

Time's Up! A Refresher on Tax Statutes of Limitations

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In this installment of *Practically Speaking: Tax Controversy*, the authors provide an overview of various statutes of limitations for assessment and refunds — including extension requests — with practical insights based on their experiences.

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Statutes of limitations in the tax world are a two-way street. In the assessment context, they favor taxpayers by limiting the time the IRS can examine and adjust items on a federal tax return. Other times they favor the IRS by limiting the time taxpayers can make claims for refunds or credits. In other words, as “applied in the field of taxation, the taxpayer sometimes gets advantages and at other times the government gets them. Both hardships to taxpayers and losses to the revenues may be pointed out.”¹

The validity of a particular adjustment by the IRS or a refund claim by a taxpayer should not

factor into the determination of whether a particular statute of limitations applies. This is because statutes of limitations “are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay.”²

In this article, we examine various statutes of limitations for assessment and refund claims as well as options for extending the limitations periods in both contexts. As explained below, Congress has identified general rules along with specific situations in which either the IRS or taxpayers should be afforded additional time to

¹ *Rothensies v. Electric Storage Battery Co.*, 329 U.S. 296, 302 (1946).

² *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 315 (1945).

assess tax or claim refunds or credits. Moreover, the parties can agree on extending certain statutes of limitations depending on the situation. Taxpayers should be aware of the various differences in statutes of limitations and their rights and options.

I. Overview of Statutes of Limitations

Statutes of limitations serve as the framework within which both taxpayers and the IRS must operate, and understanding their structure is essential to navigating any tax controversy. Although these rules are often described in terms of closed and open years, the reality is more nuanced: Different statutes apply depending on the type of tax, the nature of the filing, and the presence of omissions, adjustments, or special circumstances. As a result, determining the applicable limitations period is frequently the first — and sometimes most consequential — step in evaluating the viability of an IRS adjustment or a taxpayer's claim for refund.

At their core, statutes of limitations governing assessments and refunds reflect Congress's attempts to balance administrative finality with substantive fairness. In some instances, Congress has chosen to give the IRS additional time to address complex or substantial issues, such as large omissions of income or abusive transactions. In others, the rules provide taxpayers with extended periods to pursue refunds tied to multiyear attributes, like net operating loss carrybacks or foreign tax credits. In IRS examinations, the parties may mutually agree to extend the period, reflecting the practical reality that some issues demand more time to resolve than the standard statutory period allows.

This section provides an overview of the main statutes of limitations applicable to assessments and refund claims, highlighting the general rules, key exceptions, and the mechanical considerations that often drive disputes. Although the concepts appear straightforward, their application can be highly fact-dependent, requiring careful attention to filing dates, return types, and triggering events. Appreciating these nuances early allows taxpayers to better protect their rights, evaluate IRS positions, and determine when strategic use of statute extension consents or protective claims may be warranted.

A. Assessment Statutes of Limitations

The starting point for any assessment inquiry is section 6501(a), which establishes a general three-year period within which the IRS must assess tax for a particular tax year. In most cases, this period begins on the later of the return's due date or the date it is filed,³ creating a clear endpoint for potential examination activity. Despite its simplicity, the general rule often gives way to a complex set of exceptions that reflect Congress's intent to provide the IRS with additional time in circumstances involving heightened compliance risks or incomplete filings.

Several statutory exceptions extend the assessment period beyond the standard three years. Most notably:

- Substantial omissions of income exceeding 25 percent of gross income trigger a six-year statute of limitations on assessment.⁴
- Failure to report certain foreign transactions, including interests in passive foreign investment companies, foreign trusts, or specified foreign financial assets, can result in an indefinite statute that remains open until the required information return is filed.⁵
- Certain international inclusions, such as income required to be reported under subpart F and amounts includable under section 965, are subject to extended assessment periods, including a separate six-year statute of limitations under section 6501(e)(1)(C) and a special limitations rule for section 965 transition tax.⁶

These exceptions illustrate that the length of the limitations period may depend less on the taxpayer's substantive reporting position and more on whether the IRS received the information Congress deemed necessary to evaluate that position.

³ Section 6501(a); *see also* reg. section 301.6501(a)-1(a).

⁴ Section 6501(e)(1)(A).

⁵ Section 6501(c)(8).

⁶ Section 965(k) provides a minimum six-year period for assessing the transition tax but does not extend the assessment period for other items on the return.

One notable example arises in the subpart F context. Failure to report subpart F income triggers the six-year assessment period under section 6501(e)(1)(C). In recent chief counsel advice,⁷ the IRS reasoned that this extended period applies to the taxpayer's entire return — not merely to items related to the omitted subpart F income — potentially reopening otherwise closed domestic issues. At the same time, the extended assessment period in this statute does not extend the normal period for refund claims unless the agreement is executed within the section 6511(a) period, creating a timing mismatch that can materially disadvantage taxpayers.

