec. (k) as (l).

1962 Amendments. Subsec. (c)(6). Pub.L. 87-858 substituted "802(a)" for "802(a)(1)."

Subsec. (h). Pub.L. 87-794 authorized assessment of a deficiency within 18 months after the date on which the taxpayer files in accordance with § 172(b)(3) a copy of the certification issued under § 317 of the Trade Expansion Act of 1962, whichever is later.

Subsec. (j). Pub.L. 87-834 added subsec. (j) and redesignated former subsec. (j) as (k).

Subsec. (k). Pub.L. 87-834 redesignated former subsec. (j) as (k).

1960 Amendments. Subsec. (i). Pub.L. 86-780 added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub.L. 86-780 redesignated former subsec. (i) as (j).

1959 Amendments. Subsec. (c)(6). Pub.L. 86-69 added subsec. (c)(6).

1958 Amendments. Subsec. (a). Pub.L. 85-859 substituted "at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid" for "within 3 years after such tax became due".

Subsec. (d). Pub.L. 85-866, § 80, substituted in first sentence "subsection (c), (e), or (f)" for "subsection (c)", designated existing clauses (1)-(3) of second sentence as clause (1) and added clauses (2) and (3).

Subsec. (g)(2). Pub.L. 85-866, § 81(a), substituted "organization" for "corporation" wherever appearing.

Subsec. (h). Pub.L. 85-866, § 81(b), added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i). Pub.L. 85-866, § 81(b), redesignated former subsec. (h) as (i).

Effective and Applicability Provisions

2007 Acts. Amendments made by Pub.L. 110-172, § 7, take effect as if included in the provisions of Pub.L. 108-357 to which they relate, see Pub.L. 110-172, § 7(e), set out as an Effective and Applicability Provisions note under 26 U.S.C.A. § 1092.

2005 Acts. Amendments made by Pub.L. 109-135, § 403, effective as if included in provisions of the American Jobs Creation Act of 2004, Pub.L. 108-357, to which they relate, see Pub.L. 109-135, § 403(nn), set out as a note under 26 U.S.C.A. § 26.

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Amendments by Pub.L. 109-58, § 1341, applicable to property placed in service after Dec. 31, 2005, in taxable years ending after Dec. 31, 2005, see Pub.L. 109-58, § 1341(c), set out as a note under 26 U.S.C.A. § 30B.

Amendments by Pub.L. 109-58, § 1342, applicable to property placed in service after Dec. 31, 2005, in taxable years ending after Dec. 31, 2005, see Pub.L. 109-58, § 1342(c), set out as a note under 26 U.S.C.A. § 30C.

2004 Acts. Amendment by Pub.L. 108-357, § 413(c)(28), amending subsec. (e)(1)(B) of this section, applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see Pub.L. 108-357, § 413(d)(1), set out as an Effective and Applicability Provisions note under 26 U.S.C.A. § 1.

Pub.L. 108-357, Title VIII, § 814(b), Oct. 22, 2004, 118 Stat. 1581, provided that: "The amendment made by this section [adding subsec. (c)(10) of this section] shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act [Oct. 22, 2004]."

1998 Acts. Section 3461(c) of Pub.L. 105-206 provided that:

"(1) In general--The amendments made by this section [amending subsec. (c)(4) of this section and section 6502 of this title] shall apply to requests to extend the period of limitations made after December 31, 1999.

"(2) Prior request--If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986 [section 6502(a) of this title], such extension shall expire on the latest of--

"(A) the last day of such 10-year period;

"(B) December 31, 2002; or

"(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension."

Amendment by section 6023(27) of Pub.L. 105-206 effective July 22, 1998, see section 6023(32) of Pub.L. 106-206, set out as a note under section 34 of this title.

Amendments by Title VI (sections 6001 to 6024) of Pub.L. 105-206, except as otherwise provided in such title, shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997, Pub.L. 105-34, Aug. 5, 1997, 111 Stat. 788, to which they relate, see section 6024 of Pub.L. 105-206, set out as a note under section 1 of this title.

1997 Acts. Section 506(e)(2) of Pub.L. 105-34 provided that: "The amendment made by subsection (b) [amending subsec. (c)(9) of this section] shall apply to gifts made in calendar years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Section 1145(b) of Pub.L. 105-34 provided that: "The amendment made by subsection (a) [amending subsec. (c)(8) of this section] shall apply to information the due date for the reporting of which is after the date of the enactment of this Act [Aug. 5, 1997]."

Amendments by section 1239 of Pub.L. 105-34 applicable to partnership taxable years ending after August 5,

1997, see section 1239(f) of Pub.L. 105-34, set out as a note under section 6225 of this title.

