

States, all Government locks and seals required to be used at rectifying plants.

§ 235.901 *Where locks are required.* Government locks are required upon the door of the Government room, vault or cabinet, upon the entrance door of the wine bottling and export storage rooms, if any, upon the manheads and inlets of storage tanks and receiving tanks; upon the manheads, inlets, and outlets of bottling tanks (except where the bottling is pursuant to Form 230) upon the valves in pipelines which convey spirits from rectifying stills to receiving tanks where the pipelines are equipped for refluxing the spirits to the stills or for by-passing the berry basket in the case of gin stills; upon valves in pipelines which convey spirits into the rectifying plant from contiguous premises if such pipelines are not locked in the contiguous premises; and upon such other valves, stopcocks, and openings in equipment and apparatus as are required by this part or deemed necessary by the assistant regional commissioner to be secured with Government locks.

§ 235.902 *Seal locks.* Seal locks will be used on the door of the Government room, vault or cabinet; on the entrance door of the export storage room, if any; and on such other places where the use of seal locks is required by this part or deemed necessary by the assistant regional commissioner.

§ 235.903 *Plain locks.* Plain locks will be used at all other places in the rectifying plant where locks are required by this part.

§ 235.904 *Breaking of sealed connections forbidden.* Sealed connections must not be broken by the rectifier except as authorized by the storekeeper-gauger in charge or the assistant regional commissioner.

SUBPART PP—MISCELLANEOUS PROVISIONS OFFICER'S RIGHT OF ENTRY AND EXAMINATION

§ 235.910 *Authority to enter and inspect.* Internal revenue officers have authority under the law to inspect at any reasonable hour the records, liquors, and premises of rectifiers to determine that all provisions of the internal revenue laws and the regulations promulgated thereunder are being complied with. Officers desiring to make inspections will identify themselves by exhibiting their credentials. Any denial of or interference with such inspection by the rectifier, his agents or employees, is a violation of law and will be reported as such for appropriate action.

(68A Stat. 636, 652; 26 U. S. C. 5196, 5283)

§ 235.911 *Authority to break up grounds or walls.* Under the law, any internal revenue officer and any persons acting in his aid may break up the ground on any part of the premises of a rectifier or any ground adjoining or near any such premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil, and upon finding any pipe or conveyance leading from or to such prem-

ises to break up any ground, house, wall, or other place through or into which such pipe or conveyance leads, and to break or cut away such pipe or other conveyance. Before taking action under the law, the investigating officer should consult with his superior officer or the assistant regional commissioner, unless the circumstances are such as to require immediate action.

(68A Stat. 652; 26 U. S. C. 5283)

§ 235.912 *Rectifiers to furnish assistance.* Under the law, on demand of any internal revenue officer, every rectifier shall furnish convenient ladders to enable the officer to examine any vessel or utensil in his rectifying plant, and shall furnish all assistance, lights, tools, or other things necessary for inspecting the premises and apparatus, and shall open all doors, boxes, packages, and all casks, barrels, and other vessels not under the control of the storekeeper-gauger assigned to the plant.

(68A Stat. 652; 26 U. S. C. 5283)

VARIATIONS FROM REQUIREMENTS

§ 235.913 *Exceptions to construction and equipment requirements.* The Director, Alcohol and Tobacco Tax Division, may approve details of construction and equipment in lieu of those specified in this part where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford as much or more security and protection to the revenue as is intended by the specifications prescribed in this part and where such variations will not be contrary to any provision of law. Where it is proposed to substitute construction and equipment for that for which specifications are prescribed, prior approval must be obtained in accordance with the provisions of § 235.915. Rectifying plants heretofore established may continue to operate if the present construction and equipment afford adequate security and protection to the revenue. The assistant regional commissioner may at any time require the proprietor to make changes in construction and equipment conforming to this part, if deemed necessary to protect the revenue.

(68A Stat. 630; 26 U. S. C. 5552)

§ 235.914 *Exceptions to methods of operation.* The Director, Alcohol and Tobacco Tax Division, may, in case of emergency, approve methods of operation other than those provided for by this part, where it is shown that variations from the requirements are necessary, will not hinder the effective administration of this part, will not jeopardize the revenue, and where such variations are not contrary to any provision of law. Where it is proposed to employ methods of operation other than those provided for by this part, prior approval must be obtained in accordance with the provisions of § 235.915.