Beyond these familiar extensions, additional special rules apply to particular return types and filing circumstances. For instance, certain excise taxes,⁸ employment taxes,⁹ and partnership-related items under the centralized partnership audit regime¹⁰ each introduce their own timing considerations. Understanding these nuances is critical because, in practice, a single tax year may involve multiple statutes of limitations running concurrently, each with different triggers and closing dates.

Finally, the assessment period is not always fixed. Taxpayers and the IRS may mutually consent to extend the statute in an examination, typically using Form 872, "Consent to Extend the Time to Assess Tax." These agreements can be advantageous in complex factual or legal situations, allowing both sides sufficient time to develop the administrative record. Additionally, certain events toll the running of the statute by operation of law, including the automatic stay in bankruptcy and the suspension that occurs upon issuance of a notice of deficiency and the filing of a petition in Tax Court. However, because extensions shift the balance of finality, taxpayers should carefully evaluate whether the additional time benefits their position and ensure that any consent is appropriately tailored and limited in scope.

B. Refund Statutes of Limitations

Refund statutes of limitations serve as the counterpart to the assessment rules, ensuring that taxpayers act within defined periods when seeking to recover overpaid tax. Section 6511 provides the framework for these claims, generally requiring that a refund claim be filed within the later of (i) three years from the date the return was filed or (ii) two years from the date the tax was paid. As with assessments, the apparent simplicity of these rules masks significant technical detail, particularly in determining what constitutes a payment and how the applicable look-back period operates.¹¹

Although the three-year rule applies in most cases, Congress has provided extended limitation periods for several common categories of refund claims, including:

- claims attributable to NOL and capital loss carrybacks, for which the refund statute is measured by reference to the year in which the loss is generated;¹²
- claims arising from losses attributable to worthless securities or bad debts, which may be filed within seven years of the return to which the loss relates;¹³
- claims attributable to foreign tax credit carrybacks, for which a refund claim may be filed within 10 years from the due date of the return in which the foreign taxes were paid or accrued;¹⁴ and
- other refund claims tied to multiyear attributes, when Congress has recognized that the underlying loss or adjustment may not be identifiable within the standard three-year period.¹⁵

These extended periods reflect Congress's recognition that certain losses and adjustments are inherently retrospective and may only be substantiated after the general three-year or two-year period of section 6511(a) in which tax was originally paid.

⁷ ILM 202142009 (July 26, 2021).

⁸ Section 6501(b)(2).

⁹ Sections 6501(b)(2).

¹⁰ Sections 6221-6234.

¹¹ Section 6511(b)(2).

¹² Section 6511(d)(2).

¹³ Section 6511(d)(1).

¹⁴ Section 6511(d)(3)(A).

¹⁵ See, e.g., section 6511(d) (special rules for certain credits and carrybacks).

As with assessment statutes, the details matter greatly with refund statutes. The characterization of a remittance as a deposit or payment,¹⁶ the treatment of late-filed returns,¹⁷ and the timing of withholding credits or estimated tax payments¹⁸ can all affect the timeliness of a refund claim. In some disputes, the viability of the taxpayer's substantive position becomes irrelevant if the IRS successfully asserts that the claim falls outside the applicable refund statute.¹⁹

II. Voluntary Extensions

Both taxpayers and the IRS frequently extend the statute of limitations by agreement under section 6501(c)(4). This voluntary extension must be in writing, signed by both parties, and made before the expiration of the original assessment period or any previously agreed-upon extension.²⁰ Although an extension by agreement is enforceable so long as these requirements are met, it is best practice to use Form 872, "Consent to Extend the Time to Assess Tax," to ensure that the statutory requirements are met.²¹ Consents are generally executed by the taxpayer, such as a corporate officer for a Form 1120, "U.S. Corporation Income Tax Return," filer, and must be signed "in the same manner as the return that was filed, unless since that filing there was a name change."²² They may also be signed by an authorized representative, as indicated by a valid power of attorney. The representative must be specifically authorized to sign consents and cannot be an unenrolled return preparer.²³ Although a power of attorney stating that a representative may sign consents is sufficient, the IRS may push back if the power of attorney does not specifically mention Forms 872.

For consolidated returns, consents to extend the statute can be signed by the applicable agent

of the consolidated group, and one consent will cover all entities included on the consolidated return.²⁴ Determining the applicable agent can be tricky depending on the year at issue and specific factual circumstances — such as successor corporations, mergers, and reverse acquisitions — because of changes to the applicable consolidated return regulations. The Internal Revenue Manual provides many examples under reg. section 1.1502-77.²⁵ Care should be used to ensure the correct agent and parties are included in the extension of a consolidated group's statute of limitations.