Section 1284(b) of Pub.L. 105-34 provided that: "The amendment made by this section [amending subsec. (a) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Amendments by section 1601 of Pub.L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub.L. 104-188, Aug. 20, 1996, 110 Stat. 1755], see section 1601(j)(1) of Pub.L. 105-34, set out as a note under section 23 of this title.

1996 Acts. Amendment by section 1702 of Pub.L. 104-188 effective as if included in provision of Revenue Reconciliation Act of 1990 [Pub.L. 101-508, Title XI, Nov. 5, 1990, 104 Stat. 1388-400, see Tables for classification] to which it relates, except as otherwise specifically provided, see section 1702(i) of Pub.L. 104-188, set out as a note under section 38 of this title.

Amendment by section 1703 of Pub.L. 104-188 effective as if included in provision of Revenue Reconciliation Act of 1993 [Pub.L. 103-66, Title XIII, Chapter I, § 13001 et seq., Aug. 10, 1993, 107 Stat. 416, see Tables for classification] to which it relates, see section 1703(o) of Pub.L. 104-188, set out as a note under section 39 of this title.

1990 Acts. Section 11602(e)(2) of Pub.L. 101-508 provided that: "The amendment made by subsection (b) [amending subsec. (c) of this section] shall apply to gifts after October 8, 1990."

1989 Acts. Section 7817 of Pub.L. 101-239 provided that amendment by part I of subtitle H of Title VII (sections 7811 to 7816) of Pub.L. 101-239 shall take effect as if included in the provisions of Pub.L. 100-647 to which such amendment relates, see section 7817 of Pub.L. 101-239, set out as a note under section 1 of this title.

1988 Acts. Amendment by section 1008(j)(1) of Pub.L. 100-647 effective as if included in the provisions of Pub.L. 99-514 to which such amendment relates, except that no addition to tax shall be made under section 6654 or 6655 of this title for any period before Apr. 16, 1989 (Mar. 16, 1989 in the case of a taxpayer subject to section 6655 of this title) with respect to any underpayment to the extent such underpayment was created or increased by any provision of Titles I or II of Pub.L. 100-647, see section 1019 of Pub.L. 100-647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(2) of Pub.L. 100-647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub.L. 100-647, set out as a note under section 41 of this title.

Amendment by Pub.L. 100-418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub.L. 100-418, set out as a note under section 164 of this title.

1987 Acts. Amendment by section 10712(c)(2) of Pub.L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub.L. 100-203, set out as a note under section 4955 of this title.

Amendment by section 10714(c) of Pub.L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub.L. 100-203, set out as a note under section 4912 of this title.

1986 Acts. Amendment by Pub.L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub.L. 98-369, to which such amendment relates, see section 1881 of

Pub.L. 99-514, set out as a note under section 48 of this title.

1984 Acts. Amendment by section 131(d)(2) of Pub.L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub.L. 98-369, set out as a note under section 367 of this title.

Amendment by section 163(b)(1) of Pub.L. 98-369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after December 31, 1984, see section 163(c) of Pub.L. 98-369, set out as a note under section 118 of this title.

Amendment by section 211(b)(24) of Pub.L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub.L. 98-369, set out as a note under section 801 of this title.

Amendment by section 314(a)(3) of Pub.L. 98-369 effective July 18, 1984, see section 314(a)(4) of Pub.L. 98-369, set out as a note under section 4942 of this title.

Section 447(b) of Pub.L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 474(r)(39) of Pub.L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub.L. 98-369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(F) of Pub.L. 98-369, effective as if included in provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub.L. 97- 248 to which such amendment relates, see section 715 of Pub.L. 98-369, set out as a note under section 31 of this title.

Amendment by section 801(d)(14) of Pub.L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub.L. 98-369, set out as a note under section 921 of this title.

1982 Acts. Amendment by Pub.L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1) and (3) of Pub.L. 97-248, set out as a note under section 6221 of this title.

1980 Acts. Amendment by Pub.L. 96-223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub.L. 96-223, set out as a note under section 4986 of this title.

Amendment by Pub.L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub.L. 95-600, to which such amendment relates, see section 201 of Pub.L. 96-222, set out as a note under section 32 of this title.

1978 Acts. Amendment by Pub.L. 95-628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub.L. 95-628, set out as a note under section 6511 of this title.

Section 212(c) of Pub.L. 95-600 provided that: "The amendments made by this section [amending this section and sections 6511 and 6512 of this title] shall apply to partnership items arising in partnership taxable years beginning after December 31, 1978."

Section 321(d)(5) of Pub.L. 95-600, as added by Pub.L. 96-222, title I, § 103(a)(6)(B), Apr. 1, 1980, 94 Stat. 209, provided that: "The amendments made by subsection (b) [amending this section and former section 44B of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 504(b)(3) of Pub.L. 95-600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub.L. 95-600, set out as a note under section 6411 of this title.

