



July 13, 2016

Important Notice: A Taxpayer May Contest the Department's Determination That an Amended Return or Claim for Refund Was Not Filed Within the Statute of Limitations

On June 30, 2016, Governor Pat McCrory signed into law House Bill 533 (S.L. 2016-76). The bill provides a procedure for a taxpayer to seek review of the Department's conclusion that the statute of limitations bars a refund claim. This legislation requires the Department to deny a refund and send the taxpayer a notice of refund denial when it determines that an amended return or a claim for refund is filed outside the statute of limitations for refunds. In addition, the legislation provides a taxpayer whose request for refund was denied because the Department determined that the amended return or claim for refund was filed outside the statute of limitations a right to contest that determination.

Background

A taxpayer that believes it has overpaid its taxes may request a refund of the overpayment from the Department by taking one of the following actions within the statute of limitations for obtaining a refund:

- (1) Filing an amended return reflecting an overpayment due the taxpayer.
- (2) Filing a claim for refund.

The general statute of limitations for obtaining a refund of an overpayment is the later of the following: (1) three years after the due date of the return, or (2) two years after payment of the tax. N.C. Gen. Stat. § 105-241.6(a). The statute provides certain exceptions to the general statute of limitations for obtaining a refund. N.C. Gen. Stat. § 105-241.6(b).

If a taxpayer requests a refund of an overpayment within the statute of limitations and the Department denies or reduces the refund, the taxpayer may request an administrative review of the denial or reduction by following the procedures set forth in N.C. Gen. Stat. § 105-241.11. If the Department issues a Notice of Final Determination that sustains the denial or reduction, the taxpayer may seek judicial review of the Notice of Final Determination by following the procedures set forth in N.C. Gen. Stat. § 105-241.15(a).

Prior to the enactment of this legislation, a taxpayer that requested a refund outside the statute of limitations, as determined by the Department, was not entitled to the refund and was not entitled to further administrative or judicial review of the Department's statute of limitations determination.

Legislative Change

Session Law 2016-76 includes two provisions that allow a taxpayer to seek judicial review of the Department's determination that a request for refund was filed outside the statute of limitations. There remains no administrative review of the decision.

1. *Refund Denied by the Department on or After June 30, 2016:* A taxpayer that receives a notice of refund denial based on the Department's statute of limitations determination on or after June 30, 2016, may contest the Department's determination by filing a petition for a contested tax case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. The petition must be filed within sixty (60) days of the date of the notice of denial.
2. *Statute of Limitations Determination Made by the Department Prior to June 30, 2016:* A taxpayer that, prior to June 30, 2016, received a notification from the Department that an amended return or claim for refund was not filed within the statute of limitations and could not be processed by the Department may contest the Department's determination by filing a petition for a contested tax case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes by August 29, 2016.

The sole issue to be decided by the administrative law judge in a contested tax case based on the Department's statute of limitations determination is whether or not the statute of limitations bars the taxpayer's claim for refund of an overpayment. The final decision by the administrative law judge regarding the statute of limitations is subject to judicial review under Article 4 of Chapter 150B of the General Statutes and under N.C. Gen. Stat. § 105-241.16.

After judicial review, if the final decision is that the taxpayer's claim for refund is not barred by the statute of limitations, then the taxpayer's claim for refund is remanded to the Department for Departmental review of the substantive issues. Any remand is regarded as a new amended return or claim for refund timely filed within the statute of limitations under N.C. Gen. Stat. § 105-241.7(c).

How to File a Petition for a Contested Tax Case Hearing

Taxpayers affected by this notice may file a petition for a contested tax case hearing in accordance with Chapter 150B, Article 3 of the North Carolina General Statutes. The petition must be filed with the **Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6700**, within the applicable time period described above. N.C. Gen. Stat. § 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if a taxpayer files a petition for a contested tax case hearing, the taxpayer must serve a copy of the petition on the Department by mailing a copy of the petition to: **General Counsel, North Carolina Department of Revenue, P.O. Box 871, Raleigh, NC 27602-0871**.

If a taxpayer does not timely file a petition for a contested tax case hearing with respect to a statute of limitations determination, the determination by the Department is final and is not subject to further administrative or judicial review.

Assistance

If you have any questions about this notice, you may call the Tax Practitioner line at 919-754-2500 (8:00 am until 5:00 pm EST, Monday through Friday), or write to Customer Service, PO Box 1168, Raleigh, NC 27602.

To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.