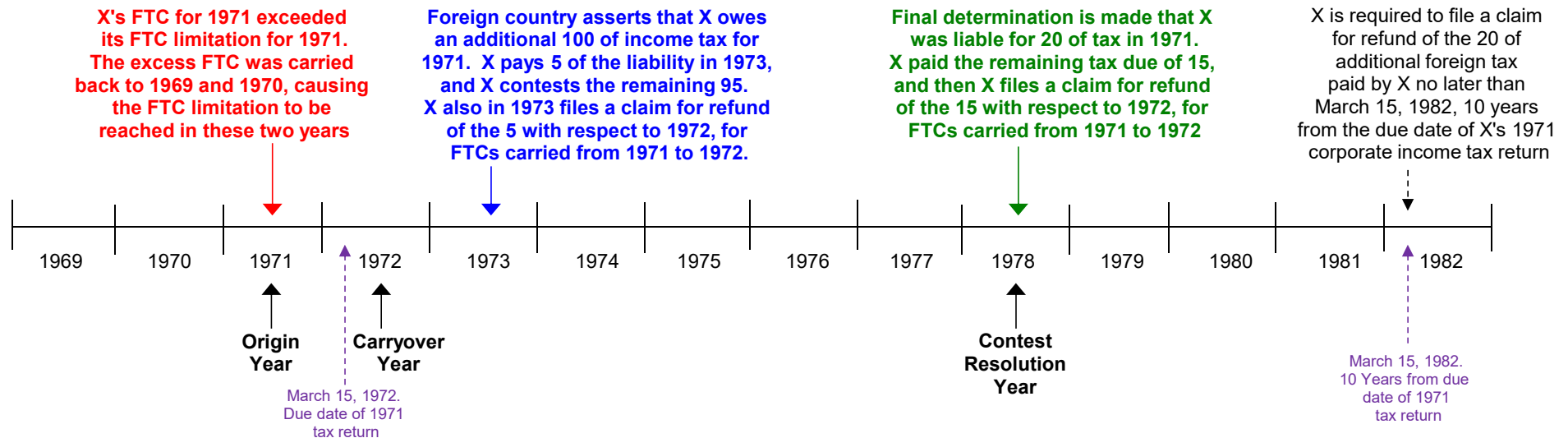


**Accrual of FTCs on Contested Liability
(Partially Paid) & 10 Year Refund Period**



X is a domestic corporation that files its tax return using the accrual method of accounting. In 1973, FC, a foreign country, asserted that X was liable for 100 of additional FC income tax with respect to X's FC 1971 taxable year. X contested the assessment. Although contesting the assessment and without admitting that any additional amount was due, X in 1973 paid FC 5 of the asserted deficiency. In 1978, it was finally determined that X was liable for 20 of additional 1971 FC income tax, and in 1978 X paid the remaining 15 (the 20 due less the 5 that was paid in 1973) in satisfaction of the 1978 determination. Prior to the assertion in 1973 of additional FC income tax liability, X's allowable foreign tax credit for the 1971 taxable year exceeded its foreign tax credit limitation for 1971, as provided in section 904(a). X's excess foreign tax credit was fully utilized when it was carried back to 1969 and 1970, respectively, causing the section 904(a) limitation to be reached in 1970 as well as in 1969. Consequently, X carried over to 1972 the 20 of additional 1971 foreign income tax paid, and filed two claims for refund for overpayment of Federal income tax with respect to the taxable year 1972. The claims were filed in 1973 and 1978, in amounts of 5 and 15, respectively.

Rev. Rul. 58-55 holds that a foreign tax for the purpose of the foreign tax credit is accruable for the taxable year to which it relates even though the taxpayer contests the liability therefor and the tax is not paid until a later year. However, the question of when the foreign tax accrues is still governed by section 461, and thus such accrual generally cannot be made until the contested liability is finally determined. Rev. Rul. 70-290 holds that contested foreign tax can be accrued at the time of payment, even though the amount of the tax liability is not finally determined at the time of payment.

Accordingly, in 1973 X is allowed to claim a foreign tax credit of 5 for the amount of the additional foreign tax assessment actually paid by X in 1973, which accrues for the taxable year 1971 pursuant to section 905(a). In 1978, subsequent to the final determination of X's additional foreign tax liability, X is allowed to claim a foreign tax credit of 15 which accrues for the taxable year 1971, representing the difference between the portion of the total foreign tax assessment for which X is finally determined to be liable (20) and the amount previously paid and claimed by X in 1973 (5). At the time of this ruling, section 904(c) provided that to the extent taxes paid to any foreign country for any taxable year exceed the limitation under section 904(a), the excess may be carried back to the two preceding years and carried forward to the five succeeding years.

Section 6511(d)(3)(A) provides that if the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country for which credit is allowed under section 901, in lieu of the 3-year period of limitation prescribed in section 6511(a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. See Rev. Rul. 68-150. The period of limitation prescribed in section 6511(d)(3)(A) for claiming a foreign tax credit is determined by reference to the year for which the taxes were paid or accrued and not to the carryover year. See Rev. Rul. 75-268. Although 5 of the total tax assessment of 100 was paid in 1973 and 15 of that assessment was paid in 1978, the total of 20 in foreign taxes paid is considered accruable for 1971, the year to which it relates. Consequently, the 10-year period of limitation prescribed in section 6511(d)(3)(A) is determined with reference to the due date of X's 1971 Federal corporate income tax return, March 15, 1972, even though the foreign tax credit will be carried forward to X's 1972 taxable year. See Rev. Rul. 77-487. Accordingly, X is required to file a claim for refund of the 20 of additional foreign tax paid by X no later than March 15, 1982, 10 years from the due date of X's 1971 Federal corporate income tax return.