How to file a protective payroll refund claim

Here’s your worst case scenario—you think you’re entitled to a tax refund, but you don’t know the exact amount because you’re waiting for a lawsuit against the IRS to be resolved, and the time for filing for that refund claim is quickly running out.

You don’t want to leave money on the table. What do you do? You can protect your rights by filing a protective refund claim on Form 941-X. Protective refund claims are filed pending the resolution of a contingent event, such as the resolution of a lawsuit or an anticipated change in the tax law or regulations.

The $1 refund solution

If you know the amount of your claim, you can file a protective refund claim for that amount. But if you don’t know the exact amount, that’s OK, too. Protective refund claims don’t have to state a particular dollar amount, so writing in $1 will suffice. To be valid, protective refund claims must meet these four criteria:

1. They must be in writing and be signed
2. They must include your name, address, Employer Identification Number and other contact information
3. They must identify and describe the contingencies or anticipated law/reg changes affecting your claim
4. They must identify the specific tax period for which a refund is sought.

Be sure to write “Protective Refund Claim” at the top of page 1 of Form 941-X, in addition to including that phrase in your description. Warning: This is a critical step; failure to indicate that the Form 941-X is a protective claim may lead the IRS to process it incorrectly, causing unnecessary problems with your tax account.

Hurry up and wait

The IRS won’t process protective refund claims until the contingency is resolved, so you may need to hang onto your supporting documentation for quite some time. Once the contingency is squared away, and you become entitled to a refund, the IRS will ask you to perfect your claim by indicating the specific amount you’re claiming as a refund.

Remember that before the IRS will refund anything, you must reimburse or repay employees for their share of any overcollected FICA taxes or obtain their consent to file a refund claim on their behalf.