

**Revenue Ruling
No. 05- 002
June 2, 2005
Administrative**

Prescription of Tax Refunds or Credits

Purpose: The purpose of this Revenue Ruling is to determine whether or not R.S. 47:1580(C)(1) interrupts the prescription running against refunds or credits for taxpayers who file returns after the usual prescription period specified in R.S. 47:1623.

Analysis/Discussion: The Louisiana constitution generally provides that a tax, except real property tax, prescribes (becomes uncollectible) after three years after December 31 of the year in which the tax became due. *R.S. 47:1580 addresses prescription of the department's ability to collect tax that is due.* It provides for the prescription running against any state tax, license, excise, interest, penalty or other charge. Specifically, R.S. 47:1580(C)(1) provides that the failure to file any return interrupts the running of prescription until the subsequent filing of the return. Once prescription begins to run, the tax, license, excise, interest, penalty or other charge, which is reported on the return filed, prescribes in three years after the thirty-first day of December of the year of the filing of the return. This provision allows the department to assess the tax and charge interest, penalty and other charges from the date the return was originally due. See Revenue Ruling No. 04-007 for a discussion of the tax periods affected.

The secretary must refund an overpayment if it is determined that the provisions of R. S. 47:1621 are met. *R.S. 47:1623 provides for the prescription of refunds or credits for overpayment of taxes.* The taxpayer must file a claim for refund or credit with the secretary before the end of the three year period from the thirty first day of December of the year in which the tax became due or before the end of the one year period from the date the tax was paid, whichever is later.

Conclusion:

The prescription provisions of R.S. 47:1623 are not affected by the prescription provisions of R.S. 47:1580(C)(1). The two provisions address different subjects.

The prescription issue addressed in R.S. 47:1580(C)(1) allows the department to assess tax, interest, penalty and other charges because of the failure to file a return. The department did not receive payment of a tax that is due and can now proceed through statutory means to collect that tax and any interest and penalty due.

In order for the prescription provision of R.S. 47: 1623 to be called upon, a taxpayer must have made a payment of tax, interest, or penalty when none was due. However, to receive a refund or credit for that overpayment, a claim for the refund or credit must be timely filed.

Cynthia Bridges
Secretary

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.