§ 235.915 *Application.* A proprietor who proposes to employ methods of operation or construction, or to install equipment, other than as provided in this part, shall submit a letter-head ap-

plication so to do, in triplicate, to the assistant regional commissioner. Such application shall describe the proposed variations and state the need therefor. Where variations in construction and equipment cannot be adequately described in the application, drawings, or photographs shall also be submitted. The assistant regional commissioner will make such inquiry as is necessary to determine the necessity for the variations, and whether approval thereof will hinder the effective administration of this part or result in jeopardy to the revenue. On completion of the inquiry, the assistant regional commissioner will forward two copies of the application to the Director, Alcohol and Tobacco Tax Division, together with a report of his findings and his recommendation.

[F. R. Doc. 54-2363; Filed, Dec. 10, 1954; 11:23 a. m.]

[26 CFR (1954) Part 301]

REGULATIONS RELATING TO ASSESSMENT, COLLECTION, ABATEMENT, CREDIT, AND REFUND, OF INTERNAL REVENUE TAXES UNDER SUBTITLE F OF THE INTERNAL REVENUE CODE OF 1954

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. These proposed regulations relate to the administrative provisions under chapter 63, chapter 64 (except section 6316, the regulations under which will be issued at a later date) and chapter 65 of Subtitle F of the Internal Revenue Code of 1954. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Washington 25, D. C., within the period of 15 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

Although 30 days are ordinarily provided for furnishing views, data, and arguments pertaining to proposed rule making, a period of 15 days is provided with respect to these proposed regulations in order to make possible more expeditious promulgation of the regulations under these chapters which generally become effective on January 1, 1955.

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

PART 301—PROCEDURE AND ADMINISTRATION

ASSESSMENT, COLLECTION, ABATEMENT, CREDIT, AND REFUND

In order to provide regulations under chapter 63, relating to assessment, chapter 64 (except section 6316, the regulations under which will be prescribed at a

later date), relating to collection, and chapter 65, relating to abatement, credit, and refund, of the Internal Revenue Code of 1954, the following regulations are prescribed:

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301.6203 Statutory provisions; method of assessment.
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301.6204-1 Supplemental assessment.
301.6205 Statutory provisions; special rules applicable to certain employment taxes.
301.6205-1 Special rules applicable to certain employment taxes.
301.6206 Statutory provisions; cross references.

DEFICIENCY PROCEDURES

- 301.6211 Statutory provisions; definition of a deficiency.
301.6211-1 Deficiency defined.
301.6212 Statutory provisions; notice of deficiency.
301.6212-1 Notice of deficiency.
301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.
301.6213-1 Restrictions applicable to deficiencies; petition to Tax Court.
301.6214 Statutory provisions; determinations by Tax Court.
301.6215 Statutory provisions; assessment of deficiency found by Tax Court.
301.6215-1 Assessment of deficiency found by Tax Court.
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COLLECTION

GENERAL PROVISIONS

- 301.6301 Statutory provisions; collection authority.
301.6301-1 Collection authority.
301.6302 Statutory provisions; mode or time of collection.
301.6302-1 Use of Federal reserve banks and authorized commercial banks in connection with the payment of certain employment and excise taxes.
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301.6303-1 Notice and demand for tax.
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RECEIPT OF PAYMENT

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301.6312-1 Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps.
301.6312-2 Certain Treasury savings notes acceptable in payment of certain internal revenue taxes.
301.6313 Statutory provisions; fractional parts of a cent.
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- 301.6314 Statutory provisions; receipt for taxes.
301.6314-1 Receipt for taxes.
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301.6315-1 Payments of estimated income tax.
301.6316 Statutory provisions; payment by foreign currency.

LIEN FOR TAXES

- 301.6321 Statutory provisions; lien for taxes.
301.6321-1 Lien for taxes.
301.6322 Statutory provisions; period of lien.
301.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.
301.6323-1 Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.
301.6324 Statutory provisions; special liens for estate and gift taxes.
301.6324-1 Special liens for estate and gift taxes; personal liability of transferees and others.
301.6325 Statutory provisions; release of lien or partial discharge of property.
301.6325-1 Release of lien or partial discharge of property.
301.6326 Statutory provisions; cross references.

