

*Maryland Income Tax*  
**ADMINISTRATIVE RELEASE**

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**Administrative Release No. 20**

**Subject: Income Tax Refunds and Credits: Limitations**

**I. General**

**A.** This release explains the Maryland law relating to the time period for filing a claim for refund or credit of overpayment of income taxes. Subsections B and C of this section set forth the Maryland statutory provisions which reference the federal law. Section II explains the federal law and provides examples. Sections III and IV explain certain exceptions where Maryland law differs from federal law. Section V describes those situations where the State may pay interest on refunds.

**B.** Section 13-1104(c) of the Tax-General Article, Annotated Code of Maryland, as amended, provides in pertinent part:

“(1) Except as provided in paragraph (2) of this subsection, a claim for refund or credit of overpayment of ...income tax may not be filed after the periods of limitations for filing claims for refund or credit of overpayment set forth in § 6511 of the Internal Revenue Code.

(2) A claim for refund or credit of overpayment may not be filed later than 1 year from the date of:

- (i) a final adjustment report of the Internal Revenue Service; or
- (ii) a final decision of the highest court of the United States to which an appeal of a final decision of the Internal Revenue Service is taken.

(3) Except as provided in paragraph (4) of this subsection, a refund or credit of overpayment allowed upon a claim filed under this subsection may not exceed the amount of the Maryland tax resulting from the application of the limits set forth in § 6511 of the Internal Revenue Code.

(4) A refund or credit of overpayment allowed upon a claim filed under paragraph (2) of this subsection shall be limited to the

amount of the reduction in Maryland tax resulting from the federal income tax adjustment.”

**C.** In 1995, the legislature passed a law that created a special exception to the above statute of limitations. In pertinent part, the law provides that a claim for a refund or credit for overpayment of income tax attributable to a credit for taxes paid to another state under §10-703 of the Tax-General Article may not be filed after the later of:

1. The time for filing a claim for refund or credit of overpayment provided in Subsection B; or
2. 1 year from the date a taxpayer receives notification that another state’s income tax is due.

**Example:** A Maryland resident taxpayer in 1994 sells real property located in New York. There is a \$50,000 capital gain. The taxpayer reports the capital gain on the 1994 Maryland resident return but does not report the gain to the state of New York. On October 1, 1999, the state of New York notifies the taxpayer that a nonresident tax is due on the gain from the sale of property in New York. The taxpayer may not file a claim for credit for taxes paid to the state of New York under Subsection B.1 above as the time for filing the claim under that section has expired.

If the taxpayer, however, amends the 1994 Maryland resident return by October 1, 2000, and claims the credit for taxes paid to the state of New York, the claim will be allowed under Subsection C.2. The taxpayer must submit with the amended Maryland return a copy of the New York nonresident return, a copy of the New York notification of tax due and proof of payment to the state of New York.

**D.** In 2003, the legislature passed a law that created another special exception. The new law, §13-1104(j) of the Tax-General Article, provides as follows:

“Notwithstanding subsection (c) of this section, a claim for refund or credit for overpayment of income tax attributable to a right to a reduction in a person’s Maryland income tax that is established by a decision of an administrative board or by an appeal of a

decision of an administrative board may be filed within 1 year after the date of a final decision of the administrative board or a final decision of the highest court to which an appeal of a final decision of the administrative board is taken.”

## **II. Conformity to Section 6511 of the Internal Revenue Code**

### **A. Time for filing a claim for refund**

Generally, a claim for a credit or refund must be filed within 3 years from the date the original return was filed or within 2 years from the date the tax was paid, whichever is later.

If a taxpayer has entered into an agreement with the Internal Revenue Service (IRS) extending the period for assessing federal income tax, then the taxpayer may file a claim for refund until 6 months after the expiration of the period in which the federal assessment may be made. This refund period remains open for filing a Maryland refund claim notwithstanding the fact that Maryland has not entered into an agreement with the taxpayer extending the time in which an assessment of Maryland income tax may be made. *Comptroller of the Treasury v. Mack Truck, Inc.*, 343 Md. 606, 683 A.2d 777 (1996).

