

**INSTRUCTIONS CONCERNING
THE ABATEMENT AND THE
REFUNDING OF TAXES AND
PENALTIES. REGULATIONS NO.
14**

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Instructions concerning the abatement and the refunding of taxes and penalties. Regulations No. 14 by United States Office of Internal Revenue

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UNITED STATES OFFICE OF INTERNAL REVENUE

**INSTRUCTIONS CONCERNING
THE ABATEMENT AND THE
REFUNDING OF TAXES AND
PENALTIES.
REGULATIONS NO. 14**

U.S. Office of Internal Revenue

(REGULATIONS No. 14, REVISED.)

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UNITED STATES INTERNAL REVENUE.

INSTRUCTIONS

CONCERNING THE

ABATEMENT AND THE REFUNDING

OF

TAXES AND PENALTIES

WHICH ARE UNCOLLECTIBLE, ABATABLE, OR REFUNDABLE UNDER
THE PROVISIONS OF SECTIONS 3220 AND 3221, REVISED
STATUTES, SECTION 6, ACT OF MARCH 1, 1879,
OR OTHER ACTS,

AND

THE REDEMPTION OF OR ALLOWANCE FOR INTERNAL-REVENUE STAMPS

UNDER THE PROVISIONS OF THE ACT OF MAY 12, 1900,
AS AMENDED BY THE ACT OF
JUNE 30, 1902.

WASHINGTON
1911

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TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, October 15, 1911.

The following Regulations, prescribed by the Secretary of the Treasury, are herewith published as Regulations No. 14, Revised, Instructions to Internal-Revenue Officers.

R. E. CABELL,
Commissioner.

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REGULATIONS.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 15, 1911.

Section 3218 of the Revised Statutes is as follows:

Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted, in the manner heretofore provided, to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him, or by his deputy acting as collector, to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same, as required by law.

Section 3220 is as follows:

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided*, That where a second assessment is made in

case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

**CREDIT TO COLLECTORS FOR TAXES CHARGED AGAINST THEM
WHICH ARE UNCOLLECTIBLE.**

Collectors are entitled to credit for taxes assessed against parties who may have absconded, or become insolvent prior to the day when the tax ought according to the provisions of the law to have been collected, provided that it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the fact to the Auditor for the Treasury Department, that due diligence was used by the collector.

It should be borne in mind that, though credits allowed on account of insolvency or absconding release the collector from the obligation created by his receipt for the amount credited, the obligation to pay still remains upon the parties assessed. Collectors should, therefore, keep a record (No. 23) of all taxes thus credited, and of the persons from whom they are due, and should enforce payment whenever it is in their power to do so.

If a tax reported as uncollectible on account of the insolvency or absconding of the party owing it, is paid after credit has been given for it, it should be returned upon Form 58.

**PREPARATION OF CLAIMS FOR CREDIT FOR TAXES AND ASSESSED PENALTIES
ALLEGED TO BE UNCOLLECTIBLE.**

FORM 58.

When a tax is found to be uncollectible the collector or deputy collector who made the demand for payment and is conversant with the facts should prepare a claim on Form 58, revised February 14, 1901, showing the name and address of the party assessed, the article or occupation for and on account of which the assessment was made, the list, page, and line on which assessed, the amount claimed, the date of first demand, and the date when the tax was found to be uncollectible, and the cause of inability to collect. The amount or amounts claimed should be entered on the Form 58 under the respective column in which it or they are charged to the collector on Form 23. One or more claims may be entered upon one Form 58, and in cases where a special tax and a penalty are both claimed to be uncollectible, but one entry of the name, address, etc., should be made, but the amounts should be entered in their respective columns.

Claims for abatement of taxes as uncollectible on account of insolvency of the principals on bonds given to secure the taxes should not be presented until after the cases have been reported to the Commissioner of Internal Revenue, as directed in Circular No. 331, dated January 21, 1889.

The collector should call on the sureties for payment when the principal is insolvent, and if they prefer to contest, he will then report to the Commissioner of Internal Revenue for authority to bring suit.

Collectors should make a careful examination as to the solvency of sureties before reporting to the Commissioner for permission to bring suit or otherwise.

In case the sureties are reported insolvent, the collector will state, as nearly as can be ascertained, the length of time such sureties have been insolvent; also what efforts were made by him to secure additional bond security. In this connection attention is called to instructions on page 71 of Regulations No. 7, of April 15, 1901, respecting additional warehousing bonds in case of death, removal, or insolvency of sureties; and hereafter taxes will be abated as uncollectible, in such cases only where it is found that the collector has exercised due diligence in this matter.

