#### State of South Carolina

# **Department of Revenue**

301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

## SC REVENUE RULING #97-14

SUBJECT: Statute of Limitations for Claims for Refunds

EFFECTIVE DATE: Returns and claims for refund filed after August 1, 1995.

Payments made after August 1, 1995.

SUPERSEDES: All previous documents and any oral directives in conflict

herewith.

REFERENCES: S. C. Code Ann. Section 12-54-85 (Supp. 1996)

S. C. Code Ann. Section 12-60-470 (Supp. 1996)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)

SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official

advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision,

Revenue Ruling or Revenue Procedure.

## INTRODUCTION

The South Carolina Code sets forth time limits within which the Department of Revenue must assess and collect taxes and within which taxpayers must file claims for refunds. Effective August 1, 1995, Code Section 12-54-85, regarding the statute of limitations for tax matters, and "The South Carolina Revenue Procedures Act," ("Act"), contained in Chapter 60 of Title 12, were enacted.

The purpose of this document is to address some frequently asked questions concerning the statute of limitations for claims for refunds.

# GENERAL RULE FOR CLAIM FOR REFUND

Code Section 12-54-85, the general statutory rule for filing a claim for refund for all fees and all taxes administered and collected by the Department of Revenue, provides for the time periods within which to timely file a claim for refund. The section provides, in part:

- (F)(1) Except as provided in subsection (D)<sup>1</sup> above, claims for credit or refund must be filed within three years of the time the timely filed return, including extensions, was filed, or two years from the date of payment, whichever is later. If no return was filed, a claim for refund must be filed within two years from the date of payment.
- (2) If the claim was filed by the taxpayer during the three-year period prescribed in item (1), the amount of the credit or refund may not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.
- (3) If the claim was not filed within the three-year period, the amount of the credit or refund may not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.
- (4) If no claim was filed, the credit or refund may not exceed the amount which would be allowable under items (2) or (3), as the case may be, as if a claim were filed on the date the credit or refund is allowed.
- (6) For the purposes of this subsection:
  - (a) Any return filed before the last day prescribed for the filing is considered as filed on the last day. Payment of any portion of the tax made before the last day prescribed for the payment of tax is considered made on the last day. The last day prescribed for filing the return or paying the tax must be determined without regard to any extension of time.

<sup>&</sup>lt;sup>1</sup> Every corporation shall notify the department in writing of all changes in taxable income reported to the Internal Revenue Service when the taxable income is changed by the Internal Revenue Service. Notification to the department must be made within thirty days after a final determination is received from the Internal Revenue Service. Notification of adjustments made by the Internal Revenue Service must be made under separate cover from any return filed or due to be filed with the department.

Notwithstanding any restrictions on filing a claim for refund provided in subsection (F), subsection (D) allows a corporation to file a claim for refund resulting from an overpayment due to changes in taxable income made by the Internal Revenue Service within thirty days from the date the Internal Revenue Service changes the taxable income.

- (b) Any tax actually withheld at the source in respect of the recipient of income, is considered to have been paid by the recipient on the last day prescribed for filing his return for the taxable year, determined without regard to any extension of time for filing the return, with respect to which the taxpayer would be allowed a credit for the amount withheld.
- (c) Any amount paid as estimated income tax for any taxable year is considered to have been paid on the last day prescribed for filing the return for the taxable year, determined without regard to any extension of time for filing the return.

EXAMPLES ARE PROVIDED IN THIS DOCUMENT TO ILLUSTRATE THE ABOVE STATUTORY PROVISIONS. FOR EASE OF DISCUSSION, THE EXAMPLES ARE DIVIDED INTO TWO CATEGORIES - (1) INDIVIDUAL TAX RETURNS AND (2) CORPORATE TAX RETURNS.

UNLESS OTHERWISE NOTED, ALL EXAMPLES APPLY TO ANY TYPE OF TAXPAYER AND ANY TYPE OF TAX.

