

# FYI – For Your Information

## Statute of Limitations

### GENERAL INFORMATION

The statute of limitations defines the time period during which a refund claim may be filed, an assessment may be initiated, or a collection activity may occur. The statute of limitations varies by tax type. The income tax and wage withholding statute of limitations are primarily based on the federal statute of limitations while the statute of limitations for other taxes are defined solely in Colorado law.

The statute of limitations begins running when a tax return is filed. If a tax return is filed prior to the due date of the return, then the return is considered to have been filed on the due date for purposes of the statute of limitations. If a return is not filed, the statute of limitations does not begin running until an assessment is made. The statute of limitations can also be extended beyond the normal time frame if a false or fraudulent return is filed with intent to evade tax.

### INCOME TAX

The statute of limitations for Colorado income tax refunds and assessments is generally four years from the due date of the return. A return filed prior to the due date is considered filed on the due date. The Colorado statute of limitations is the federal statute of limitations plus one year. Therefore, the federal statute of limitations and any activity that affects the federal time frame will impact the Colorado statute of limitations. [§§39-21-107(2) and 39-21-108, C.R.S.]

### Extended returns

If the federal income tax return is filed under extension, then the statute of limitations is extended by the length of the extension. (*Example:* If the 2005 federal return is filed under extension on August 10, 2006, then the Colorado statute of limitations will expire on August 10, 2010.)

### C Corporations

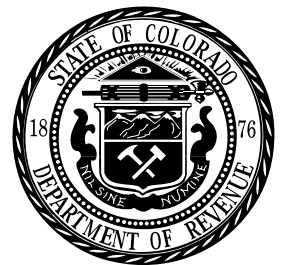
Because federal C corporation income tax returns are due on the 15<sup>th</sup> day of the third month after the close of the tax year (as opposed to Colorado's due date of the 15<sup>th</sup> day of the fourth month), the statute of limitations for Colorado C corporations is generally three years and eleven months from the due date of the return. (*Example:* If a C corporation files its 2005 calendar year federal return on March 15, 2006 and its Colorado return on April 15, 2006. The Colorado statute of limitations will expire on March 15, 2010.)

### Federal waiver

If there is a federal waiver of the statute of limitations, the Colorado statute of limitations is extended by the period of the federal waiver. [§39-21-108(1), C.R.S.]

### Late payment of tax

The federal statute of limitations may be extended beyond the usual three year time frame when a payment of income tax is made after the due date. The federal statute of limitations is two years from the date of the payment of tax if this date is after the three-year statute of limitations date. Colorado extends the statute of limitations to three years from the date of last payment (the federal two-year time frame plus one year).



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Any refund or credit claim under this extended statute of limitations is limited to the amount of tax paid within the three-year period, not previous payments or tax issues. If the refund claim is not filed within the original statute of limitations period, the refund may not exceed the tax paid within three years preceding the filing of the claim. Estimated tax payments, wage withholding credits and refundable credits are deemed paid on the due date of the return for purposes of determining whether a refund is available under the statute of limitations. (Example: Additional 2001 tax of \$100 is reported and paid on an amended return on November 15, 2005. On December 10, 2007, the taxpayer realizes that the taxable income for 2001 should have been \$0 and wants to amend the return. Because the four-year statute of limitations expired on April 15, 2006, the taxpayer can not receive a refund of the tax paid with the original return. However, because the \$100 in additional tax was paid within the last three years, a refund of the \$100 is still available under the statute of limitations.)

#### *False, Fraudulent or No Return Filed*

When a taxpayer fails to file an income tax return or files a false or fraudulent return with intent to evade the tax, the tax may be assessed and collected at any time. [§39-21-107(4), C.R.S.]

#### *Colorado waivers*

The Colorado statute of limitations can be extended beyond the federal statute of limitations plus one year in the following situations:

- When there is a written agreement between the taxpayer and the executive director to extend the statute of limitations. [§39-21-107(5), C.R.S.]
- When the taxpayer fails to notify the executive director in writing within 30 days of any final determination from the federal IRS. [§39-22-601(6)(c), C.R.S.]
- When the taxpayer fails to file an amended Colorado income tax return to notify the executive director of the filing of an amended federal income tax return reflecting any change in income reportable to the state of Colorado. [§39-22-601(6)(d), C.R.S.]
- When a written proposed adjustment (e.g. a notice of deficiency or assessment) of the tax liability has been issued by the Department, the limitation is extended one year after the final determination or assessment is made. [§39-21-107(1), C.R.S.]

#### *Net operating loss/Investment tax credit carryback*

The statute of limitations for an income tax refund from a carryback adjustment is determined using the year the loss or credit was generated. Whether the tax year to which a loss or credit is carried back is in statute is not a factor in determining whether a refund can be issued.

#### *Applying a refund to a balance due*

An overpayment for an income tax year closed under the statute may not be applied to a balance of tax due for another tax year open under the statute for assessment or, if the assessment was timely made, open under the statute for collection. Such application would be in effect allowing a refund to be made for a closed year.

#### *Reissued refunds*

Income tax refunds issued on or after June 30, 2001 are not affected by the statute of limitations. These refunds, if not cashed, are sent to the Colorado State Treasury Unclaimed Property Office ([www.treasurer.state.co.us](http://www.treasurer.state.co.us)), where a taxpayer can claim the refund at any time.

