

PROTECTION CLAIM FOR REFUND OF NET INVESTMENT INCOME TAX (NIIT)

Taxpayers who paid NIIT with their 2017 returns should consider if they want to file a protective claim for refund before the 3 year statute of limitations expires for 2017 tax return refunds.

- You paid net investment income tax (NIIT) if there is a number on line 62, page 2, of your 2017 form 1040.
- Due to a pending case at the Supreme Court, there is a very remote chance that the NIIT, which was enacted in connection with the Affordable Care Act, could be declared unconstitutional, and an even more remote chance the prescribed remedy would be to allow retroactive refund claims.
- Since the statute of limitations for 2017 tax refunds will close April 15, 2021 (for 2017 returns filed by the original due date), or 3 years from the date you filed your 2017 return (for 2017 returns extended to and filed by October 15, 2021), you would need to have a protective claim on file with the IRS if you wish to preserve your rights to a refund should the Supreme Court throw out the NIIT and apply the remedy retroactively.

On the next two pages is a fill-in form you may use to make a protective claim, should you wish to. Specific instructions appear on the last page of this PDF.

_____, 2021

Department of the Treasury
Internal Revenue Service

Re: Protective Claim for Refund

Taxpayer's Name: _____

Spouse's Name (if filed jointly): _____

Address: _____

Taxpayer's Social Security Number: _____

Spouse's Social Security (if filed jointly): _____

Tax Year: _____

Dear Internal Revenue Service:

Please accept this letter as my formal written Protective Claim for Refund of Additional Medicare Tax and/or Net Investment Income Tax liabilities paid for the tax year(s) set forth above. These taxes were paid with my/our Form 1040 U.S. Individual Income Tax Return for the year(s) set forth above.

- The Additional Medicare Tax liability was set forth on Form 8959, Part IV, Line 18, and
- the Net Investment Income Tax liability was set forth on Form 8960, Part III, Line 17,

both of which were timely paid with my/our Form 1040 U.S. Individual Income Tax Return(s).

A formal written Protective Claim for Refund may be filed when a taxpayer's right to a refund is contingent on future events and may not be determinable until after the statute of limitations expires. The Additional Medicare Tax and Net Investment Income Tax are contingent on the case pending before the United States Supreme Court, *California, et al., Petitioners v. Texas, et al.*, No. 19-840. At issue before the United States Supreme Court is whether reducing the amount specified in 5000A(c) of the Patient Protection and Affordable Care Act ("ACA") to zero rendered the minimum coverage provision of the ACA unconstitutional, and if unconstitutional, whether the minimum coverage provision is severable from the rest of the ACA. If the United States Supreme Court holds that the minimum coverage provision of the ACA is unconstitutional and not severable from the rest of the ACA, the Additional Medicare Tax and Net Investment Income Tax which were assessed pursuant to the ACA would be eliminated and no longer valid.

Request for Refund

If the United States Supreme Court holds that the minimum coverage provision of the ACA is unconstitutional and not severable from the rest of the ACA, and such holding is applicable to the Additional Medicare Tax and Net Investment Income Tax paid for the tax year(s) set forth above, taxpayer requests a full refund of such taxes paid and interest, as provided by law, on the principal amount of the tax overpayment.

If you need additional information, please contact me at the address of record identified above.

Under penalties of perjury, I/we declare that I/we have paid the Additional Medicare Tax and/or Net Investment Income Tax for the tax years set forth above, and that to the best of my knowledge, this Protective Claim for Refund for such taxes, which is contingent on the ruling of the case pending before the United States Supreme Court, *California, et al., Petitioners v. Texas, et al.*, No. 19-840, is true, correct and complete.

Dated: _____, 2021

Taxpayer Signature

Dated: _____, 2021

Spouse Signature (if filed jointly)

[Page 3 is for reference only; do not file with claim]

INSTRUCTIONS:

1. Complete the IRS address in the top left corner of the claim by adding the city, state and zip of your IRS service center from the below list.
2. Remember to sign your claim.
3. A separate letter should be filed for each year for which you wish to make a claim.
4. MAIL to the appropriate service center. Certified mail, return receipt requested is recommended for proof of timely filing.
5. BE SURE TO KEEP A COPY OF YOUR CLAIM AND PROOF OF DATE FILED.
6. To be timely, the claim for 2017 must be filed by either April 15, 2021 (2017 returns filed before the original due date) or the earlier of 3 years from the date your 2017 return was filed or October 15, 2021 (2017 returns that were extended).
7. The claim made by this letter is protective only, serving to hold the statute of limitations open for this one issue until the IRS takes action to accept or reject the claim. Should the Supreme Court rule that the NIIT tax is invalidated, we expect that additional filings will be needed to perfect the claim and obtain the refund.
8. You can expect the IRS to send a notification that they are reviewing your correspondence. This will take a few months.

if you live in:	THEN mail Form 1040X and attachments to:
Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0052
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Texas	Department of the Treasury Internal Revenue Service Austin, TX 73301-0052
Alaska, California, Hawaii	Use this address if you file January 1, 2021 through June 18, 2021: Department of the Treasury Internal Revenue Service Fresno, CA 93888-0422 Starting June 19, 2021, use the following address: Department of the Treasury Internal Revenue Service Ogden, UT 84201-0052
Arizona, Colorado, Idaho, Iowa, Kansas, Michigan, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0052
A foreign country, U.S. possession or territory; * or use an APO or FPO address, or file Form 2555, 2555-EZ, or 4563; or are a dual-status alien.	Department of the Treasury Internal Revenue Service Austin, TX 73301-0215
* If you live in American Samoa, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Marian Islands, See Pub. 570	See Pub. 570