#### **EXAMPLES FOR INDIVIDUAL TAX RETURNS**

For purposes of the following examples it is assumed that:

- 1. the taxpayer is an individual, calendar year, taxpayer required to file a South Carolina individual income tax return;
- 2. the original due date of the return is April 15;
- 3. no dates fall on weekends or holidays;
- 4. the refund is proper if it is within the statute of limitations; and
- 5. all dates are after August 1, 1995.
- 1. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The taxpayer had \$500 of South Carolina income tax withheld from wages. The taxpayer timely files an extension of time to file until August 15, Year 2. On August 15, Year 2, the taxpayer files a timely tax return showing and paying an additional tax liability of \$200. On August 15, Year 5, the taxpayer files a claim for refund of \$700. Is the taxpayer entitled to a refund?
  - A. Yes. The claim for refund was timely filed within 3 years of filing the timely original return, including the extension of time. As a result, the taxpayer is entitled to a refund of \$700, the \$500 tax paid within the 3 year period immediately preceding the filing the return (the amount withheld from wages is deemed paid April 15, Year 2) and the \$200 since the 4 month extension period used to file the return is added to the 3 year statute of limitation.
- 2. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The taxpayer had \$500 of South Carolina income tax withheld from wages. The taxpayer timely files an extension of time to file until August 15, Year 2. On August 1, Year 2, the taxpayer files a timely tax return showing and paying an additional tax liability of \$200. This return was received by the Department on August 3, Year 2. On August 15, Year 5, the taxpayer files a claim for refund of \$700. Is the taxpayer entitled to a refund?
  - A. No. The taxpayer does not meet the requirements of South Carolina Code §12-54-85(F)(1). Although the taxpayer filed a timely return, the claim for refund was filed more than three years after the original return was filed and more than two years after the tax payments. Since the three-year limitation period that applies to a timely filed return began on August 3, Year 2, the taxpayer's claim for refund filed on August 15, Year 5 was not timely filed. The taxpayer's claim for refund should have been filed by August 3, Year 5 in order to receive a refund of all amounts claimed.

**NOTE:** If a return is filed after the original due date but before the extended due date, the period of limitations for filing a claim for refund begins to run from the date the return was actually received by the Department and not from the extended due date.

- 3. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The taxpayer timely files an extension of time to file until August 15, Year 2. The taxpayer files a delinquent tax return on May 18, Year 5 and claims a refund of South Carolina income tax withheld from wages for Year 1. Is the taxpayer entitled to a refund?
  - A. No. The taxpayer does not meet the requirements of South Carolina Code §12-54-85(F)(1). The three-year limitation period in this section applies to a timely filed return. Since the taxpayer did not file a timely return, the only refund limitation rule that can apply is the two-year rule. The tax overpayment cannot be refunded because the income tax withheld from wages is deemed paid on the due date of the return without regard to extensions; i.e., April 15, Year 2. This deemed payment was made more than two years before the claim was filed. The taxpayer's claim for refund should have been filed by April 15, Year 4 in order to receive a refund of all amounts claimed.
- 4. Q. A taxpayer files a tax return for Year 1 on April 15, Year 2 and pays a tax liability of \$400. On April 1, Year 4, the taxpayer files an amended return showing and paying an additional tax liability of \$200. On June 1, Year 5, the taxpayer files a claim for refund of \$300, stating that the correct liability for Year 1 was \$300. Is the taxpayer entitled to a refund?
  - A: Yes, but the refund amount is limited as provided in South Carolina Code §12-54-85(F)(3). Although the taxpayer filed a timely return, the claim for refund was filed more than three years after the original return was filed. As a result, the taxpayer is not entitled to a refund of any part of the tax paid with the Year 1 return. The refund amount is measured by and limited to the tax paid within two years before the taxpayer filed the claim. The taxpayer is entitled to a refund of \$200.

NOTE: Where a taxpayer files an original return and then an amended return, the "return" referred to in Code Section 12-54-85 is the original return. An amended return is a claim for refund or a further self assessment and does not affect the running of the limitations period on the filing of a refund claim.

