

# **TAX REFUND CLAIMS: An Overview of the Joint Committee on Taxation's Review Process**



**Prepared by the Staff of the Joint Committee on Taxation  
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# Types of Refund Claims and Criteria for Joint Committee Review

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# Joint Committee Review of Refund Claims

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- A claim for refund or credit subject to Joint Committee review can arise from:
  - An examination,
  - An unpaid claim, or
  - Tentative allowances in excess of the Joint Committee jurisdictional threshold.

# Joint Committee Review — Types of Refund Claims

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- ❑ Section 6405(a) – refund claims (Form 1120X/Form 1040X)
  - Refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators’ trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of \$2,000,000 (\$5,000,000 in the case of a C corporation)
  - No payment or credit until 30 days from the date the IRS submits a report to the Joint Committee for review
  
- ❑ Section 6405(b) – tentative carryback (Form 1139/Form 1045)
  - Tentative carryback adjustments in excess of \$2 million (\$5 million in the case of a C corporation)
  - Paid before Joint Committee review, but subject to later review
  - Taxpayer may have to repay some or all of the refund, with interest
  
- ❑ Section 6405(c) – refund claims attributable to section 165(i) disaster losses

# Refund Claim vs. Tentative Carryback

## Refund Claim

- Must be filed within the time period of the refund statute of limitations (later of three years from the time the return was filed or two years from the time the tax was paid)
- IRS review prior to issuing refund
- Joint Committee review required for refunds or credits in excess of \$2 million (\$5 million in the case of a C Corporation) prior to issuing refund
- Income, war profits, excess profits, estate, or gift taxes
- Multiple claims are aggregated

## Tentative Carryback

- Not technically a claim for refund, rather a tentative claim
- Must be filed within 12 months of the close of the year in which the carryback arises
- Joint Committee review after refund issued and IRS audit
  - “[T]here shall be submitted to such committee a [summary of the facts and audit determination] at such time after the making of the credit or refund as the Secretary shall determine the correct amount of the tax.”

# Exceptions to Joint Committee Review

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Refund or credit of estimated or withheld income tax made without an examination	Refund or credit of unassessed advance payment or deposit made before a final determination of liability
Specified excise taxes	Refunds on original returns
Employment taxes	Refund resulting from litigation
Trust fund recovery penalty cases	Section 6404 abatements
Windfall profit taxes	Others (see Internal Revenue Manual (“IRM”) secs. 4.36.2.3 and 8.7.9.3)

# IRS and Joint Committee Review Procedures

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# IRS Joint Committee Review Team – IRM Sec. 4.36.4

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- Joint Committee Review Team (“Review Team”)
  - Specialized IRS team within the Large Business and International Division that reviews and prepares a report for each Joint Committee refund
  - Reviews the case for procedural, computational, and technical accuracy
  - May return the case to the examination team (“Exam”) in the following types of situations:
    - Substantial error
    - Fraud or malfeasance
    - Serious administrative omission
    - Unprocessable cases
    - Corrections favorable to the taxpayer

***Note:*** If Exam does not agree with the Review Team, the conflict must be resolved before submission to Joint Committee.

# Review Team Reports - IRM Sec. 4.36.5

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- ❑ Upon completion of review, the Review Team will prepare a report and submit the report to the Joint Committee for approval
  - In addition to Regular Joint Committee reports, the Review Team also may submit Expedite Refund, Minimum Refund, Modified Expedite, Supplemental, and Foreign Sales Corporation reports
- ❑ A report generally includes the following types of items:
  - Taxpayer information including history and related parties
  - Proposed refunds and deficiencies (statement of years)
  - Reason for the refund
  - Calculation spreadsheets
  - Prior examination history and current examination activity of the refunds
  - Information on statutes of limitations for each refund and source year
  - If applicable, Form 2848, *Power of Attorney and Declaration of Representative*

**Note:** The Review Team will also send Letter 1573P to the taxpayer and representative, if applicable, as notification that the case has been sent to the Joint Committee.