The Department of Revenue can reissue refunds originally issued prior to June 30, 2001 that were not cashed, but only if the refund is generated by a credit other than wage withholding. Refunds of wage withholding are no longer available. [§39-22-604(12), C.R.S.] If a refund consists of both wage withholding and other prepayment or refundable credits, the refund that may be reissued will be reduced ratably. Example: A 1997 income tax refund of \$200 was not cashed in 1998 when it was issued. The applicable credits on the 1997 return in determining the refund were \$250 wage withholding, \$100 estimated tax, and \$37 state sales tax refund. The portion of the refund that can be issued now is \$71 ( $137/387 \times \$200$ ).

#### *Collections*

The statute of limitations for collecting an income tax (or wage withholding) balance due is six years from the date of the final determination or assessment. [§39-21-107(2), C.R.S.]

### **WAGE WITHHOLDING**

The Colorado statute of limitations for wage withholding refunds and assessments follows the statute of limitations for income tax, the federal statute of limitations plus one year. The statute of limitations is generally four years from the due date of the return or three years from the date of last payment, whichever is later. A return filed prior to the due date is considered filed on the due date. Like income tax, the applicable extensions and waivers referenced in the income tax section above affect the statute of limitations for wage withholding assessments or refunds. [§§39-21-107(2) and 39-21-108, C.R.S.]

### **SALES AND USE TAX**

The statute of limitations for state and state-collected local sales or use tax refunds and assessments is generally three years from the due date of the return or the date the sales or use tax return was filed, whichever is later. This also applies to any special district sales or use tax. [§39-21-107(1), C.R.S.]

*Refund of disputed tax paid with a purchase*  
Should a dispute arise between the purchaser and the seller as to whether or not the sales tax was correctly charged, the purchaser may submit an application for refund. The application must be filed with the Colorado Department of Revenue within sixty days after the purchase of the item upon which an exemption is claimed. [§39-26-703(2), C.R.S.]

#### *False, Fraudulent or No Return Filed*

When a taxpayer fails to file a return or files a false or fraudulent return with intent to evade the tax, the tax may be assessed and collected at any time. [§§39-21-107(4) and 39-26-125, C.R.S.]

#### *Colorado waivers*

The Colorado statute of limitations can be extended when there is a written agreement between the taxpayer and the executive director to extend the statute of limitations. Also, when a written proposed adjustment (e.g. a notice of deficiency or assessment) of the tax liability has been issued by the Department, the limitation is extended one year after the final determination or assessment is made. [§39-21-107(5), C.R.S.]

#### *Reissued refunds*

There is no statute of limitations limiting the length of time the Department of Revenue can reissue sales and use tax refunds that were timely issued but not cashed.

#### *Collections*

The statute of limitations for collecting a sales or use tax balance due is the later of:

- three years from the due date of the return or the date the return is filed, whichever is later, or
- one year from the date of the final determination or assessment (extended statute of limitations). [§§39-21-107(1) and 39-26-125, C.R.S.]

### **OTHER TAXES**

*Severance, Gasoline and Special Fuel, Aviation Fuel, IFTA, Cigarette, Tobacco Products, Oil & Gas Withholding, Liquor Excise, Estate Tax*

The Colorado statute of limitations for other tax refunds and assessments follows the statute of limitations for sales and use tax, which is generally three years. A return filed prior to the due date is considered filed on the due date. Like sales and use tax, the statute of limitations for other tax assessments or refunds is affected by the applicable extensions and waivers referenced in the sales and use tax section above. [§39-21-107(1), C.R.S.]

#### *Tax Refunds for Exempt Use of Fuel*

A refund of the Colorado fuel tax paid may be allowed on the fuel purchased and used in Colorado for tax exempt purposes. A claim for refund must be submitted within twelve months after the date of purchase of the fuel. For additional information see FYI Excise 7 "Tax Refunds for Exempt Use of Fuel." [§39-27-103(3)(d), C.R.S.]

#### *Reissued Severance Tax Refunds*

The Department of Revenue can reissue refunds that were not cashed if the refund is generated by a credit other than oil and gas or oil shale withholding. However, any request to reissue a refund of withholding must be filed within four years of the due date of the return. [§39-29-112(3), C.R.S.] If a refund consists of both withholding and other prepayment or refundable credits, the refund that may be reissued after the four year period will be reduced ratably.

### ***PTC REBATE***

The property tax/rent/heat (PTC) rebate statute of limitations requires the application be filed within two years of the end of the calendar year for which the rebate is being claimed. (Example: The 2005 rebate application must be received no later than December 31, 2007.) [§§39-31-102(4) & (6), C.R.S.]

Any assessment must be made within three years of the filing of the PTC rebate application, except when there is a written agreement between the taxpayer and the executive director to waive the statute of limitations or when a written proposed adjustment (e.g. a notice of deficiency or assessment) has been issued prior to the expiration of the three year period.

### ***Reissued rebates***

There is no statute of limitations limiting the length of time the Department of Revenue can reissue PTC rebates that were timely issued but not cashed. Rebates issued on or after June 30, 2001, if not cashed, are sent to the Colorado State Treasury Unclaimed Property Office ([www.treasurer.state.co.us](http://www.treasurer.state.co.us)), where a taxpayer can claim the rebate at any time.

### ***Collections***

The statute of limitations for collecting a PTC balance due is the later of:

- three years from the date the application is filed, or
- one year from the date of the final determination or assessment (extended statute of limitations). [§39-21-107(1), C.R.S.]

### ***FURTHER INFORMATION***

FYIs and commonly used forms are available on the Web at [www.taxcolorado.com](http://www.taxcolorado.com)

For additional tax information visit the "Tax Information Index" which covers a variety of topics including links to forms publications, regulations, statutes and general questions and answers. The "Tax Information Index" is located at [www.taxcolorado.com](http://www.taxcolorado.com)

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.