- 5. Q. A taxpayer's Year 1 individual income tax return is timely filed on April 15, Year 2. The return is audited by the Department and an assessment of \$500 is issued on April 1, Year 5. The taxpayer pays the assessment on May 1, Year 5. On July 15, Year 5, the taxpayer files a claim for refund for \$600. Is the taxpayer entitled to a refund?
  - A. Yes, but the refund is limited to \$500 the amount of the assessment paid. The taxpayer is entitled to a refund providing the claim for refund is filed by May 1, Year 7, the later of two years from date of payment or three years from the time the return is filed. The taxpayer must have filed a claim for refund on or before April 15, Year 5 to obtain a refund of the tax paid on the due date of the original return.
- 6. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The taxpayer makes quarterly estimated payments of \$2000 on April 15, June 15, and September 15, Year 1, and January 15, Year 2. The return is filed on March 1, Year 2. When must a claim for refund be filed by the taxpayer for it to be considered timely?
  - A. A claim filed on or before April 15, Year 5 would be timely as to all estimated payments. Estimated payments made for the taxable Year 1 are deemed made on April 15, Year 2. A claim filed on or after April 16, Year 5 would be filed more than 3 years from the last day prescribed for filing the return (the return is deemed to be filed on April 15, Year 2), and no portion of the \$8000 estimated tax paid could be claimed.
- 7. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The return is filed on March 1, Year 2. On April 1, Year 4, the Department issues a \$6000 assessment. The taxpayer pays the assessment in \$2000 installments on May 1, August 1, and November 1, Year 4. The taxpayer files a claim for refund more than three years after the filing period of the return. Is the taxpayer entitled to a refund?
  - A. Since the claim for refund was more than three years after the original return was filed, the refund amount is measured by and limited to the tax paid within two years before the taxpayer filed the claim. The taxpayer is entitled to a refund of the \$6000 paid on May 1, August 1, and November 1, Year 4 if the claim is filed on or before May 1, Year 6. Any claim filed more than 2 years after each \$2000 payment would be untimely as to that payment(s). For example, a claim filed August 5, Year 6 would be timely as to the \$2000 payment made on November 1, Year 4, but would be untimely as to each of the \$2000 payments made on May, 1 and August 1, Year 4. A claim filed November 2, Year 6 or thereafter would be untimely as to all payments.

# **EXAMPLES FOR CORPORATE TAX RETURNS**

For purposes of the following examples it is assumed that:

- 1. the taxpayer is a corporate, calendar year, taxpayer required to file a South Carolina corporate income tax return;
- 2. the original due date of the return is March 15;
- 3. no dates fall on weekends or holidays;
- 4. the refund is proper if it is within the statute of limitations; and
- 5. all dates are after August 1, 1995.
- 8. Q. A taxpayer's corporate income tax return for Year 1 is due March 15, Year 2. No income tax is due with the return, but a \$325 license fee is due and paid. The taxpayer timely files an extension of time to file until September 15, Year 2. On September 15, Year 2, the taxpayer files a timely tax return showing and paying no additional tax liability. On August 15, Year 5, the taxpayer files a claim for refund for \$300 of the license fee. Is the taxpayer entitled to a refund?
  - A. Yes. The claim for refund was timely filed within 3 years of filing the timely original return, including the extension of time. As a result, the taxpayer is entitled to a refund of \$300.
- 9. Q. A taxpayer's corporate income tax return for Year 1 is due on March 15, Year 2. The taxpayer does not request an extension of time to file the return. The return is filed August 1, Year 2 showing and paying an additional tax liability of \$200. A claim for refund is filed August 1, Year 5. Is the claim for refund timely?
  - A. No. Since the taxpayer did not file a timely return, the only refund limitation rule that can apply is the two-year rule. The payment was made on August 1, Year 2 more than two years before the claim was filed. The taxpayers claim for refund should have been filed by August 1, Year 4 in order to receive a refund of all amounts claimed. Further, since the taxpayer is not due a refund, the statute does not permit the amount to be credited to another year's tax liability.
- 10. Q. A taxpayer's corporate income tax return for Year 1 is due on March 15, Year 2. An extension of time to file the return is granted until September 15, Year 2. No return is filed by the extended due date. On January 15, Year 3, the Department makes an estimate of the tax liability and issues a proposed assessment. The taxpayer does not protest the proposed assessment and pays the assessment of \$1500 on March 15, Year 3. The taxpayer files the original return on June 15, Year 5 showing no tax due. Is the taxpayer entitled to a refund or application of the \$1500 payment to another tax?

