

**Revenue Ruling
No. 13 - 005
June 18, 2013
Administrative**

Treatment of Tax Credits on Prescribed Periods

Purpose

The purpose of this Revenue Ruling is to determine (1) whether tax credits claimed on prescribed periods are also prescribed and (2) whether federal return adjustments open prescribed periods for issues not related to the federal return adjustment.

Analysis/Discussion – Credits Claimed on Prescribed Periods

According to La. Const. art. VII, § 16, “Taxes, ... shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law.”

As such, taxes generally prescribe or become uncollectible three years after December 31st of the year in which the taxes became due.

According to La. R.S. 47:1580(C)(1),

“The failure to file any return required to be filed by this Subtitle shall interrupt the running of prescription, and prescription shall not commence to run again until the subsequent filing of such return. Once prescription commences to run, the tax, license, excise, interest, penalty, or other charge which is reported on such return shall prescribe in three years after the thirty-first day of December of the year of the filing of the return. ...”

As such, the failure to file a return interrupts prescription and prescription does not start to run again until the filing of such return. Likewise, once prescription starts to run, the amount due, including tax, license, excise, interest, penalty, and other charges, reflected on the return will prescribe three years after December 31st of the year that the return was filed.

According to La. R.S. 47:1621(A),

“For the purpose of this Chapter, “overpayment” means a payment of tax, penalty, or interest when none was due; the excess of the amount of tax, penalty, or interest paid over the amount due; or the payment of a penalty that is later waived or remitted by the secretary, provided that the power of the secretary to refund overpayments shall be as prescribed and limited in this Section.”

Also, according to La. R.S. 47:1623(A),

“After three years from the 31st day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been filed with the secretary by the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period.”

A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

It is the Department of Revenue's position that the use of "refund or credit" refers to the ultimate disposition of an overpayment, either in the form of a refund to the taxpayer or a credit which is applied to a prior or subsequent tax year, and not to the tax credit being claimed, which ultimately results in the overpayment. In such cases, the overpaid accounts would reflect a "prescription adjustment", which means that, even though an overpayment exists, a refund will not be issued nor will a credit be allowed for prior or subsequent tax periods. Instead, a tax credit will be allowed, up to the amount of tax that has been computed for the period, in order to eliminate or zero out the tax for the period. However, in such a case, a refund would not be issued nor would a credit be allowed for subsequent tax periods.

Example

A corporate taxpayer fails to file a 2004 Corporation Income and Franchise Tax Return, which is due in 2005. As such, according to La. R.S. 47:1623(A), no refund or credit for an overpayment would be allowed on the 2004 tax period for any returns filed after December 31, 2008. The corporate taxpayer files its original return for the 2004 tax period in 2010. This return reflects a Louisiana tax liability of \$3,000 and an inventory tax credit of \$5,000. According to the provisions of La. R.S. 47:1621(A) and La. R.S. 47:1623(A), the \$5,000 inventory tax credit would be allowed to eliminate or zero out the taxpayer's tax liability of \$3,000. As such, the taxpayer's tax liability for the 2004 tax period would be reduced to zero. However, the remaining \$2,000, that amount remaining after the zeroing out of the taxpayer's tax liability, would neither be refunded to the taxpayer nor would the taxpayer be allowed a credit for prior or subsequent tax periods. Instead, the taxpayer's account would reflect a "prescription adjustment", meaning that even though an overpayment exists, neither a refund nor a credit will be allowed due to the overpayment having prescribed.

Analysis/Discussion – Federal Return Adjustments (RARs)

According to La. R.S. 47:1623(E),

“Provided that where a refund or credit relates to an overpayment of income tax, the running of prescription shall be suspended by means of: ... (2) For any period from the time of the commencement of an audit of a taxpayer by the United States Internal Revenue Service until one year from the time the secretary of the Department of Revenue is notified by said taxpayer or the federal government of an agreed change to the taxpayer's United States income tax return.”