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

- 301.6331 Statutory provisions; levy and distraint.
301.6331-1 Levy and distraint.
301.6332 Statutory provisions; surrender of property subject to levy.
301.6332-1 Surrender of property subject to levy.
301.6333 Statutory provisions; production of books.
301.6333-1 Production of books.
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301.6334-1 Property exempt from levy.
301.6335 Statutory provisions; sale of seized property.
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301.6336-1 Sale of perishable goods.
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301.6337-1 Redemption of property.
301.6338 Statutory provisions; certificate of sale; deed of real property.
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301.6339 Statutory provisions; legal effect of certificate of sale of personal property and deed of real property.
301.6339-1 Legal effect of certificate of sale of personal property and deed of real property.
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301.6340-1 Records of sale.
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301.6341-1 Expense of levy and sale.
301.6342 Statutory provisions; application of proceeds of levy.
301.6342-1 Application of proceeds of levy.
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301.6344 Statutory provisions; cross references.

ABATEMENTS, CREDITS, AND REFUNDS

PROCEDURE IN GENERAL

- 301.6401 Statutory provisions; amounts treated as overpayments.

Sec.

- 301.6401-1 Amounts treated as overpayments.
301.6402 Statutory provisions; authority to make credits or refunds.
301.6402-1 Authority to make credits or refunds.
301.6402-2 Claims for credit or refund.
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301.6402-4 Payments in excess of amounts shown on return.
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301.6403 Statutory provisions; overpayment of installment.
301.6403-1 Overpayment of installment.
301.6404 Statutory provisions; abatements.
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301.6405-1 Reports of refunds and credits.
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301.6407 Statutory provisions; date of allowance of refund or credit.
301.6407-1 Date of allowance of refund or credit.

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- 301.6411 Statutory provisions; tentative carryback adjustments.
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301.6413-1 Special rules applicable to certain employment taxes.
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301.6415-1 Credits or refunds to persons who collected certain taxes.
301.6416 Statutory provisions; certain taxes on sales and services.
301.6416-1 Certain taxes on sales and services.
301.6417 Statutory provisions; coconut and palm oil.
301.6417-1 Coconut and palm oil.
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301.6419-1 Excise tax on wagering.
301.6420 Statutory provisions; cross references.

EFFECTIVE DATE AND RELATED PROVISIONS

- 301.7851 Statutory provisions; applicability of revenue laws.

AUTHORITY: §§ 301.6201 to 301.7851 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

ASSESSMENT

IN GENERAL

§ 301.6201 Statutory provisions; assessment authority.

SEC. 6201. ASSESSMENT AUTHORITY.

(a) Authority of Secretary or delegate. The Secretary or his delegate is authorized

and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.* The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) *Unpaid taxes payable by stamp.*

(A) *Omitted stamps.* Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) *Check or money order not duly paid.* In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) *Erroneous income tax prepayment credits.* If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) *Estimated income tax.* No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

(c) *Compensation of child.* Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73 (a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) *Deficiency proceedings.* For special rules applicable to deficiencies of income, estate, and gift taxes, see subchapter B.

§ 301.6201-1 Assessment authority—

(a) *In general.* The district director is authorized and required to make all inquiries necessary to the determinations and assessments of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. He is further authorized and required to make the determinations and the assessments of such taxes. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director to make assessments includes the following:

(1) *Taxes shown on return.* The district director shall assess all taxes determined by the taxpayer or by the district director and disclosed on a return or list.

(2) *Unpaid taxes payable by stamp.* (i) If without the use of the proper stamp:

(a) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(b) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs;

the district director, upon such information as he can obtain, must estimate the amount of the tax which has not been paid and must make assessment therefor upon the person the district director determines to be liable for the tax. However, the district director may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(ii) If a taxpayer gives a check or money order as payment for stamps but the check or money order is not paid upon presentment, then the district director shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

(3) *Erroneous income tax prepayment credits.* If the amount of income tax withheld or the amount of estimated income tax paid is overstated by a taxpayer on a return or on a claim for refund, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund shall be assessed by the district director in the same manner as in the case of a mathematical error on the return. See section 6213 (b) (1), relating to exceptions to restrictions on assessment.

(b) *Estimated income tax.* The district director shall not assess any amount of estimated income tax required to be paid under section 6153 or 6154 which is unpaid.