### **B. Limit on amount of refund**

1. Claims filed within 3 years of the date the return is filed:

If a claim is filed within 3 years after the date the return was filed, the credit or refund is limited to the amount of tax paid within the 3 years (plus any extension of time) prior to the filing of the claim.

**Example 1:** Taxpayer made estimated tax payments of \$500 and got an automatic extension of time to August 15, 1996, to file the 1995 income tax return. The taxpayer filed the return on that date and paid an additional \$200 tax. Three years later, on August 15, 1999, the taxpayer files an amended return and claims a refund of \$700. Because the taxpayer files within the 3 years plus the 4-month extension period, the taxpayer could get a refund of \$700.

**Example 2:** The situation is the same as in Example 1, except the taxpayer filed the return on October 31, 1996, 2 1/2 months after the extension period ended and paid an additional \$200 on that date. Three years later, on October 25, 1999, the taxpayer files an amended return and claims a refund of \$700. Although the taxpayer files the claim within 3 years from the date the original return was filed, the refund is limited to \$200. The estimated tax of \$500 was paid before the 3 years, plus the 4-month extension period.

2. Claims filed after 3 years, but within 2 years of payment:

If a claim is filed after the 3-year period, but within 2 years from the time the tax was paid, the credit or refund may not be more than the tax paid within 2 years immediately before filing the claim.

**Example:** The taxpayer filed a 1996 tax return on April 15, 1997, and paid taxes of \$500. On November 3, 1998, after an examination of the 1996 return, the taxpayer had to pay an additional tax of \$200. Assume that on May 2, 2000, the taxpayer files a claim for a refund of \$300. The refund will be limited to the \$200 paid during the 2 years immediately before filing the claim.

3. Estimated taxes and taxes withheld at source are considered paid on the due date of the return.

### **C. Exceptions for special types of refunds**

1. Net operating loss:

A refund claim based on a federal net operating loss carry-back may be filed up to 3 years after the due date for filing the return (including extensions) following the end of the tax year in which the loss occurred.

2. Bad debts and worthless securities:

A claim for refund based on a bad debt or worthless security must generally be filed within 7 years after the due date of the return for the tax years in which the debt or security became worthless.

## **III. Refunds based on a federal adjustment or federal court decision**

### **A. Time for filing a claim**

1. A claim for refund may be filed within 1 year of a final adjustment report of the Internal Revenue Service or a final decision of the highest federal court to which the adjustment is appealed, even though the time for filing a claim under Section II may have

expired.

2. A final adjustment report includes a statement from the IRS accepting or modifying changes made by the taxpayer on an amended federal return.

3. A claim for refund based on a federal final adjustment report is limited to those changes made or accepted by the IRS, and must include a copy of:

a. The final adjustment report from the IRS; and

b. If the claim is based on an amended federal return, the taxpayer's amended federal return.

#### **B. Limitation on amount of refund**

The refund is limited to the amount of the reduction in Maryland tax resulting from the federal adjustment.

#### **IV. Protective claim**

**A.** A protective claim is a request for refund:

1. which is not based on a federal adjustment;

2. filed using an amended return for a specific amount;

3. with a request that the Comptroller delay acting on the refund request; and

4. the requested delay is:

a. because of a pending decision by a state or federal court which will affect the outcome of the refund claim; or

b. for reasonable cause.

**B.** A protective claim shall be filed within the period of limitations set forth in Section II.

**C.** A protective claim may be accepted or rejected. If rejected, the taxpayer will be informed of a right to appeal the decision to the Hearings and Appeals Section in the Compliance Division of the Comptroller's Office.

#### **V. Interest on refunds**

**A.** Section 13-603 of the Tax-General Article, Annotated Code of Maryland,

effective January 1, 1989, codifies the terms for the payment of interest on tax refunds.

**B.** Administrative Release No. 14, "Interest on Refunds" provides the Comptroller's interpretation of the statutory provision relating to interest.

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