
State of South Carolina
Department of Revenue
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SC REVENUE RULING #13-1

SUBJECT: General Rules for Limitations on Filing a Claim for Refund

SUPERSEDES: SC Revenue Ruling #97-14 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-54-85 (Supp. 2011)
S. C. Code Ann. Section 12-60-470 (Supp. 2011)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

The South Carolina Code sets forth time limits within which the Department must assess and collect taxes and within which taxpayers must file claims for refunds. Code Section 12-54-85, regarding the statutory time limitations for tax matters, and "The South Carolina Revenue Procedures Act," ("Act"), contained in Chapter 60 of Title 12, contain the rules and procedures for filing a claim for refund. A taxpayer may file a claim for refund by filing a written claim for refund with the Department. Code Section 12-60-470 sets forth the information that a refund claim must contain.

The purpose of this document is to address common questions and provide examples to illustrate the general time limitations within which to file a claim and the statutory rules establishing the amount of refund allowed. **Note:** These general time limitations may be extended or suspended for a financially disabled individual as provided in Code Section 12-54-85(F)(6)¹ or for a taxpayer as authorized by Code Section 12-60-40 and SC Revenue Procedure #13-1.

¹This exception to the general limitation rules on filing a claim for refund is **not** discussed in this advisory opinion.

LAW – GENERAL LIMITATION RULES

Code Section 12-54-85 provides the time periods within which to file a claim for refund and the limits on a refund or credit amount for fees and taxes administered and collected by the Department. Code Section 12-54-85(F)(1) through (F)(5)² contains the general limitation rules for a claim for refund, and reads:

(F)(1) Except as provided in subsection (D),³ claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid. A credit or refund may not be made after the expiration of the period of limitation prescribed in this item for the filing of a claim for credit or refund, unless the claim for credit or refund is filed by the taxpayer or determined to be due by the department within that period.

(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 item (2) or (3), as the case may be, as if a claim were filed on the date the credit or refund is allowed.

²Code Section 12-54-85(F)(6) provides for the suspension of the time periods specified in Code Section 12-54-85(F) for the running of the statutory period for filing a claim for refund and for determining the amount of the refund during the time an individual is financially disabled. This provision is not discussed in this advisory opinion.

³Notwithstanding any restrictions on filing a claim for refund provided in subsection (F), subitem (D)(3) allows a person to file a claim for refund resulting from an overpayment due to changes in taxable income made by the Internal Revenue Service within 180 days after the date a final determination of a tax adjustment (*i.e.*, the federal assessment date) is made by the Internal Revenue Service. The refund described in subitem (D)(3) is limited to the overpayment of taxes resulting from adjustments of the Internal Revenue Service.

(5) For the purposes of this subsection:

- (a) A 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 the 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.
- (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.

DISCUSSION

Code Section 12-54-85(F)(1) through (5) sets forth two general limitation rules for a claim for refund.⁴ The first rule is a “time” limitation for filing a claim for refund.⁵ The second rule is a limitation on the “amount” of refund.⁶ When filing a claim, two limitation questions must be answered in the order listed:

Limitation Question 1: Is the claim for refund timely filed?

Limitation Question 2: Is the amount of the refund limited?

These limitations are briefly discussed below and offer guidance in understanding the examples provided in this advisory opinion.

⁴See Introduction for exceptions to the general rules that are **not** discussed in this advisory opinion.

⁵SC Code §12-54-85(F)(1).

⁶SC Code §§12-54-85(F)(2) and (F)(3).

Limitation Rule 1: Time to File Claim for Refund. In general, the time period when a claim for refund of South Carolina tax must be filed is the later of:

- a. three years from the date the return⁷ was filed (but not before its due date), or
- b. two years from the date the tax was paid.⁸

Note: The time for filing a refund claim is measured from the date the return is filed or when the tax is paid (but not before it is due). Where a return is filed before its due date, (without regard to an extension), the return is considered to be filed on its due date, *e.g.*, generally April 15 for an individual income tax return.

Limitation Rule 2 – Limit on Amount of Refund. Even though a refund claim is timely filed (see Rule 1), the amount of refund may be limited based upon when the claim is filed (Rule 2). In general, the rules limiting the amount of taxes allowed to be refunded in a claim for refund of South Carolina tax are:

- a. If the claim is filed within 3 years from when the return was filed, then the refund amount may not exceed the portion of the tax paid during the three years (plus the period of any extension of time for filing) immediately preceding the filing of the claim. This is sometimes referred to as the “3 year lookback” period limitation.
- b. If the claim is not filed within 3 years from when the return was filed, then the refund amount may not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. This is sometimes referred to as the “2 year lookback” period limitation.

Thus, in determining the amount of the refund allowed, the statute “looks back” from the date the refund claim was filed; it does not look from the date the return was filed. Examples in this document illustrate the “3 year lookback” and the “2 year lookback” period limitations.