(c) *Compensation of child.* Any income tax assessed against a child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of section 73 (a) or the corresponding provision of prior law, if not paid by the child, shall, for the purposes of the income tax imposed by chapter 1 (or the corresponding provisions of prior law) be considered as having also been properly assessed against the parent. In any case in which the earnings of the child are included in the gross income of the child solely by reason of section 73 (a) or the corresponding provision of prior law, the parent's liability is an amount equal to the amount by which the tax assessed against the child (and not paid by him) has been increased by reason of the inclusion of such earnings in the gross income of the child. Thus, if for the calendar year 1954 the child has income of \$1,000 from investments and of \$3,000 for services rendered, and the latter amount is includible in the gross income of the child under section 73 (a) and the child has no wife or dependents, the tax liability determined under section 3 is \$625. If the child had only the investment income of \$1,000, his tax liability would be \$62. If the tax of \$625 is assessed against the child, the difference between \$625 and \$62, or \$563, is the amount of such tax which is considered to have been properly assessed against the parent, if not paid by the child.

§ 301.6202 *Statutory provisions; establishment by regulations of mode or time of assessment.*

SEC. 6202. ESTABLISHMENT BY REGULATIONS OF MODE OR TIME OF ASSESSMENT.

If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary or his delegate may establish the same by regulations.

§ 301.6203 *Statutory provisions; method of assessment.*

SEC. 6203. METHOD OF ASSESSMENT.

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary or his delegate in accordance with rules or regulations prescribed by the Secretary or his delegate. Upon request of the taxpayer, the Secretary or his delegate shall furnish the taxpayer a copy of the record of the assessment.

§ 301.6203-1 *Method of assessment.*

The district director shall appoint one or more assessment officers, and the assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period if applicable, and the amount of the assessment. The amount of the assessment shall in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment the district director shall furnish the taxpayer a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

§ 301.6204 *Statutory provisions; supplemental assessments.*

SEC. 6204. SUPPLEMENTAL ASSESSMENTS.

(a) *General rule.* The Secretary or his delegate may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) *Restrictions on assessment.* For restrictions on assessment of deficiency in income, estate, and gift taxes, see section 6213.

§ 301.6204-1 *Supplemental assessment.* If any assessment is incomplete or incorrect in any material respect, the district director, subject to the restrictions with respect to the assessment of deficiencies in income, estate, and gift taxes, and subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

§ 301.6205 *Statutory provisions; special rules applicable to certain employment taxes.*

SEC. 6205. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) *Adjustment of tax.*

(1) *General rule.* If less than the correct amount of tax imposed by section 3101,

3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 301.6205-1 *Special rules applicable to certain employment taxes.* For regulations under this section, see the Employment Tax Regulations (Part 31 of this chapter).

§ 301.6206 *Statutory provisions; cross references.*

SEC. 6206. CROSS REFERENCES.

(1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment in case of sale or removal of tobacco, snuff, cigars, and cigarettes without the use of proper stamps, see section 5703 (d).

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006 (c).

(6) For assessment in case of certain spirits subject to excessive leakage, see section 5006 (b).

(7) For assessment of deficiencies in production of distilled spirits, see section 5007 (e) (1).

(8) For period of limitation upon assessment, see chapter 66.

(9) For assessment under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

DEFICIENCY PROCEDURES

§ 301.6211 *Statutory provisions; definition of a deficiency.*

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) *In general.* For purposes of this title in the case of income, estate, and gift taxes, imposed by subtitles A and B, the term "deficiency" means the amount by which the tax imposed by subtitles A or B exceeds the excess of:

(1) The sum of:

(A) The amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over:

(2) the amount of rebates, as defined in subsection (b) (2), made.

(b) *Rules for application of subsection (a).* For purposes of this section:

(1) The tax imposed by chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitles A or B was less than the excess of the amount specified in subsection (a) (1) over the rebates previously made.

(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

§ 301.6211-1 *Deficiency defined.* (a) In the case of the income tax imposed by subtitle A, the estate tax imposed by chapter 11, or the gift tax imposed by chapter 12, the term "deficiency" means the excess of the tax (income, estate, or gift tax, as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return of income tax on Form 1040A pursuant to section 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies with respect to the tax have been assessed, or collected without assessment, and no rebates with respect to the tax have been made, the deficiency is the amount of the tax imposed by subtitle A, chapter 11, or chapter 12. Additional tax shown on an "amended return", so-called, filed after the due date of the return, is a deficiency within the meaning of the Internal Revenue Code.