- A. No. Under Code Section 12-54-85, claims for credit or refund must be filed within three years of the time the return was timely filed, or two years from the date of payment, whichever is later. Since the taxpayer did not file a timely return, the only refund limitation rule that can apply is the two-year rule. The payment was made on March 15, Year 3 more than two years before the claim was filed. The taxpayers claim for refund should have been filed by March 15, Year 5 in order to receive a refund of all amounts claimed. Further, since the taxpayer is not due a refund, the statute does not permit the amount to be credited to another year's tax liability.
- 11. Q. A taxpayer's corporate income tax return for Year 1 is due March 15, Year 2. The taxpayer timely files an extension of time to file until September 15, Year 2. The return is filed on August 1, Year 6. The taxpayer takes credit for estimated tax payments made timely on March, June, September and December Year 1 and an extension payment made on March 1, Year 2. Can the overpayment shown on the return be refunded or applied to another tax year?
  - A. No. Any amount paid as estimated income tax for any taxable year is deemed paid on the due date of the return without regard to extensions. The March, June, September, and December Year 1 estimated tax payments are deemed made on March 15, Year 2. Further, payment of any portion of the tax made before the last day prescribed for the payment of the tax is deemed paid on the due date of the return without regard to extensions. The tax paid on March 1, Year 2 with the extension is deemed made on March 15, Year 2. Since the taxpayer did not file a timely return, the only refund limitation rule that can apply is the two-year limitation rule. All payments are deemed made on March 15, Year 2 more than two years before the claim was filed in August 1, Year 6. Since the taxpayer is not due a refund, the statute does not permit the overpayment amount shown on the return to be refunded or applied to another tax year.
- 12. Q. The Internal Revenue Service issues a final determination of tax adjustment on May 1, Year 13 to a corporation for Year 1. As a result of the adjustment, the taxpayer files a claim for refund with the Department on May 25, Year 13. Is the taxpayer entitled to a refund?
  - A. Yes. Code Section 12-54-85(D) provides that notwithstanding any restrictions on filing a claim for refund under Code Section 12-54-85(F), a corporation may file a claim for refund resulting from an overpayment due to changes in taxable income by the IRS within 30 days from the date the IRS changes the taxable income. A claim filed on or before May 31, Year 13 would be a timely claim for refund. A claim filed June 1, Year 13 or after, however, would not be a timely claim for refund. (NOTE, this example only applies to a corporate taxpayer.)

- 13. Q. A taxpayer timely files an amended return. After the statute of limitations for filing a claim for refund expires, the taxpayer discovers a refund greater than that originally reported on the claim should have been claimed. This additional amount is based upon issues already raised in the timely claim for refund. Is the taxpayer entitled to the greater refund?
  - A. Yes, providing the adjustment is based upon issues raised in a timely filed claim for refund and providing the claim for refund is still being considered. Although Code Section 12-60-470(H) provides that a claim for refund can be amended prior to, but not after, the expiration of the time for filing the claim for refund under Code Section 12-54-85(F), the Department will allow under Code Section 12-60-470(G) correction of errors that may otherwise be barred by the statute of limitations in certain circumstances outlined in SC Revenue Procedure #95-5. It provides that when the Department is considering a timely filed claim for refund, it will also consider an additional claim for refund outside of the statute of limitations only if the adjustment is based upon issues raised in the timely filed claim for refund. No additional refund will be allowed if a taxpayer raises new issues after the statute of limitations has expired or after the Department has completed work on the timely filed refund request.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III	
Burnet R.	Maybank III, Director

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