⁷The “return” referred to is the original return; it is not an amended return. (SC Code §12-54-85(F)(5)). The original return can be a timely filed return or an untimely filed (delinquent) return. (A 2001 amendment to SC Code §12-54-85(F) in Act No. 89 deleted the word “timely” from Code Section 12-54-85.) In some instances, the filing of an original return may be a claim for refund. For example, a late filed individual income tax return claiming a refund of wage withholding is an original return and is also a claim for refund filed at the same time the original return is filed.

⁸This advisory opinion does not further discuss the limitation issues if no return was filed or required to be filed. See SC Code §12-54-85(F)(1) for these rules.

When filing a claim for refund there are many filing and payment rules that must be considered. The most common rules are discussed below. **Caveat:** For simplicity, the rules discussed below assume: (1) no dates fall on a Saturday, Sunday, or legal holiday,⁹ unless otherwise indicated, and (2) the refund discussed is for individual income tax due on April 15. Note that Code Section 12-54-85 and this advisory opinion apply to all other taxes administered by the Department, such as the motor carriers property tax, and to returns filed for other tax periods, such as South Carolina sales tax filed on a monthly return, or withholding tax filed on a quarterly return.

1. Return Filed Before Due Date. A return filed before the last day prescribed for the filing (*i.e.*, the return is filed early) is considered as filed on the original due date of the return. The last day prescribed for filing the return is determined without regard to any extension of time.¹⁰ For example, an income tax return for Year 1 is due on April 15, Year 2; the return is filed early on March 5, Year 2; the return is deemed filed on April 15, Year 2.
2. Effect of Extension of Time to File a Return. A request for an extension of time to file is not considered a “return” for purposes of the time limitation rules for filing a refund claim.¹¹ An extension of time for filing is not given any effect in establishing the date a return is filed for refund purposes when addressing whether the claim for refund is timely filed (see limitation Rule 1). However, an extension of time for filing is given effect in establishing the 3 year look back limitation that determines the amount of the refund (see item 3 below and limitation Rule 2), even if the original return is filed late.¹²

Date an Extended Return is Considered Filed.¹³ If a return for Year 1 is mailed after the original due date (*i.e.*, April 15, Year 2), but on or before the extended due date (*i.e.*, October 15, Year 2), then the date of filing is the date the return is actually received by the Department (*i.e.*, the period of limitations for a refund claim begins on

⁹SC Code §12-60-50 provides that for purposes of Title 12 and for other taxes, when the last day of a specified time period is a Saturday, Sunday, or legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the department or the offices of the United States Postal Service are closed or for property taxes valued by county officials any day a South Carolina county office is closed.

¹⁰SC Code §12-54-85(F)(5)(a).

¹¹An extension of time to file does not contain sufficient information to calculate a taxpayer’s tax liability and is not considered a return for purposes of the time limitation rules.

¹²SC Code §12-54-85(F)(2).

¹³In general, “filing” means physical delivery of the return to the Department. See item 10 for a discussion of the mailbox rule for instances when the date of the U.S. Postal Service postmark is deemed the delivery date and the date for filing or date of payment. Although not illustrated in this advisory opinion, the Department also applies the timely mailing or postmark rule to the delivery of returns and claims for refund by certain private delivery services in the same manner as the Internal Revenue Service.

the date the return is received by the Department and not from the extended due date.)¹⁴ For example, an income tax return for Year 1 is due on April 15, Year 2, but is extended until October 15, Year 2; the return is received on October 1, Year 2, before the extension period ends; the original return is deemed filed on October 1, Year 2.

Likewise, if a return for Year 1 is mailed after the original due date (*i.e.*, April 15, Year 2), and also after the extended due date (*i.e.*, the return is late), then the date of filing is the date the return is actually received by the Department (*i.e.*, the period of limitations for a refund claim begins on the date the return is received by the Department.) For example, an income tax return for Year 1 is due on April 15, Year 2, but is extended until October 15, Year 2; the return is received on May 1, Year 5, after the extension period ends; the original return is deemed filed on May 1, Year 5.

Note: See item 10 below for a discussion of the timely mailing as timely filing rule applicable to timely mailed returns, but received after the due date by the Department.