# Review Team — Types of Reports

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- ❑ Regular report – IRM sec. 4.36.5.1.1
  - Default report prepared for Joint Committee after review of a surveyed or examined case
- ❑ Expedite Refund reports – IRM secs. 4.36.5.1.2 and 4.36.5.1.4
  - Standard Expedite Refund report
    - Potentially applicable where there is net unpaid section 6405(a) refund in excess of \$2 million (\$5 million for C corporations)
    - Similar to regular report with additional page that is stamped by Joint Committee upon receipt and starts the 30-day period under section 6405(a) for refund issuance
      - Refund will be issued within 30-day period even if Joint Committee has not completed review
    - All years under expedite refund process must have “live” statutes open either by the original statute of limitations or statute extension
      - If there are years that are open only by reason of a carryback, expedite refund procedure is not available
  - Modified Expedite report
    - Only for those cases where taxpayer has requested refund prior to completion of exam or survey and furnished collateral for the amount of the requested refund (and interest if applicable)
- ❑ Minimum Refund report – IRM sec. 4.36.5.1.3
  - Reserved for cases where the taxpayer is entitled to a refund reportable under section 6045(a) regardless of the outcome of the unagreed issues and the unagreed issues will take substantial time to resolve

# Joint Committee Refund Review (cont'd)

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- ❑ Once the Review Team has submitted a report, the Joint Committee begins its review
- ❑ Pursuant to the review, the Joint Committee staff may:
  - Review the report and other documentation, as necessary
  - Work informally with Exam or IRS Appeals to resolve questions of fact and technical positions, or issue a staff review memorandum (“SRM”) for formal review
- ❑ The Joint Committee reviews the IRS’s resolution of the issues, focusing in particular on the technical aspects of the analysis
  - Of particular concern to the Joint Committee are cases where taxpayers claim tax benefits that do not appear to have been intended by the relevant statute
    - In such a case, the Joint Committee may recommend a statutory amendment or ask the IRS to issue guidance or clarify or reconsider prior published guidance
  - The Joint Committee staff refund review also permits identification of issues that, as a technical matter, were not handled correctly by the Exam or Appeals functions

# Joint Committee Refund Review

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- Upon completion of review, Joint Committee will issue either a clearance letter or SRM
  - Clearance letter
    - Indicates that Joint Committee does not disagree with the IRS's position
  - SRM
    - Outlines areas where Joint Committee disagrees with the IRS's position and recommends a different outcome
  - Joint Committee may recommend adjustments to the amount of the refund (if significant), but neither IRS nor the Department of Justice is bound to accept the recommendation(s)
    - They may either agree with the Joint Committee recommendation and change their position or disagree with the Joint Committee's recommendation and make no change

# The Jurisdictional Amount

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# Jurisdictional Amount — General Rules

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## □ Type of taxpayer – jurisdictional amount

- Section 6405 requires Joint Committee review of refunds and credits *in excess of* the jurisdictional threshold (“Jurisdictional Amount”)
- Historically, the Jurisdictional Amount was the same amount for all taxpayers
- The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295, December 19, 2014) increased the Jurisdictional Amount for only C corporations from \$2 million to \$5 million
  - Effective on December 19, 2014, for reports made to Joint Committee on or after such date

## □ General rules

- Joint Committee jurisdiction over each class of refunds is determined separately
- Section 6405(a) and (b) refund amounts cannot be aggregated to determine if the Jurisdictional Amount is met

**Note:** The two classes of refunds may be addressed in one report, but the amounts are not aggregated to determine if Joint Committee review is required.

# Determining Jurisdictional Amount

## Example 1:

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	Assumption: \$5M threshold
<b>Tentative allowances – sec. 6405(b):</b>	
2012 net operating loss (“NOL”) carryback to 2010	\$4,800,000
<b>Audit results – sec. 6405(a):</b>	
2011 exam refund	\$450,000
Jurisdictional Amount – sec. 6405(b)	\$4,800,000
Jurisdictional Amount – sec. 6405(a)	\$450,000

**Conclusion:** No report is required because the section 6405(a) and (b) refunds or credits are not aggregated.

# Determining Jurisdictional Amount (cont'd)

## Example 2:

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	Assumption: \$5M threshold
<b>Tentative allowances – sec. 6405(b):</b>	
2012 NOL carryback to 2010	\$4,700,000
2011 NOL carryback to 2009	\$500,000
Jurisdictional amount – sec. 6405(b):	\$5,200,000
<b>Previous tentative allowance – sec. 6405(b)</b>	
2010 capital loss carryback to 2007	\$300,000

**Conclusion:** The 2009 and 2010 refunds must be reported. If the 2007 refund is not barred by statute of limitations and was not considered in prior examination, then it is included in determining the Jurisdictional Amount.