As such, prescription is suspended beginning from the date of the commencement of an audit by the IRS until one year from the date that the secretary is notified by either the taxpayer or the IRS that there have been changes made to the taxpayer's federal income tax return.

According to Senate Concurrent Resolution No. 32 of the 1996 Regular Session,

“Whereas, Act 316 of the 1980 Regular Session of the Legislature of Louisiana, relative to individual income tax, and Act 16 of the 1986 First Extraordinary Session of the Legislature of Louisiana, relative to corporation income tax, were enacted to provide that state income tax law would conform to federal income tax law with regard to the determination of income and deductions, subject to limited exceptions; and

Whereas, Article VII, Section 16 of the Constitution of Louisiana provides that taxes, except real property taxes, and licenses shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law; and

Whereas, because the determination of the state income tax is contingent upon the correct computation of the federal income tax, the Louisiana Legislature enacted Act 761 of the 1985 Regular Session to add R.S. 47:1580(B)(2) and (3), relative to prescription of income tax assessments, and Act 245 of the 1991 Regular Session to add R.S. 47:1623(E)(1) and (2), relative to prescription of refunds of overpayments of income tax, in order to suspend the prescription of income taxes for the purpose of incorporating the results of federal audits; and

Whereas, it was the intent of the Louisiana Legislature that R.S. 47:1580(B)(2) and (3) and R.S. 47:1623(E)(1) and (2) would allow for the extension of prescription solely for the purpose of incorporating adjustments made pursuant to federal audits; and

Whereas, the suspension of prescription until one year after the Department of Revenue and Taxation is notified of federal audit changes allows the department reasonable time to redetermine the state income tax based upon the audited federal amounts; and

Whereas, it is the intent of the Louisiana Legislature that confusion be avoided for the future.

Therefore, be it resolved that the Legislature of Louisiana does hereby clarify that it intends that R.S. 47:1580(B)(2) and (3) and R.S. 47:1623(E)(1) and (2) suspend the prescription of the income tax solely to the extent of federal audit adjustments made by the United States Internal Revenue Service and only to the extent such federal audit adjustments affect the computation of income tax computed pursuant to Louisiana law, for the same taxable year.

Be it further resolved that the Legislature of Louisiana does not intend to affect pending litigation with this Resolution and hereby provides that this Resolution shall have prospective application only.

Be it further resolved that a copy of this Resolution shall be transmitted to the secretary of the Department of Revenue and Taxation recommending and requesting that the aforementioned statutes be interpreted and administered in accordance with the intent expressed in this Resolution.”

Based upon SCR 32, prescription is suspended solely with respect to the federal audit adjustment and only to the extent that the federal audit adjustment affects the computation of Louisiana income tax for the same tax year.

Example

An individual taxpayer has individual income tax liability for the 2006 tax year. The taxpayer files a timely return, but does not claim their credit for the Louisiana Citizens Property Insurance Corporation Assessment. Prescription tolls for the 2006 tax year on December 31, 2010. In December 2010, the Department processes a federal RAR adjustment. The only adjustment is to

reduce the federal income tax, thereby increasing Louisiana taxable income and Louisiana tax. In March 2011, the taxpayer files a return claiming the credit for the Louisiana Citizens Property Insurance Corporation Assessment, even though it had nothing to do with the federal RAR adjustment. According to the provisions of La. R.S. 47:1623(E) and SCR 32, the refund request for the taxpayers Louisiana Citizens Property Insurance Corporation Assessment should properly be disallowed as it was not included as part of the federal RAR adjustment.

Conclusion

It is the Department of Revenue's determination that credits claimed on prescribed periods are not prescribed and will be allowed, up to the amount of tax that has been computed for the period, in order to eliminate or zero out the tax for the period. It is also the Department's position that federal adjustments, such as RARs, do not open prescribed periods for issues not related to the federal adjustment.

Tim Barfield

Secretary