3. Time of Extension Period Added to Lookback Limitation. The reference in Code Section 12-54-85(F)(2) (the 3 year lookback limitation) to “the period of any extension of time for filing the return” refers to the period of time that is granted by the Department to file the return. If an extended return is filed before the extended due date, the entire extension period granted is added to the 3 year lookback limitation (see Limitation Rule 2.) For example, if a 6 month extension of time is granted until October 15 to file an individual income tax return due April 15, but the return is filed May 15, one month after the original due date, then the entire 6 month extension period granted is added to the 3 year lookback limitation (not just the one month extension period used). Further, if the extended return is filed after the extended due date (*i.e.*, the return is not timely filed), the entire extension period (6 months in this example) is added to the 3 year lookback limitation.
4. Effect of Amended Return. An amended return is a claim for refund or an additional self-assessment and does not affect the running of the limitations period on the filing of a refund claim.
5. Payment Made Before Due Date, Except as Otherwise Provided Below. Payment of any portion of the tax made before the last day prescribed for the payment of the tax is considered made on the last day. The last day prescribed for paying the tax is determined without regard to any extension of time granted.¹⁵ For example, payment of the full balance due with the SC 1040 for Year 1 on March 5, Year 2 is deemed paid on April 15, Year 2. Taxes paid before April 15, Year 2 with a request for an

¹⁴Internal Revenue Manual – 25.6.1, “Statute of Limitations Processes and Procedures,” September 9, 2011.

¹⁵SC Code §12-54-85(F)(5)(a).

extension of time to file the SC 1040 are deemed an estimated payment¹⁶ paid on April 15, Year 2. (See item 11 below where the “last day prescribed for payment” is a Saturday, Sunday, or legal holiday.)

6. Income Tax Withholding. Tax withheld at the source is considered paid by the recipient on the last day prescribed for filing the return for the tax year (*i.e.*, April 15 of the following year), determined without regard to any extension of time for filing the return. For example, all income tax withheld throughout tax Year 1 from an individual’s pay check is deemed paid on April 15, Year 2. (See item 11 below where the “last day prescribed for payment” is a Saturday, Sunday, or legal holiday.)
7. Estimated Tax Payment. Estimated income tax paid for a tax year is considered paid on the last day prescribed for filing the return for the tax year. The last day prescribed for paying the tax is determined without regard to any extension of time granted. For example, if an individual makes four timely quarterly installments of estimated income tax for the tax year (Year 1), all four estimated tax payments for that tax year are deemed paid on April 15, Year 2.¹⁷ (See item 11 below where the “last day prescribed for payment” is a Saturday, Sunday, or legal holiday.)
8. Payment Made with Extension of Time to File. A payment made with an extension of time to file is treated as an estimated tax payment for purposes of determining the period during which a refund may be claimed and is considered paid on the due date of the return, without regard to an extension of time. For example, taxes paid on or before April 15, Year 2 with a request for an extension of time to file the SC 1040 are deemed an estimated payment¹⁸ paid on April 15, Year 2. (See item 11 below where the “last day prescribed for payment” is a Saturday, Sunday, or legal holiday.)
9. Tax Must be Paid For Tax Year. The lookback period limits refunds to the part of the tax paid during the lookback period for the tax year for which the refund is sought. If a taxpayer seeks a refund of tax for tax Year 1, and none of the tax for that year was paid during the lookback period, then no refund is allowed, even if payments are made during that period for other years and even if the claim for refund is timely (*i.e.*, made within the Rule 1 limitation time). If the taxpayer reports an overpayment for the tax year (*e.g.*, Year 1) and elects to credit the overpayment to estimated tax for the next tax year (*e.g.*, Year 2), the amount credited is considered an estimated payment for tax Year 2 and is deemed paid on April 15, Year 3.

¹⁶SC Code §12-54-85(F)(5)(c).

¹⁷SC Code §12-54-85(F)(5)(c). Different payment date rules apply when computing an understatement penalty.

¹⁸SC Code §12-54-85(F)(5)(c). Most courts have held that money remitted with an extension request is a “payment” and not a “deposit” since it is an amount the taxpayer intends to represent his estimated tax liability.

10. Timely Mailing as Timely Filing. The “timely mailing as timely filing” rule (*i.e.*, the “mailbox rule” or “postmark date rule”) applies in determining whether a claim for refund or credit is filed within the limitation period specified in Code Section 12-54-85. It is also applicable when a claim for refund or credit is delivered after the last day of the period specified in Code Section 12-54-85(F).¹⁹ The timely mailing rule is discussed below and examples are provided to illustrate the rule.

Code Section 12-60-50(B), concerning the filing date of timely returns, provides:

Except where payment of taxes is required to be made in funds which are immediately available to the State by electronic transfer or otherwise, the provisions of Internal Revenue Code 7502 relating to timely mailing as timely filing and paying are applicable to returns, other documents, or payment of taxes imposed by this title, or subject to assessment and collection by the department.

In general, under Internal Revenue Code Section 7502, the “mailbox or postmark” rule (*i.e.*, a timely mailed but late received return or payment is treated as timely filing and payment) applies when a return or payment is mailed on or before the due date and is actually delivered after that date. The date of the U.S. Postal Service postmark is deemed the delivery date and the date for filing or date of payment. Although not illustrated in this advisory opinion, the Department also applies the timely mailing or postmark rule to the delivery of returns and claims for refund by certain private delivery services in the same manner as the Internal Revenue Service. See Treasury Regulation 301.7502 for general rules for claims for refund on late filed tax returns deemed filed on the postmark date and not on the delivery date to the Department.

