

§ 105-241.6. Statute of limitations for refunds.

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax.

(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a refund of an overpayment are as follows:

- (1) Federal Determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for requesting a refund is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later.
- (2) Waiver. – A taxpayer's waiver of the statute of limitations for making a proposed assessment extends the period in which the taxpayer can obtain a refund to the end of the period extended by the waiver.
- (3) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:
 - a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.
 - b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.
- (4) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.
- (5) Contingent Event. – The period to request a refund of an overpayment may be extended as provided in this subdivision if an event or condition prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter:
 - a. If a taxpayer is subject to a contingent event and files written notice with the Secretary, the period to request a refund of an overpayment is six months after the contingent event concludes. For purposes of this subdivision, a "contingent event" means litigation or a state tax audit initiated prior to the expiration of the statute of limitations under subsection (a) of this section, the pendency of which prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter. The written notice to the Secretary must be filed prior to expiration of the statute of limitations under subsection (a) of this section for a return or payment in which a contingent event prevents a taxpayer from filing a definite request for a refund of an overpayment. The notice must identify and describe the contingent event, identify the type of tax, list the return or payment affected by the contingent event, and state in clear terms the basis for and an estimated amount of the overpayment.

- b. If a taxpayer contends that an event or condition other than a contingent event, as defined in this subdivision, has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under subsection (a) of this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations allowed under this subdivision. The request must establish by clear, convincing proof that the event or condition is beyond the taxpayer's control and that it prevents the taxpayer's timely filing of an accurate and definite request for a refund of an overpayment. The request must be filed within the period under subsection (a) of this section. The Secretary's decision on the request is final and is not subject to administrative or judicial review.
- (6) **(Expires December 19, 2016)** Wrongfully Incarcerated Individuals. – If a request for a refund of an overpayment of tax under Section 139F of the Code for a taxable year prior to 2016 is barred by the operation of any law or rule of law, the refund may nevertheless be allowed if the claim for the refund is filed by December 18, 2016. (2007-491, s. 1; 2013-414, s. 47(a); 2015-6, s. 2.16; 2016-6, s. 5(a).)