

## Legal Updates & News

### Bulletins

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#### **Your North Carolina Refunds Could Be in Jeopardy: Refund Claims Could Disappear on August 14, 2008**

July 2008

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#### **Your North Carolina Refunds Could Be in Jeopardy: Refund Claims Could Disappear on August 14, 2008**

North Carolina taxpayers should be aware that the Department of Revenue (the "Department") is taking the position that all refund claims that were pending before the Department on January 1, 2008 and not yet acted upon will disappear if the company does not file an appeal by August 14, 2008.

### New Law

Under new laws in North Carolina, 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. (This is different from 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.) An appeal, called a "request for review," of a refund claim denial must be filed with the Department with 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. Thus, the refund claim would be lost.

#### **Refund Claims Pending on January 1, 2008**

The North Carolina Legislature amended the tax appeal procedures in 2007. The amendments apply to refund claims that are pending on, or filed on or after, January 1, 2008. The Department takes the position that all refund claims that were pending before it on January 1, 2008 were deemed denied six months after January 1, 2008 on June 30, 2008. The Department asserts that such a denied refund claim can be preserved only by filing a request for review with the Department by August 14, 2008.

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. Those auditors suggested that, in light of the waiver, a request for review need not be filed to preserve the claim. The statutes make no provision for such a waiver, unless the Department has sent a request to the taxpayer for additional information concerning the refund claim. If the Department provided such a waiver without having first requested additional information from the taxpayer before the waiver was signed, issues could arise by relying on the waiver.

The deemed denial could also haunt many companies with respect to federal tax changes. Frequently, federal changes are filed for a group of years. Also, frequently, some of the years' changes result in assessments and some of the years' changes result in refunds. Further, an amount is usually claimed for a net refund or paid as a net self-assessment with respect to the group of years. If the refund years are deemed denied and the assessment years are self-assessed, the assessments could live on while the refunds expire leaving a higher balance due.

The procedural changes are new and untested. Any challenges to the new procedure will come after the time to file protective claims has expired. Thus, the answer to the question of whether the Department's position will be upheld by the courts will come too late.

Therefore, consideration should be given to filing requests for review by August 14, 2008, for all refund claims, including those refunds that were netted against assessments, that were pending before the Department on January 1, 2008.