Timely Mailing of Claim for Refund - Return and Claim Filed Separately. A taxpayer mails a return that was due on April 15, Year 2, on May 10, Year 2, but no tax was paid at that time because the tax liability had been satisfied by withholding from wages. A claim for refund for a portion of the wage withholding is mailed and the postmark date is April 15, Year 5. The refund claim is received by the Department on April 18, Year 5.

The claim for refund is considered timely filed under Code Section 12-54-85 since the claim for refund was filed within 3 years of the time the return was filed (*i.e.*, the claim was filed April 15, Year 5, and the return was filed May 10, Year 2). Under the lookback rules, the taxpayer must have filed a claim within 3 years after the date the taxes were considered paid on April 15, Year 2. The claim for refund was timely postmarked and, although the claim was delivered after the last day of the period

¹⁹See Treas. Reg. §301.7502-1(b)(2).

specified in Code Section 12-54-85 (*i.e.*, April 15, Year 5), the timely mailing rule applies and the claim is deemed to have been filed on April 15, Year 5.²⁰

Claim for Refund on Late Filed Return - Original Return Also Considered a Claim for Refund. A taxpayer mails a return due on April 15, Year 2 on April 15, Year 5 and claims a refund of the amounts paid through withholding during Year 1. The postmark date on the envelope containing the return and the claim is April 15, Year 5. The return and claim are received by the Department on April 18, Year 5. Amounts withheld in Year 1 are treated as paid on April 15, Year 2. Even though the postmark date is after the due date of the return, the claim for refund and the late filed return are treated as filed on the postmark date or April 15, Year 5 for purposes of Code Section 12-54-85. Accordingly, the return is treated as filed on April 15, Year 5. In addition, the claim for refund is treated as filed timely on April 15, Year 5. The entire refund attributable to withholding is allowed.²¹

11. Time to File or Pay When Last Day is a Saturday, Sunday, or Legal Holiday. Code Section 12-60-50(A) provides for the filing date of a return when the due date falls on a Saturday, Sunday, or legal holiday.

Code Section 12-60-50(A) states:

For purposes of this title and for other taxes, when the last day of a specified time period is a Saturday, Sunday, or legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the department or offices of the United States Postal Service are closed and for Subarticles 9 and 13 of Article 9²² any date the county office is closed.

This weekend and holiday rule applies to the filing of returns, the payment of tax, and the filing of refund claims. Accordingly, for purposes of Code Section 12-54-85, if the due date is on a Saturday, Sunday, or legal holiday, then the return due date or last date prescribed for payment is considered the next business day that is not a Saturday, Sunday, or legal holiday as provided in Code Section 12-60-50. This rule in Code Section 12-60-50 also extends the time for filing a claim for refund if the return is filed early or if the taxpayer actually files the return on the next business day after the Saturday, Sunday, or legal holiday. If the date for filing the claim for refund is on a Saturday, Sunday, or legal holiday, then the taxpayer is allowed to file the claim on the next business day that is not a Saturday, Sunday, or legal holiday.

²⁰Treas. Reg. §301.7502-1(b)(2)(ii).

²¹Treas. Reg. §301-7502-(1)(f)(3).

²²Subarticles 9 and 13 of Article 9 in Chapter 60, Title 12 pertain to property taxes valued by county officials.

Example – Return Filed Early.²³ The last day for filing an income tax return for Year 1 that would otherwise be due on Saturday, April 15, Year 2, is “postponed” or “extended” by Code Section 12-60-50(A) to Monday, April 17, Year 2. The return is filed early on March 1, Year 2. The return is deemed filed on Monday, April 17, Year 2.²⁴ A claim for refund filed April 17, Year 5 is considered timely.

Example – Return Filed on Due Date. An income tax return for Year 1 having a due date that would otherwise be Saturday, April 15, Year 2, is “postponed” or “extended” to Monday, April 17, Year 2 by Code Section 12-60-50(A) that provides that “the end of the period is extended to the next business day”. The return is filed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, or Monday, April 17, Year 2. On Friday, April 17, Year 5, the taxpayer files a claim for refund of taxes withheld from wages during Year 1. The withholding tax is deemed paid on April 17, Year 2, the “last day prescribed for filing his return for the taxable year, determined without regard to any extension of time.”²⁵ A claim for refund filed April 17, Year 5 is considered timely and a refund of the full amount of withholding taxes is allowed. The taxpayer is allowed the benefit of the “postponement or extension” of the due date of the return from Saturday to the following Monday.