The statute can be extended to a specific date or for an indefinite period. An open-ended consent ends after the occurrence of specific events plus 90 days and uses a Form 872-A, "Special Consent to Extend Time to Assess Tax."²⁶ In practice, unrestricted consents are rarely used.²⁷

Further, an agreement to extend the assessment period under section 6501(c)(4) will also extend the statute of limitations to claim a refund. Under section 6511(c)(1), the period for filing a claim does not expire until six months after the expiration of an extension by agreement under section 6501(c)(4). However, when the assessment period of limitations has already been extended under the code, such as the six-year period under section 6501(e), an agreement to further extend the period will not automatically extend the refund period of limitations under section 6511.²⁸

Although taxpayers may find it necessary or advantageous to extend their statute of limitations, the need for a statute extension often arises in the context of an examination when the IRS determines that it needs additional time to

¹⁶ See section 6603.

¹⁷ See *Commissioner v. Lundy*, 516 U.S. 235 (1996).

¹⁸ Sections 6513(b), 6511(b)(2)(A).

¹⁹ See *United States v. Brockamp*, 519 U.S. 347 (1997).

²⁰ Section 6501(c)(4)(B).

²¹ Form 872 states that a taxpayer has "the right to refuse to extend the period of limitation or limit this extension to a mutually agreed-upon issue(s) or mutually agreed-upon period of time."

²² Internal Revenue Manual 25.6.22.5.8 (Aug. 26, 2011).

²³ IRM 25.6.22.5.8.1 (Nov. 17, 2021).

²⁴ IRM 25.6.22.6.2.1 (Nov. 17, 2021).

²⁵ *Id.*

²⁶ IRM 25.6.22.5.7 (Aug. 26, 2011); IRM 25.6.22.5.7.1 (Nov. 17, 2021) (restricted consents are terminated through receipt of Form 872-T, "Notice of Termination of Special Consent to Extend the Time to Assess Tax").

²⁷ Taxpayers may also enter restricted consents, which are consents that extend the assessment statute of limitations for one or more specific issues only, while the statute of limitations is allowed to expire on all other issues. Although taxpayers have the right to request a restricted consent, the IRS does not have to grant one and, in practice, they are usually limited to specific situations. See IRM 25.6.22.8 (Aug. 26, 2011); IRM 25.6.22.8.1 (Aug. 26, 2011); IRM 25.6.22.8.2 (Aug. 26, 2011).

²⁸ ILM 202142009.

complete the examination.²⁹ If the IRS determines that the statute may expire during an examination, it will inform the taxpayer that, absent an extension, the IRS may simply issue a statutory notice of deficiency. In dealing with extension requests, three questions commonly arise: (1) why the IRS will request an extension; (2) when the IRS will request an extension; and (3) how long of an extension will the IRS request.

Regarding why the IRS will request an extension, the agency's published position is that "it has been the long-established policy of the IRS to secure a consent, extending the statutory period of limitation, only in a case involving unusual circumstances."³⁰ The IRM identifies situations that warrant asking for an extension; the list is not all-inclusive and consent may be requested in other rare circumstances. The identified situations include³¹:

- The limitations period will expire within 180 days, and there is insufficient time to complete the examination and administrative processing of the case.
- The limitations period requires extension so the case can go to the IRS Independent Office of Appeals.
- The limitations period will expire within 300 days, and the case is part of the large corporate compliance program or the industry case program.
- The limitations period will expire within 180 days, and the case is subject to the 1982 Tax Equity and Fiscal Responsibility Act procedures.
- The limitations period will expire within 365 days, and the case will be (or was) placed in fraud suspense.
- The limitations period will expire within 24 months, and the case will be (or was) placed in Form 1254 suspense.
- The limitations period will expire within 180 days, the case involves preparer or appraiser

penalties, and there is insufficient time to complete the examination before the limitations period expires.

- A joint investigation with the IRS Criminal Investigation division is in progress, and there is a likelihood that the work cannot be completed before expiration of the limitations period.
- The limitations period will expire within 14 months in a Bipartisan Budget Act (BBA) case, and it is presumed that the case will not be closed as agreed.

In practice, extension requests are commonly made in large corporate, partnership, and high-net-worth examinations. The reason for these requests in many cases is because of the IRS's backlog and the increased amount of time it takes the IRS to examine and close out cases. Thus, in cases like these, extension requests are often the norm.