If authority is given the collector to report the case to the United States attorney for suit, the bonds should immediately be placed in the hands of the United States attorney and his receipt obtained in duplicate, one of which should be filed with the claim on Form 53. If authority is not given to report the case to the United States attorney, the claim may be made on Form 53 for the abatement of the tax as uncollectible and a copy of the letter refusing to grant authority to report the case to the United States attorney should be filed with the claim.

Collectors are required to make demand within the time prescribed by law, and either to collect the taxes or prove them to be uncollectible, within six weeks after the receipt of the list, unless special reasons are furnished, such as lack of mail facilities, great extent of territory, etc., showing why they could not be collected within that time.

Six months are allowed from the receipt of a list in which to close it up, either by collection or by presenting claims for abatement; but when an abatement of taxes alleged to be uncollectible is asked, it must be shown in the vouchers, by dates, or otherwise, that they could not have been collected at the time they first became due and payable according to law, nor at any time since. Where dates can not be given, it should appear in each case that they were uncollectible before distraint was or could have been made.

Upon this form there should be a sworn certificate of the deputy collector of the division, as follows:

I, _____, deputy collector of internal revenue for division No. _____, in collection district No. _____, in the State of _____, hereby certify that the within taxes or duties charged to and assessed against the several persons named in the lists within specified for 19____, amounting in the aggregate to _____ dollars, have not been collected; and that I demanded payment of said taxes and duties of the within-mentioned persons on the several dates affixed to their names; and that I have been unable to collect said taxes and duties, or any portion thereof, for the reasons set forth in my schedule herein inclosed. And I further certify that neither of the parties against whom the taxes herein claimed for abatement were assessed had any property liable to distraint for the said taxes at the time when warrants of distraint could first lawfully be issued therefor—i. e., ten days after first demand for the same at the dates specified in the schedule—nor since; that I made diligent efforts to collect the said taxes and duties, and that the failure to collect the same did not arise out of or through any omission or neglect of duty on my part.

Deputy Collector.

Sworn and subscribed to, this _____ day of _____, 19____, before me.

Circular 118 calls the attention of collectors of internal revenue to the act of March 3, 1873 (17 Stat., 580; see sec. 3164, Rev. Stat., on p. 74 of the compilation of 1900), which provides "That it shall be the duty of the several collectors of customs and of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within their knowledge, together with the names of the witnesses, and which may come to their knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction." * * *

The carrying on of any business upon which a special tax is imposed by law, without payment of the tax, is a violation of law which renders the delinquent liable to fines and penalties.

Collectors are therefore instructed, in every case where a special tax is claimed for abatement as uncollectible, to enter in the column for "Remarks," on Form 53, the date of report of the case to the district attorney for prosecution.

The following certificate should be made upon each Form 53 by the collector, and the number of any claim to which he may object should be entered under the exception in his certificate, and there should be a written statement of the reasons for his objections annexed to the Form 53 itself:

Collector's certificate.

UNITED STATES INTERNAL REVENUE,
 Collector's Office, _____, District of _____,
 _____, _____, 19—.

I hereby certify that I have carefully investigated the facts set forth in the within claims, and am satisfied that, except _____, they are in all respects just and true. And I further certify, from personal examination, that all the names and taxes enumerated within are found on the pages and lines as indicated in the respective lists now on file in my office; and that each of the said several taxes is included in my aggregate receipt for the list to which it belongs, as reported to the Office of Internal Revenue; and I further certify that no credit has heretofore been allowed in any form on account of any of the taxes within claimed for credit, and that none of them have been collected.

_____, Collector.

When the claims have been thus prepared they should be carefully sealed up and mailed to the Commissioner of Internal Revenue. Letters of transmittal should not be sent with claims unless they contain necessary explanations.

TAXES THAT ARE OR HAVE BEEN IN LITIGATION.

When a suit has been instituted upon a bond for the recovery of a tax due from a taxpayer who has no distrainable property, the collector may present a claim for abatement of the tax on Form 53.

The Form 53 should show when the tax first became due; whether the taxpayer had any property liable to distraint at that time or thereafter, and whether the collector used due diligence at all times to collect the tax.

The claim should be supported by a certificate of the United States attorney stating the date of the commencement of the suit, and when the bond was first placed in his hands.

It is the duty of the collector to use the same diligence to collect a tax after it has been abated as uncollectible, or as in suit, as before abatement. Such an abatement does not impair the claim of the Government against the taxpayer or against the sureties upon his bond.

Amounts collected by distraint or otherwise, subsequent to the institution of the suit, should be at once reported to the United States attorney for his guidance in his further prosecution of the case in court.

Credit given the collector for taxes abated as uncollectible will not affect a suit pending for their recovery, nor will it relieve the collector from the duty of distraining any property of the taxpayer that may be found at any time before judgment.