Amendment by section 701(t)(3)(A) of Pub.L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub.L. 95-600, set out as a note under section 859 of this title.

Amendment by section 703(p)(2) of Pub.L. 95-600 applicable with respect to losses sustained in taxable years ending after Nov. 6, 1978, see section 703(p)(4) of Pub.L. 95-600, set out as a note under section 172 of this title.

Amendment by section 703(n) of Pub.L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub.L. 95-600, set out as a note under section 46 of this title.

Amendment by Pub.L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub.L. 95-227, set out as a note under section 192 of this title.

1977 Acts. Amendment by Pub.L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub.L. 95-30, set out as a note under section 51 of this title.

1976 Acts. Amendment by section 1906 of Pub.L. 94-455 effective the first day of the first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub.L. 94-455, set out as a note under section 6013 of this title.

Amendment by section 1031(b)(5) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, with specific exceptions, see section 1031(c) of Pub.L. 94-455, set out as a note under section 904 of this title.

Amendment by section 1035(d)(3) of Pub.L. 94-455 applicable to taxes paid or accrued during taxable years ending after Oct. 4, 1976, see section 1035(e) of Pub.L. 94-455, set out as a note under section 907 of this title.

Amendment by section 1302(b) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1974, see section 1302(c) of Pub.L. 94-455, set out as a note under section 4942 of this title.

Amendment by section 1307(d)(2)(F)(vi) of Pub.L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e)(5) of Pub.L. 94-455, set out as a note under section 501 of this title.

1974 Acts. Amendment by Pub.L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub.L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub.L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub.L. 93-406, set out as a note under section 410 of this title.

1971 Acts. Amendment by section 504(c) of Pub.L. 92-178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub.L. 92-178, set out as a note under section 991 of this title.

Amendment by section 601(d), (e)(2)(A), (B) of Pub.L. 92-178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub.L. 92-178, set out as a note under section 381 of this title.

1970 Acts. Amendment of section by Pub.L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub.L. 91-614, set out as a note under section 2501 of this title.

1969 Acts. Amendment by section 101(g)(1) to (3) of Pub.L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub.L. 91-172, set out as a note under section 4940 of this title.

Amendment by section 512(e)(1) of Pub.L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub.L. 91-172, set out as a note under section 1212 of this title.

1967 Acts. Amendment by Pub.L. 90-225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub.L. 90-225, set out as a note under section 46 of this title.

1966 Acts. Section 105(f)(4) of Pub.L. 89-809 provided that: "The amendments made by this subsection [amending this section and section 6513 of this title] shall take effect on the date of the enactment of this Act [November 13, 1966]."

Amendment by section 2(f) of Pub.L. 89-721 applicable with respect to taxable years ending after Dec. 31, 1961, but only in the case of applications filed after Nov. 2, 1966, see section 2(g) of Pub.L. 89-721, set out as a note under section 6411 of this title.

Section 3(b) of Pub.L. 89-721 provided that: "The amendment made by subsection (a) [amending this section] shall apply in any case where the application under section 6411 of the Internal Revenue Code of 1954 is filed after the date of the enactment of this Act [Nov. 2, 1966]."

1965 Acts. Section 810(c) of Pub.L. 89-44 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to returns filed on or after July 1, 1965."

1964 Acts. Section 3(f) of Pub.L. 88-571 provided that: "The amendments made by this section [amending sections 815, 6501, 6511, 6601 and 6611 of this title] shall apply with respect to amounts added to policyholders surplus accounts (within the meaning of section 815(c) of the Internal Revenue Code of 1954) for taxable years beginning after December 31, 1958."

Amendment by Pub.L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub.L. 88-272, set out as a note under section 316 of this title.

1962 Acts. Section 3(f) of Pub.L. 87-858 provided that: "Except as provided in subsection (d)(2), the amendments made by this section [amending this section, and former sections 801, 802, 804, 809 and 815 of this title] shall apply with respect to taxable years beginning after December 31, 1961."

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Amendment by Pub.L. 87-834, applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub.L. 87-834, set out as a note under section 46 of this title.

1960 Acts. Amendment by Pub.L. 86-780 applicable to taxable years beginning after Dec. 31, 1957, see section 4 of Pub.L. 86-780, set out as a note under section 904 of this title.

1959 Acts. Amendment by Pub.L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub.L. 86-69, set out as a note under section 841 of this title.

1958 Acts. Amendment by Pub.L. 85-859 effective the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub.L. 85-859.

Amendment by Pub.L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub.L. 85-866, set out as a note under section 165 of this title.

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