Don’t Sleep On Your Tax Refund Claims During The Coronavirus Disruption

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In the wake of the coronavirus disruption, taxing authorities across the United States are adjusting their approaches. Many states have already come forward in delaying their state income tax filing and payment deadlines to conform with the federal government’s new deadline of July 15, 2020 for 2019 income taxes.[1]

In light of these announcements, it is important to recognize their limitations. First, these delays are generally geared toward income taxes and likely do not impact any of the other critical tax filings that may come due in the near term, including but not limited to state sales taxes, use taxes, property taxes, gross receipts taxes (e.g., Ohio’s CAT), fuel taxes, among others. Second, these delays and extensions do not extend the statute of limitations period for refund claims associated with past tax periods. This article will focus on this latter point and explain how these announcements interplay with federal refund claims and those in the three Midwestern states of Ohio, Kentucky, and Indiana.

Federal

While the Federal government may have extended its deadline to submit and file one’s 2019 income taxes, this does not extend equally to deadlines for submitting income tax amendments and refund claims for prior periods. The statute of limitations for filing a federal income tax refund claim is three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later.[2] For most individual taxpayers, this date is April 15 every year.

Taxpayers may seek to amend their income tax returns for a number of reasons – whether to reclassify certain items of income, take an additional deduction, or otherwise. If taxpayers wish to amend their income tax return to claim a refund in prior years, they must be mindful of when the statute of limitations for their refund claim expires.

Here is an example of how the refund time limitations work. The deadline for most individual taxpayers to file their 2016 income taxes was April 15, 2017. The statute of limitations for filing a federal income tax refund claim is (i) three years from the time the return was filed or (ii) two years from the time the tax was paid, whichever of such periods expires the later. Assuming the taxpayer made its payment on the due date and no extension was filed, the deadline for filing an income tax amendment and refund claim for tax year 2016 would be April 15, 2020.[3] This refund and amendment deadline is not impacted by the recent postponement of the 2019 income tax return deadline.

Ohio

The State of Ohio extended its income filing deadline until July 15, 2020 to conform with the IRS deadline for federal income taxes. This includes additional time granted to individuals, estates, trusts and certain businesses making quarterly estimated income tax payments. The first and second quarterly payments, normally scheduled for April 15 and June 15 for most taxpayers, have both been extended to July 15, 2020.[4]

Taxpayers should, however, note that the delay of the 2019 income tax filing deadline will delay neither state income tax amendments and refund filing deadlines nor other state tax refund deadlines. Ohio taxpayers frequently seek to amend past income tax returns for a number of reasons. Often these amendments involve the recharacterization of business or nonbusiness income and an associated refund claim. This situation commonly arises in the context of a major asset or stock disposition.

The deadline to file an amended return and refund claim in Ohio is four years from the date the return was filed or required to be filed, whichever is later.[5] For anyone who might be eligible for a refund claim for Ohio income taxes paid in years past, this refund deadline remains the same. Any deadline extension for filing 2019 income taxes would have no impact on the statute of limitations that are expiring in 2020.

There has been some uncertainty in Ohio as to whether the statute of limitations for tax refunds and amendments was impacted by the passage of Ohio House Bill ("H.B.") 197. The recently enacted H.B. 197 provides for a tolling (or delay) of "[a]ny criminal, civil, or administrative time limitation or deadline under the Revised Code" that are set to expire between March 9, 2020 and July 30, 2020.[6] This ambiguous language could arguably apply to all Ohio tax filings. Nevertheless, the Ohio Department of Taxation has not released any guidance on how this provision impacts tax filing deadlines. Due to a lack of clarity from the Department of Taxation on this issue, taxpayers should act conservatively to submit their amendments and refund claims based on original statute of limitation deadlines.

The same is true for all tax types with expiring limitations periods. Beyond income tax, here are some other key statutes of limitations to keep in mind for different Ohio tax types for which refund claims commonly apply:

- Commercial Activity Tax – Four years after the date of the illegal or erroneous payment of the tax.[7]
- Municipal Income Tax – Three years after return was due or paid, whichever is later.[8]
- Sales Tax – Four years from the date of the illegal or erroneous payment of the tax.[9]
- Use Tax – Four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period was filed, whichever date is later.[10]
- Motor Fuel Tax – One year from the date of purchase.[11]

Kentucky

The Commonwealth of Kentucky also extended its 2019 income tax filing and payment date from April 15, 2020 to July 15, 2020.[12] The Kentucky General Assembly clarified that interest will not apply to the deferred income tax payments during this period.[13] The General Assembly also authorized local taxing districts to suspend or otherwise extend the applicable deadline for filing of returns for net profits and gross receipts taxes within their jurisdictions as necessary in response to the current pandemic.[14]