Regarding when the IRS will request an extension, the above situations in which a request will be made provide a helpful guide. In practice, it is typical for the IRS to request extensions early in the examination or months before the dates listed above. Partnership exams under the BBA may require different amounts of time depending upon the posture of the case³² and the IRS examination team. For taxpayers and practitioners, it is important to have discussions with IRS examiners early in the process to set expectations for the timing of extension requests.

Regarding how long of an extension the IRS will request, the IRM explains that "if it is necessary to extend the statute, the period of extension must be no longer than is necessary to complete the examination and other administrative actions."³³ The amount of time needed varies based on several factors — for example, the type of examination, the number and complexities of issues identified for review,

²⁹ IRM 25.6.22.2(1) (Mar. 26, 2019).

³⁰ Rev. Proc. 57-6, 1957-1 C.B. 729; see also IRM 25.6.22.2(1) (Mar. 26, 2019) ("Generally, the extension of the period for assessment will be secured only in cases involving unusual circumstances."); IRM 25.6.22.2.1 (Nov. 17, 2021) ("It is the policy of the IRS to secure consents to extend the period to assess tax only in cases involving unusual circumstances.").

³¹ IRM 25.6.22.2.1(3) (Nov. 17, 2001); IRM 4.31.9.8.4.2(1).

³² No-change exams without an adjustment require six months, exams with adjustments that are not going to Appeals require 12 months, and those with adjustments that are bound for Appeals require 18 months. See IRM 4.31.9.8.4(2) (Oct. 29, 2021).

³³ IRM 25.6.22.2.1(1) (Nov. 17, 2021); see also IRS Publication 1035, "Extending the Tax Assessment Period" ("The Service's examiners will request an extension period no longer than is necessary to complete the examination and any administrative action necessary to process your case.").

and the workload of the IRS exam team members. As explained above, an extension is required in certain situations to pursue appeals or for cases that must be reviewed by the Joint Committee on Taxation.³⁴

For taxpayers and their representatives, handling extension requests often depends on the type of case and even the relationship the taxpayer or its representative has with the IRS. IRS examiners are often compelled to ask for extension earlier and to request extensions that are longer than necessary because of the consequences of letting the statute of limitations expire. However, taxpayers and their representatives may want to approach examiners with a proposal to extend the statute for a shorter period and offer to revisit the extension closer to its expiration to determine if a longer one is necessary.

Consents to extend the statute of limitations may be signed by any person authorized to do so under IRM 1.2.2.15.2, and they may be executed by authorized IRS employees in the examination and collection function. Associate offices within the IRS Office of Chief Counsel may also execute consents for tax and taxable years. In practice, however, many of these IRS functions will refuse to execute an extension once the matter is perceived to be outside of their jurisdiction, and chief counsel will frequently decline to sign statute extensions despite their authority to do so.

In limited circumstances, taxpayers may extend their ability to pursue litigation even if the administrative claim period is nearing expiration.

³⁴ There must be at least 12 months remaining on the statute when the case is received by Appeals and 12 months from the time the case is sent to the JCT reviewer. IRM 25.6.22.2.1(3) and (5) (Jan. 17, 2021). Thus, in practice, a longer extension may be requested toward the conclusion of the exam to ensure there is sufficient time when the case is assigned to Appeals. Existing delays in the assignment of Appeals officers have exacerbated this need.

Filing Form 907, "Agreement to Extend the Time to Bring Suit," to extend the period for initiating a refund suit under section 6532(a) serves as a protective mechanism, ensuring judicial review remains available while the parties continue administrative discussions. Because refund statutes rigidly govern the right to recover overpaid tax, taxpayers benefit from proactively monitoring filing periods and, when appropriate, using protective claims to preserve their rights. The separate statute of limitations period to bring suit under section 6532(a) can be critical to resolving a taxpayer's claims administratively because a refund may not be issued past the expiration of this period, and Appeals will not assign a taxpayer's matter involving a refund if the period of limitations under section 6532(a) has expired. Because it is often difficult and time-consuming to obtain the signature of the required IRS executive on a Form 907, it is generally advisable to obtain the assistance of the Taxpayer Advocate Service to ensure that a Form 907 is timely signed.

III. Conclusion

Statutes of limitations are designed to provide time limits to the IRS and taxpayers to achieve tax certainty. While seemingly simple — taxpayers and their representatives often speak of the general three-year period after a return is filed — there are many nuances that are explained above. Additionally, Congress's provision of the ability for the IRS and taxpayers to voluntarily extend the applicable limitations period — while necessary in many situations — can further delay resolution. Thus, before every examination, taxpayers should be aware of the rules regarding statutes of limitations and how the IRS approaches extensions. ■