

Legal Updates & News

Bulletins

Your North Carolina Refunds Are Saved By the Bill: Refund Claims Should *Not* Expire on August 14, 2008

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State and Local Tax Update, August 5, 2008

North Carolina taxpayers should be aware that the State of North Carolina enacted a “clean-up” bill to restore refund claims that could have expired on August 14, 2008. The Department of Revenue (the “Department”) had taken the position that all refund claims that were pending before the Department on January 1, 2008, would disappear if the company did not file an appeal by August 14, 2008. In light of the ‘clean-up’ bill, the Department should not assert that such refund claims will disappear.

Law

Under a new procedure that became effective this year, a refund claim is deemed denied if the Department does not take action on the claim within six months after the date on which the refund claim was filed. The statute provides that an appeal, called a “request for review,” of a refund claim denial must be filed with the Department within 45 days of the deemed denial. If a deemed denial is not appealed in a timely fashion, the deemed denial becomes final and is not subject to further administrative or judicial review.

It had been the Department’s position that if a refund claim was filed prior to January 1, 2008, that refund claim would be deemed denied six months from January 1, 2008 on June 30, 2008. Further, it was the Department’s position that a request for review of the deemed denial would have to have been filed before the end of the 45-day appeal period. Thus, the refund claim could be lost under the procedure as originally enacted.

“Clean-up” Bill

North Carolina recently (shortly after our previous email alert) amended the appeal statute in the “clean-up” bill. The amended statute provides that a request for review of a refund claim denial must be filed with the Department at any time between the date that a refund claim is deemed denied and 45 days after a notice of the proposed denial is mailed or hand delivered. Therefore, after the six month deemed denial the taxpayer can, but need not, request a review of the deemed denial at any time up until 45 days after the notice of the Department’s action on the refund claim is mailed or hand delivered. (This change brings North Carolina in line with the laws of many other states where a taxpayer can deem a refund denied after six months and appeal that denial but is not required to do so.)

Refund Claims Pending on January 1, 2008

All refund claims that were pending before the Department on January 1, 2008 can be considered (“deemed”) denied six months after January 1, 2008 on June 30, 2008. Under the enacted “clean-up” bill, if the taxpayer has received no notice of the Department’s action on the refund claim, the taxpayer may request review of that deemed denial at any time after June 30, 2008. However, the taxpayer need not request review – it may continue to work with the Department.

The Department had taken the position that all such pending refund claims were deemed denied on June 30, 2008 and that if a request for review was not filed by August 14, 2008, the refunds would disappear. Some North Carolina auditors provided waivers of the deemed denial period before June 30, 2008, and asserted that such a waiver tolled, or stopped, the deemed denial period. Although any need for such waivers (and the

issues whether those waivers could toll the appeal period) have become moot, it is anticipated that some auditors will continue to seek such waivers.

Additional Considerations

Consideration should be given to filing refund claims with proof of mailing and return receipt requested, e.g., a tracking document or return receipt card, that identifies the date that the claim was delivered and the person that signed for the refund claim delivery to the Department. Further consideration should be given to keeping a log of the date on which the refund claim was filed and the date on which the six-month deemed denial period expires. The foregoing will allow the taxpayer to continue to cooperate with the Department. However, if such cooperation becomes fruitless, the taxpayer can prove that the deemed denial period has run and an appeal should be allowed.