(b) For purposes of the definition, the income tax imposed by subtitle A and the income tax shown on the return shall both be determined without regard to the credit provided in section 31 for income tax withheld at the source and without regard to so much of the credit provided in section 32 for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds described in section 1451. Payments on account of estimated income tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency.

(c) The computation by the district director pursuant to section 6014 (a) of the income tax imposed by subtitle A shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.

(d) If so much of the credit claimed on the return for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds is greater than the amount of such credit

allowable, the unpaid portion of the tax attributable to such difference will be collected not as a deficiency but as an underpayment of the tax shown on the return.

(e) This section may be illustrated by the following examples:

Example (1). The amount of income tax shown by the taxpayer upon his return for the calendar year 1954 was \$1,600. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. He claimed a credit in the amount of \$2,050 for tax withheld at source on wages under section 3402, and a refund of \$450 (not a rebate under section 6211) was made to him as an overpayment of tax for the taxable year. It is later determined that the correct tax for the taxable year is \$1,850.

A deficiency of \$250 is determined as follows:

Tax imposed by subtitle A.....	\$1,850
Tax shown on return.....	\$1,600
Tax previously assessed (or collected without assessment) as a deficiency.....	None
Total.....	1,600
Amount of rebates made.....	None
Balance.....	1,600
Deficiency.....	250

Example (2). The taxpayer made a return for the calendar year 1954 showing a tax of \$1,250 before any credits for tax withheld at the source. He claimed a credit in the amount of \$800 for tax withheld at source on wages under section 3402 and \$60 for tax paid at source under section 1451 upon interest on bonds containing a tax-free covenant. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. The district director determines that the 2 percent tax paid at the source on tax-free covenant bonds is \$40 instead of \$60 as claimed by the taxpayer and that the tax imposed by subtitle A is \$1,360 (total tax \$1,400 less \$40 paid at source on tax-free covenant bonds). A deficiency in the amount of \$170 is determined as follows:

Tax imposed by subtitle A (\$1,400 minus \$40).....	\$1,360
Tax shown on return (\$1,250 minus \$60).....	\$1,190
Tax previously assessed (or collected without assessment) as a deficiency.....	None
Total.....	1,190
Amount of rebates made.....	None
Balance.....	1,190
Deficiency.....	170

(f) As used in section 6211, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the tax imposed by subtitle A or B is less than the excess of (1) the amount shown as the tax by the taxpayer upon his return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. For example, assume that the amount of income tax shown by the taxpayer upon his return for the taxable year is \$600 and the amount claimed as a credit under section 31 for income tax withheld at the source is \$900. If the district director determines that the tax imposed by subtitle A is \$600 and makes a refund of \$300, no part of such refund constitutes a "rebate" since the refund is not

made on the ground that the tax imposed by subtitle A is less than the tax shown on the return. If, however, the district director determines that the tax imposed by subtitle A is \$500 and refunds \$400, the amount of \$100 of such refund would constitute a rebate since it is made on the ground that the tax imposed by subtitle A (\$500) is less than the tax shown on the return (\$600). The amount of such rebate (\$100) would be taken into account in arriving at the amount of any deficiency subsequently determined.

§ 301.6212 Statutory provisions; notice of deficiency.

SEC. 6212. NOTICE OF DEFICIENCY.

(a) *In general.* If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by registered mail.

(b) *Address for notice of deficiency.*

(1) *Income and gift taxes.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 1 or 12, mailed to the taxpayer at his last known address, shall be sufficient for purposes of such chapter and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax return.* In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by registered mail to each spouse at his last known address.

(3) *Estate tax.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) *Further deficiency letters restricted.*

(1) *General rule.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, except in the case of fraud, and except as provided in section 6214 (a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213 (b) (1) (relating to mathematical errors), or in section 6861 (c) (relating to the making of jeopardy assessments).

(2) *Cross references.* For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of:

(A) Deficiency attributable to change of election to take standard deduction where taxpayer and his spouse made separate returns, see section 144 (b).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a) (3) (C) and (D).