Rule for Other Dates. Other situations exist when the last day prescribed for filing a return or making a payment is postponed or disregarded. However, a taxpayer should be aware of these situations and the impact each may have on the timeliness of a refund claim. These situations include:

- a. Presidentially Declared Disasters or Terroristic or Military Actions. The Department may extend the date for filing returns and payment of taxes for damage caused by war, terrorist act, or natural disaster or service with the United States armed forces or national guard in or near a hazard duty zone.²⁶ Accordingly, when the last day prescribed for the filing of a return or payment falls in a period that is extended because of a disaster or service in a combat zone, then the next succeeding day after the postponement period that is not a Saturday, Sunday, or legal holiday is treated as the last day prescribed for filing the return, the claim for refund, or making the payment.

²³SC Code §12-54-85(F)(5)(a).

²⁴For South Carolina purposes, this rule differs from the federal rule. Internal Revenue Code §7503 provides that the Saturday, Sunday, or legal holiday extension rule does not affect the time for filing a timely claim for refund under Internal Revenue Code §6511 if the last day for filing a return falls on a Saturday, Sunday, or legal holiday, and the taxpayer does not actually file the return on the next day that is not a Saturday, Sunday, or legal holiday. See also Internal Revenue Service Revenue Ruling 2003-41, 2003-1 CB 814.

²⁵SC Code §12-54-85(F)(5)(b).

²⁶SC Code §12-4-320(6).

- b. Emancipation Day. April 16 is a legal holiday, Emancipation Day, in the District of Columbia. Internal Revenue Service Notice 2011-17 advises of the effect of Emancipation Day on the federal filing deadline for tax forms and payments required on April 15. Although the Department honors the federal filing date for Emancipation Day in Washington, DC when filing a return, this day is not a legal holiday as defined in Code Section 12-60-50.²⁷ Accordingly, the otherwise applicable due date of the return or a claim for refund is not postponed until the next business after Emancipation Day. (See exception above for Saturday or Sunday rule.)

For example, if April 15, Year 2 falls on a Sunday, the last day prescribed for filing the return is postponed until Monday, April 16, Year 2. If Emancipation Day falls on Monday, April 16, the taxpayer mails his South Carolina income tax return on the federal filing date, Tuesday, April 17, Year 2. The taxpayer does not request an extension of time to file the South Carolina return. On April 17, Year 5, a claim for refund is filed requesting a refund of a portion of the amount of South Carolina income tax withheld from wages. Although the claim for refund is timely (*i.e.*, filed 3 years from the date the return was filed), the refund is limited to the tax paid during the 3 years immediately preceding the claim (the lookback period is the 3 years back from April 17, Year 5 to April 17, Year 2). Since the taxpayer's payments are deemed paid on April 16, Year 2, (3 years and one day immediately preceding the claim) the taxpayer is not entitled to a refund. However, under the facts above, if the taxpayer had filed an extension of time to file, a refund would be allowed.

- c. South Carolina's Electronic Filing Incentive for Individual Income Tax. The Department allows an individual to electronically file a SC 1040 on or before May 1 instead of April 15, even if taxes are owed, and not be subject to late payment or filing penalties or interest.²⁸ Note: The last date for filing the individual income tax return remains April 15; it is not "postponed" to May 1. Caution should be exercised when computing the time limitations within Code Section 12-54-85 when filing a claim for refund for a taxpayer who electronically files between April 16 and May 1 and has not extended the time to file that return.

²⁷Item 11 discusses Code Section 12-60-50 that provides that for purposes of Title 12 and for other taxes, when the last day of a specified time period is a Saturday, Sunday, or legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the department or offices of the United States Postal Service are closed or for property taxes valued by county officials any day a South Carolina county office is closed.

²⁸The Department can waive (*i.e.*, completely or partially adjust) penalties as authorized by Code Section 12-54-160. Code Section 12-54-160 provides that unless otherwise specifically prohibited, the Department may waive, dismiss, or reduce penalties provided for in this chapter. See SC Revenue Procedure 08-6, "Penalty Waiver," describing penalty waiver guidelines set forth by the Department. The Department cannot waive interest except for up to 30 days for administrative convenience pursuant to Code Section 12-54-25.

EXAMPLES

Examples are provided in the remainder of this document to illustrate these statutory provisions discussed above. 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. Tax is defined in Code Section 12-60-30(27) to include taxes, licenses, permits, fees, or other amounts subject to assessment or collection by the Department.

EXAMPLES FOR INDIVIDUAL TAX RETURNS

Assumptions. 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 taxpayer is entitled to the refund requested if a claim for refund is made within the statutory time limitations; and
5. the individual is not financially disabled as defined in Code Section 12-54-85(F)(6).

Example – Return is filed on the extended due date. Payments include wage withholding and additional tax with the return.