Just like with Ohio, the delay of the 2019 income tax filing deadline will postpone neither state income tax amendments and refund filing deadlines nor other Kentucky tax refund deadlines. Here are some important deadlines to know for Kentucky tax refund claims:

- Income Tax – Four years from the date overpayment was made.[15]
- Sales Tax – Four years from the date payment was made.[16]
- Use Tax – Four years from the date payment was made.[17]
- Property Tax – Two years from the date the tax was paid.[18]

Indiana

Indiana also followed the trend in extending its 2019 income tax deadline until July 15, 2020.[19] The Indiana Department of Revenue's announcement clarified that the deadline extension applied to individual income tax returns and corporate income tax returns. For any 2019 corporate tax returns with an original May 15, 2020 deadline, the due date was extended proportionally until August 15, 2020.

The State of Indiana also issued an Executive Order explaining that all 2019 property taxes remain due on May 11, 2020, provided that Indiana counties must waive penalties on payments made after May 11 for a period of 60 days.[20] This waiver does not apply to tax payments that haven escrowed by financial institutions on behalf of property taxpayers. The state also explained in that Executive Order that manufacturers may be exempt from use tax if they are creating or donating certain items needed to fight the coronavirus pandemic.[21]

As with Kentucky and Ohio, the delay of the 2019 income tax filing deadline will not delay tax amendment and refund filing deadlines. Here are some important deadlines to know for Indiana tax refund claims:

- Income Tax – three years after the due date of the return or the date of payment, whichever is later.[22]

- Gross Retail or Use Tax – three years after the date the return is filed or the end of the calendar year which contains the taxable period for which the return is filed, whichever is later. [23]
- Gasoline or special fuel tax – three years after the date the return is filed or the end of the calendar year which contains the taxable period for which the return is filed, whichever is later.[24]

Summary

While many taxpayers have been given some breathing room to compile, file and pay their income taxes, all should be mindful of possible amendment and refund claims that may be expiring. The postponed deadlines may allow taxpayers and tax departments time to take a fresh look at the different refund claims that may be available to them but expiring soon. Eligibility for amending returns and filing refund claims changes frequently through legislation and court decisions.

For some tax types with a monthly reporting structure (commonly sales and use taxes), statute of limitations periods may expire every month. For most income tax types with an annual reporting regime, the April 15 will remain a key date with respect to the expiration of amendments to past returns and potential refund claims. Whenever the deadline may be, it is important not to sleep on your potential refund claim and let the opportunity pass by. Because when it's gone, it's gone forever.

For more information, please contact Mark F. Sommer, Daniel Mudd, Elizabeth D. Mosley, or any attorney in Frost Brown Todd's Tax Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Resource Page. We have also convened a dedicated Coronavirus Response Team, with attorneys on hand to field questions concerning labor and employment matters, commercial contracts, litigation risks, as well as business succession, continuity and crisis response planning.

[1] IRS Notice 2020-18.

[2] Internal Revenue Code 6511(a).

[3] *See* Filing and Payment Deadlines Questions and Answers, Question 22, *available at*: https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers (last accessed March 30, 2020).

[4] 2020 Ohio House Bill 197.

[5] Ohio Revised Code ("O.R.C.") 5747.13.

[6] 2020 Ohio House Bill 197, Section 22.

[7] O.R.C. 5751.08.

[8] O.R.C. 718.99.

[9] O.R.C. 5739.07(D).

[10] O.R.C. 5741.16.

[11] O.R.C. 5735.14.

[12] Kentucky Department of Revenue Announcement, March 22, 2020, *available at*: https://revenue.ky.gov/News/Pages/Kentucky%20Income%20Tax%20Return%2
; *see also* 2020 Kentucky Senate Bill (SB) 150, Section 1 (3).

[13] 2020 Kentucky SB 150, Section 1 (3).

[14] 2020 Kentucky SB 150, Section 1 (9)(d).

[15] Kentucky Revised Statutes ("K.R.S.") 141.345.

[16] K.R.S. 134.580(3); K.R.S. 139.770.

[17] *Id.*

[18] *Department of Revenue, Finance and Admin. Cabinet v. Cox Interior, Inc.* (Ky. 2013) 400 S.W.3d 240.

[19] Indiana Department of Revenue Announcement, March 19, 2020, available at: *https://calendar.in.gov/site/dor/event/dor-announces-filing-and-payment-extensions*.

[20] State of Indiana, Indiana Executive Order 20-05, March 19, 2020.

[21] *Id.*

[22] Indiana Code ("I.C.") 6-8.1-9-1.

[23] *Id.*

[24] *Id.*