(C) Deficiency attributable to gain on sale or exchange of personal residence, see section 1034 (j).

(D) Deficiency attributable to war loss recoveries where prior benefit rule is elected, see section 1335.

§ 301.6212-1 Notice of deficiency—(a) General rule. If a district director determines that there is a deficiency in respect of income, estate, or gift tax imposed by subtitle A or B, he is authorized to notify the taxpayer of the deficiency by registered mail.

(b) *Address for notice of deficiency—*
(1) *Income and gift taxes.* Unless the district director for the district in which the return in question was filed has been notified under the provisions of section 6903 as to the existence of a fiduciary relationship, notice of a deficiency in respect of income tax or of gift tax shall be sufficient if mailed to the taxpayer at his last known address, even though such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax returns.* If a joint income tax return has been filed by husband and wife, the district director may, unless the district director for the district in which such joint return was filed has been notified by either spouse that a separate residence has been established, send either a joint or separate notice of deficiency to the taxpayers at their last known address. If, however, the proper district director has been so notified, a separate notice of deficiency, that is, a duplicate original of the joint notice, must be sent by registered mail to each spouse at his or her last known address. The notice of separate residences should be addressed to the district director for the district in which the joint return was filed.

(3) *Estate tax.* In the absence of notice, under the provisions of section 6903 as to the existence of a fiduciary relationship, to the district director for the district in which the estate tax return was filed, notice of a deficiency in respect of the estate tax imposed by chapter 11 of subtitle B shall be sufficient if addressed in the name of the decedent or other person subject to liability and mailed to his last known address.

(c) *Further deficiency letters restricted.* If the district director mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar year, or estate tax with respect to the taxable estate of the same decedent. This restriction shall not apply in the case of fraud, assertion of greater deficiencies before the Tax Court as provided in section 6214 (a), mathematical errors as provided in section 6213 (b) (1), or jeopardy assessments as provided in section 6861 (c).

§ 301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) *Time for filing petition and restriction on assessment.* Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of

Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment.*

(1) *Mathematical errors.* If the taxpayer is notified that, on account of a mathematical error appearing upon the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212 (c) (1) restricting further deficiency letters), or section 6512 (a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(2) *Assessments arising out of tentative carryback adjustments.* If the Secretary or his delegate determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback with respect to which such amount was applied, credited, or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the return.

(3) *Assessment of amount paid.* Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) *Failure to file petition.* If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Waiver of restrictions.* The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) *Cross references.* (1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201 (a) (3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 605 (c).

(B) Recovery of foreign estate tax, see section 2016.

§ 301.6213-1 *Restrictions applicable to deficiencies; petition to Tax Court—* (a) *Time for filing petition and restrictions on assessment—* (1) *Time for filing petition.* Within 90 days after notice of the deficiency is mailed (or within 150 days after mailing in the case of such notice addressed to a person outside the States of the Union and the District of Columbia) as provided in section 6212, a petition may be filed with the Tax Court of the United States for a redetermination of the deficiency. In determining such 90-day or 150-day period, Saturday, Sunday, or a legal holiday in the District of Columbia is not counted as the 90th or 150th day. The term "States of the Union" referred to in this paragraph does not include the Territories of Alaska and Hawaii.

(2) *Restrictions on assessment.* Except as otherwise provided by this section, by section 6861 (a) (relating to jeopardy assessments of income, estate, and gift taxes) by section 6871 (a) (relating to immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership cases) or by section 7485 (in case taxpayer petitions for a review of a Tax Court decision without filing bond) no assessment of a deficiency in respect of a tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made until notice of deficiency has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day period within which a petition may be filed with the Tax Court, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax Court becomes final, see section 7481. Notwithstanding the provisions of section 7421 (a), the making of an assessment or the beginning of a proceeding or levy which is forbidden by this paragraph may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment of deficiencies—* (1) *Mathematical errors.* If a taxpayer is notified of an additional amount of tax due on account of a mathematical error appearing upon the return, such notice is not deemed a notice of deficiency, and the taxpayer has no right to file a petition with the Tax Court upon the basis of such notice, nor is the assessment of such additional amount prohibited by section 6213 (a).