# Determining the Jurisdictional Amount (cont'd)

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- ❑ Multi-year exams with net deficiency (IRM sec. 4.36.2.4.3)
  - Not subject to JCT review – no report necessary
  
- ❑ Multi-year exams with net refund (IRM secs. 4.36.2.4.4 and 8.7.9.6.5)
  - Four-step process:
    1. Apply the deficiency for each year against the smallest refund category (sec. 6405(a) or (b)) for that year and then apply the remaining deficiency, if any, against the other refund category for that year;
    2. Determine the aggregate deficiency (*i.e.*, add the deficiencies of net deficiency years);
    3. Determine the aggregate overpayment by refund category (*i.e.*, add each remaining refund category for all years); and
    4. Apply the aggregate net deficiency against the least aggregate refund category and then apply the remaining aggregate deficiency, if any, against the other aggregate refund category.

## Determining Jurisdictional Amount (cont'd)

Example 3: Multi-year exam with net refund – C corp.

Year	Deficiency	Sec. 6405(a) refund	Sec. 6405(b) refund
2010	\$1,005,000		(\$5,005,000)
2011		(\$5,005,000)	
2012	\$600,000		
Sub-total deficiency/refund	\$1,605,000	(\$5,005,000)	(\$5,005,000)
Same year offset (2010)	(\$1,005,000)		\$1,005,000
Subtotal	\$600,000	(\$5,005,000)	(\$4,000,000)
Offset of least refund type	(\$600,000)		\$600,000
Net deficiency/refund	\$0	(\$5,005,000)	(\$3,400,000)
In excess of jurisdictional amount?		Yes	No

# Computing the Jurisdictional Amount (cont'd)

## Example 3: Multi-year exam (cont'd)

**Step 1 — Same Year Offset:** Offset the 2010 deficiency of \$1,005,000 against the 2010 section 6405(b) refund of \$5,005,000

Year	Deficiency	Sec. 6405(a) refund	Sec. 6405(b) refund
2010	\$1,005,000		(\$5,005,000)
Offset			\$1,005,000
<b>Total</b>			<b>(\$4,000,000)</b>

**Step 2 — Net Deficiency:** After Step 1, there is a deficiency of \$600,000 in 2012, thus there is a net deficiency

Year	Deficiency
2010	
2011	
2012	\$600,000
<b>Total</b>	<b>\$600,000</b>

# Computing the Jurisdictional Amount (cont'd)

## Example 3: Multi-year exam (cont'd)

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**Step 3 — Aggregate Overpayments:** The aggregate section 6405(a) overpayment is \$5,005,000. The aggregate section 6405(b) overpayment is \$4 million (*i.e.*, \$5,005,000 refund — \$1,005,000 deficiency).

Year	Sec. 6405(a) refund	Sec. 6405(b) refund
2010		(\$4,000,000)
2011	(\$5,005,000)	
2012		
<b>Total</b>	<b>(\$5,005,000)</b>	<b>(\$4,000,000)</b>

# Computing the Jurisdictional Amount (cont'd)

## Example 3: Multi-year exam (cont'd)

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**Step 4 — Offset:** Net deficiency of \$600,000 is applied against the section 6405(b) refund of \$4 million, as it is the lowest amount of refund type. After offset, the section 6405(b) refund is \$3,400,000.

Year	Sec. 6405(a) refund	Sec. 6405(b) refund
Refunds	(\$5,005,000)	(\$4,000,000)
Net Deficiency		\$600,000
Net Refunds	(\$5,005,000)	(\$3,400,000)

### Conclusions:

- No net deficiency.
- The section 6405(a) refund will be reportable because it exceeds the threshold.
- The section 6405(b) refund is not reportable because the amount after deficiency offset does not exceed the threshold.

# Other Considerations

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# Joint Committee Review — Other Considerations

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- ❑ IRS may delay or stop the anticipated refund due to reviews by the Review Team and Joint Committee staff.
- ❑ The IRS may request a statute extension to ensure that sufficient time remains on the statute for both source and carryback years:
  - 12 months for refund cases in examination (IRM sec. 4.36.3.5), or
  - 6 months for refund cases in Appeals (IRM sec. 8.7.9.5.3)
- ❑ Taxpayer is under exam for purposes of Form 3115, *Application for Change in Accounting Method*
  - See Rev. Proc. 2015-13
- ❑ Denial of a refund claim constitutes a determination under section 1313 of the mitigation provisions