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 files an extension of time to file until October 15, Year 2. On October 15, Year 2, the taxpayer files a return showing and paying an additional tax liability of \$200. On October 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 as required by Code Section 12-54-85(F)(1) (*i.e.*, the claim was filed within 3 years after filing the original return - filed original return October 15, Year 2 and filed claim on October 15, Year 5; see limitation rule 1). Accordingly, Code Section 12-54-85(F)(2) provides that the refund amount allowed is the tax paid during the 3 years immediately preceding the filing of the claim and during the period of extension (see limitation rule 2). The taxpayer is entitled to a refund of \$700, the \$500 tax withheld from wages that is deemed paid on April 15, Year 2 (this amount is within the 3 year period immediately preceding the filing the return plus the 6 month extension period), and the \$200 paid with the return on October 15, Year 2.

Example – Return is filed before the extended due date. Payments include wage withholding and additional tax with the return.

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 October 15, Year 2. On October 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 October 3, Year 2. On October 15, Year 5, the taxpayer files a claim for refund of \$700. Is the taxpayer entitled to a refund?
- A. No. The claim for refund was not timely filed as required by Code Section 12-54-85(F)(1) (*i.e.*, the claim was not filed within 3 years after filing the original return; the original return was filed October 3, Year 2, and the refund claim was filed on October 15, Year 5; see limitation rule 1). Accordingly, Code Section 12-54-85(F)(3) provides that the refund amount allowed is the tax paid during the 2 years immediately preceding the filing of the claim, not including any period of extension of time for filing the return; see limitation rule 2. However, no refund is allowed under Code Section 12-54-85(F)(3) since all payments for the tax year were made more than 2 years before the date the claim was filed (the \$500 withholding tax is deemed paid on April 15, Year 2 and the \$200 was paid with the return on October 3, Year 2.) The taxpayer's claim for refund should have been filed by October 3, Year 5 (within 3 years from the time the original return was filed) in order to receive a refund of all amounts (\$500 + \$200).

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 (see limitation rule 1) begins to run from the date the return was actually received by the Department and not from the extended due date.

Example – Original return is filed after the due date (*i.e.*, delinquent return). Wage withholding is the only tax payment.

3. Q. A taxpayer's individual income tax return for Year 1 is due April 15, Year 2. The taxpayer files an extension of time to file until October 15, Year 2. The taxpayer files an original return late on May 18, Year 5 and on that return claims a refund of South Carolina income tax withheld from wages for Year 1. Is the taxpayer entitled to a refund?
- A. Yes. The filing of the original return is also considered a claim for refund for the overpayment of withholding taxes shown on the return. Although the return itself is untimely, the claim for refund is timely under Code Section 12-54-85(F)(1) (*i.e.*, it is filed within the time limitation period of 3 years from filing the original

return) since the return and the refund claim are treated as filed on the same day (*i.e.*, the date the return is filed, May 18, Year 5). Accordingly, the refund amount allowed under Code Section 12-54-85(F)(2) is the tax paid during the 3 years immediately preceding the claim plus the period of any extension of time for filing the return. (Note: The extension period is included in the refund calculation even though the return was filed after the extended due date; see limitation Rule 2.) The overpayment is deemed to have been made on April 15, Year 2, which is within the 3 year period immediately preceding the date the claim was made, May 18, Year 5, plus the granted 6 month extension period. If the taxpayer's claim for refund had been filed after October 15, Year 5 (3 years from the due date of the return plus the 6 month extension of time granted for filing) the taxpayer would not be entitled to any refund of the withholding tax deemed paid on April 15, Year 2.

Example – Claim for refund is filed after an original return and an amended return are filed.

4. Q. A taxpayer files an individual income 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 \$350, stating that the correct liability for Year 1 was \$250. Is the taxpayer entitled to a refund?
- A. Yes, but the refund amount is limited as provided in Code Section 12-54-85(F)(3) since the claim for refund was filed more than three years after the original return was filed (original return was filed April 15, Year 2, and refund claim was filed on June 1, Year 5). 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 limited to the tax paid within two years before the taxpayer filed the claim (amounts paid between June 1, Year 5 and June 1, Year 3). The taxpayer is entitled to a refund of the \$200 taxes paid with the amended return on April 1, Year 4.

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.

Example – Claim for refund is filed after paying an audit assessment

5. Q. A taxpayer files an individual income tax return for Year 1 on April 15, Year 2 and pays a tax liability of \$100. 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. Since the taxpayer's claim for refund was filed more than three years after the original return was filed (filed original return April 15, Year 2 and filed refund claim on July 15, Year 5), any refund is limited to the taxes paid during the 2 years immediately before the claim is filed (July 15, Year 5 to July 15, Year 3).

The taxpayer is entitled to a refund of the \$500 assessment paid provided the claim for refund is filed by May 1, Year 7, the later of two years from date of payment (May 1, Year 5) or three years from the time the return is filed (April 15, Year 2). The taxpayer must have filed a claim for refund on or before April 15, Year 5 to obtain a refund of the \$100 tax paid with the original return on April 15, Year 2.

Example – Claim for refund is filed requesting a refund of quarterly installments of estimated tax payments.