(2) *Tentative carryback adjustments.*

(i) If the district director determines that any amount applied, credited, or refunded under section 6411 (b) with respect to an application for a tentative carryback adjustment is in excess of the overassessment properly attributable to the carryback upon which such application was based, he may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the return. That is, the district director may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and

collection imposed by section 6213 (a). Thus, the district director, for example, may assess such amount without regard to whether he has mailed the taxpayer a prior notice of deficiency. Either before or after assessing such an amount, the district director will notify the taxpayer that he has made, or will make, such assessment. Such notice will not constitute a notice of deficiency, and the taxpayer may not file a petition with the Tax Court of the United States based on such notice. However, the taxpayer within the applicable period of limitation may file a regular claim for credit or refund based on the carryback, if he has not already filed such a claim, and may maintain a suit based on such claim if it is disallowed or if it is not acted upon by the Internal Revenue Service within 6 months from the date the claim was filed.

(ii) The method provided in subdivision (i) of this paragraph to recover any amount applied, credited, or refunded in respect of an application for a tentative carryback adjustment which the district director later determines should not have been so applied, credited, or refunded is not an exclusive method. Two other methods are available to recover such amount: (a) By way of a deficiency notice under section 6212; or (b) by a suit to recover an erroneous refund under section 7405. The district director, in his discretion, may proceed by way of any one or more of the three available methods to recover any amount which he determines was improperly applied, credited, or refunded in respect of an application for a tentative carryback adjustment.

(3) *Assessment of amount paid.* Any payment made after the mailing of a notice of deficiency which is made by the taxpayer as a payment with respect to the proposed deficiency may be assessed without regard to the restrictions on assessment and collection imposed by section 6213 (a) even though the taxpayer has not filed a waiver of restrictions on assessment as provided in section 6213 (d). A payment of all or part of the deficiency asserted in the notice together with the assessment of the amount so paid will not affect the jurisdiction of the Tax Court. If any payment is made before the mailing of a notice of deficiency, the district director is not prohibited by section 6213 (a) from assessing such amount, and the district director may assess such amount if he deems such action to be proper. If the district director assesses such amount, the assessment is taken into account in determining whether or not there is a deficiency for which a notice of deficiency must be issued. Thus, if such a payment satisfies the taxpayer's tax liability, no notice of deficiency will be mailed and the Tax Court will have no jurisdiction over the matter. In any case in which there is a controversy as to the correct amount of the tax liability, the assessment of any amount pursuant to the provisions of section 6213 (b) (3) shall in no way be considered to be the acceptance of an offer by the taxpayer to settle such controversy.

(4) *Jeopardy.* If the district director believes that the assessment or collection

of a deficiency will be jeopardized by delay such deficiency shall be assessed immediately, as provided in section 6861 (a).

(c) *Failure to file petition.* If no petition is filed with the Tax Court within the period prescribed in section 6213 (a), the district director shall assess the amount determined by him as the deficiency and of which the taxpayer was notified by registered mail and the taxpayer shall pay the same upon notice and demand therefor. In such case the district director will not be precluded from determining a further deficiency and notifying the taxpayer thereof by registered mail. If a petition is filed with the Tax Court the taxpayer should notify the district director who issued the notice of deficiency that the petition has been filed in order to prevent an assessment of the amount determined to be the deficiency.

(d) *Waiver of restrictions.* The taxpayer may at any time by a signed notice in writing filed with the district director waive the restrictions on the assessment and collection of the whole or any part of the deficiency. The notice must in all cases be filed with the district director under whose jurisdiction the audit of the return in question is being conducted. The filing of such notice with the Tax Court does not constitute filing with the district director within the meaning of the Internal Revenue Code. After such waiver has been acted upon by the district director and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn.

§ 301.6214 *Statutory provisions; determinations by Tax Court.*

SEC. 6214. DETERMINATIONS BY TAX COURT.

(a) *Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax.* The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or addition to the tax should be assessed, if claim therefor is asserted by the Secretary or his delegate at or before the hearing or a rehearing.

(b) *Jurisdiction over other years.* The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year shall consider such facts with relation to the taxes for other years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

(c) *Final decisions of tax court.* For purposes of this chapter and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

§ 301.6215 *Statutory provisions; assessment of deficiency found by Tax Court.*

SEC. 6215. ASSESSMENT OF DEFICIENCY FOUND BY TAX COURT.

(a) *General rule.* If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the