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 \$2,000 each on April 15, June 15, and September 15, Year 1, and January 15, Year 2 (\$8,000 total estimated tax payments). The return is filed on March 1, Year 2. When must a claim for refund be filed for the taxpayer to receive a refund of the entire \$8,000 estimated tax paid?
- A. Since the return is filed March 1, Year 2 before its due date of April 15, Year 2, it is deemed to be filed on April 15, Year 2. A claim filed on or before April 15, Year 5 (*i.e.*, a claim filed within 3 years following the filing of the return) would permit a refund of all estimated payments. Estimated payments made for 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 and no portion of the \$8,000 estimated tax paid could be claimed.

Example – Claim for refund of an assessment that was paid in three installments during a tax year.

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 \$6,000 assessment. The taxpayer pays the assessment in \$2,000 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 (April 15, Year 2). 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 limited to the tax paid within two years before the taxpayer filed the claim. The taxpayer is entitled to a refund of the \$6,000 paid on May 1, August 1, and November 1, Year 4 if the claim is filed on or before May 1, Year 6 (*i.e.*, the claim is filed within 2 years of all three installment payments). Any claim filed within 2 years of a \$2,000 installment is timely as to that installment payment whereas a claim filed more than 2 years after a \$2,000 installment payment would be untimely as to that payment. For example, a claim filed August 5, Year 6 would be timely as to the \$2,000 payment made on November 1, Year 4, but would be untimely as to each of the \$2,000 payments made on May, 1 and August 1, Year 4. Further, a claim filed November 2, Year 6 or thereafter would be untimely as to all payments.

Example – Limitation Rule in Code Section 12-54-85(D)(3) for adjustments by Internal Revenue Service - Internal Revenue Service Final Determination adjusts taxpayer's income 4 years after return is filed. Taxpayer subsequently files a South Carolina claim for refund.

8. Q. The Internal Revenue Service issues a final determination of tax adjustment on May 1, Year 6 to an individual for Year 1. As a result of the adjustment, the taxpayer files a claim for refund with the Department on August 1, Year 6. Is the taxpayer entitled to a refund?
- A. Yes, but only to the overpayment of taxes resulting from adjustments to issues raised by the Internal Revenue Service. Code Section 12-54-85(D) provides that notwithstanding any restrictions on filing a claim for refund under Code Section 12-54-85(F), an individual may file a claim for refund resulting from an overpayment due to changes in taxable income by the Internal Revenue Service within 180 days from the date the Internal Revenue Service changes the taxable income. A claim filed on or before October 28, Year 6 would be a timely claim for refund. A claim filed October 29, Year 6 or after, however, would not be a timely claim for refund.

Example – Refund Rule in Code Section 12-60-470(G) and (H) - Revising amount of claim for refund after expiration of statutory time limitations.

9. Q. A taxpayer timely files an amended return claiming a refund. After the time 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. Is the taxpayer entitled to the greater refund?
- A. It depends on whether this additional amount is based upon issues already raised in the timely claim for refund.

The taxpayer is entitled to the greater refund 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. No additional refund is allowed for new issues raised after the time limitation has expired. 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 statutory time limitations in certain circumstances outlined in SC Revenue Procedure #13-1. 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 statutory time limitations only if the adjustment is based upon issues raised in the timely filed claim for refund for the tax periods in the timely filed claim. It also provides that the Department follows the doctrines of setoff, equitable recoupment, and for income tax, the mitigation provisions, provided in Internal Revenue Code Sections 1311-1314.

EXAMPLES FOR CORPORATE TAX RETURNS

Assumptions. 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; and
4. the taxpayer is entitled to the refund requested if a claim for refund is made within the statutory time limitations.

Example – Return filed on extended due date. Refund claim made for overpayment of corporate license fee.

10. Q. A taxpayer's corporate income tax return for Year 1 is due March 15, Year 2. The taxpayer timely filed an extension of time to file until September 15, Year 2. No income tax is due with the extension, but a \$325 license fee is due and paid with the extension on March 15, Year 2. On September 15, Year 2, the taxpayer filed a 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. Since the claim for refund was filed within 3 years of filing the original return (filed original return September 15, Year 2 and filed refund claim August 15, Year 5), Code Section 12-54-85(F)(2) provides that the refund amount allowed is the tax paid during the 3 years immediately preceding the filing of the claim plus the period of extension granted (*i.e.*, the lookback period includes payments made during the 3 years back from August 15, Year 5 to August 15, Year 2 and during the 6 month extension of time, or payments back to February 15, Year 2). Accordingly, the taxpayer is entitled to a refund of the \$300 license fee paid on March 15, Year 2.

Example – Original return filed after due date (*i.e.*, delinquent return). Tax paid with return. Claim for refund filed in subsequent year.

11. 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 for the \$200 paid on August 1, Year 2. Is the claim for refund timely?
- A. Yes. The claim was timely filed (*i.e.*, within 3 years from the date the late return was filed – filed original return August 1, Year 2 and filed claim for refund August 1, Year 5). Accordingly, the tax refund amount allowed is the tax paid during the 3 years immediately preceding the claim (taxes paid from August 1, Year 5 back to August 1, Year 2.) The taxpayer is entitled to a refund of \$200.

Example – Taxpayer pays proposed assessment of tax. An original return is filed after payment of the proposed assessment requesting a refund or credit of the overpayment of the tax assessment.

12. 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. The return is not 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 \$1,500 on March 10, Year 3. The taxpayer files the original return on March 15, Year 6 showing no tax due. Is the taxpayer entitled to a refund or application of the \$1,500 payment to another tax year?
- A. Yes. The filing of the original return is also considered a claim for refund for the overpayment of taxes shown paid with the proposed assessment. To satisfy Code Section 12-54-85, claims for credit or refund must be filed within three years of the time the original return was filed (timely or untimely filed), or two years from the date of payment, whichever is later. Although the return itself is untimely, the claim for refund is timely under Code Section 12-54-85(F)(1) (*i.e.*, since the return and the refund claim are treated as filed on the same day, the claim is filed within the time limitations - 3 years from the filing the original return.) Accordingly, any refund amount allowed under Code Section 12-54-85(F)(2) is limited to the tax paid during the 3 years immediately preceding the claim (return) plus the period of any extension of time for filing the return (*i.e.*, the "lookback" period includes payments made during the 3 years back from March 15, Year 6 to March 15, Year 3 and during the 6 month extension of time, or payments back to September 15, Year 2.) Since the taxpayer's payment was made on March 10, Year 3, the taxpayer is allowed a \$1,500 refund or credit of the \$1,500 tax paid to another year's tax liability.

Example – Original return is filed after the extended due date (*i.e.*, delinquent return). Taxes paid include quarterly estimated tax payments and an amount with the extension. A refund or credit is requested on the delinquent return.

13. Q. A taxpayer's corporate income tax return for Year 1 is due March 15, Year 2. On March 1, Year 2, the taxpayer 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 April 15, June 15, September 15 and December 15, 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 tax year is deemed paid on the due date of the return without regard to extensions. The April, 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. Although the return is untimely, the claim for refund is timely under Code Section 12-54-85(F)(1) (*i.e.*, filed within the 3 year period of limitations) since the return and the refund claim are treated as filed on the same day (*i.e.*, the date the return is considered filed). However, any refund amount allowed under Code Section 12-54-85(F)(2) is limited to the tax paid during the 3 years immediately preceding the claim (return) plus the period of any extension of time for filing the return (August 1, Year 6 to August 1, Year 3 and back 6 months for the extension of time to February 1, Year 3.) Since the taxpayer's payments are deemed paid on March 15, Year 2, no amount can be refunded to the taxpayer on the claim for refund filed August 1, Year 6. The taxpayer's claim for refund should have been filed by September 15, Year 5 in order to receive a refund of all estimated tax payment amounts paid, *i.e.*, within 3 years plus the 6 month extension of time granted. Further, since a refund is not due, the overpayment amount shown on the return cannot be refunded or applied to another tax year.

Example – Limitation Rule in Code Section 12-54-85(D)(3) for adjustments by Internal Revenue Service - Internal Revenue Service Final Determination adjusts taxpayer's income 11 years after return is filed. Taxpayer subsequently files a South Carolina claim for refund.

14. 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 August 1, Year 13. Is the taxpayer entitled to a refund?
- A. Yes, but only to the overpayment of taxes resulting from adjustments to issues raised by the Internal Revenue Service. 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 Internal Revenue Service within 180 days from the date the Internal Revenue Service changes the taxable income. A claim filed on or before October 28, Year 13 would be a timely claim for refund. A claim filed October 29, Year 13 or after, however, would not be a timely claim for refund.

Example – Refund Rule in Code Section 12-60-470(G) and (H) - Revising amount of claim for refund after expiration of statutory time limitations.

15. Q. A taxpayer timely files an amended return claiming a refund. After the time 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. Is the taxpayer entitled to the greater refund?
- A. It depends on whether this additional amount is based upon issues already raised in the timely claim for refund.

The taxpayer is entitled to the greater refund provided the adjustment is based upon issues raised in a timely filed claim for refund and providing the claim for refund is still being considered. No additional refund is allowed for new issues raised after the time limitation has expired. 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 statutory time limitations in certain circumstances outlined in SC Revenue Procedure #13-1. 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 statutory time limitations only if the adjustment is based upon issues raised in the timely filed claim for refund for the tax periods in the timely filed claim. It also provides that the Department follows the doctrines of setoff, equitable recoupment, and for income tax, the mitigation provisions, provided in Internal Revenue Code Sections 1311-1314.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.

William M. Blume, Jr., Director

February 1 _____, 2013
Columbia, South Carolina