

**§ 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. The amount refunded under this subdivision shall not exceed the portion of the tax paid during the two years immediately preceding the taxpayer's request for refund.

(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 once as provided in this subdivision:
  - a. Litigation or a State Tax Audit. – If a taxpayer is subject to litigation or a state tax audit that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the period to request a refund of an overpayment is six months after the litigation or state tax audit concludes. The taxpayer must file written notice to the Secretary prior to expiration of the statute of limitations under this section. The notice must identify and describe the litigation or state tax audit, identify the type of tax, list the return or payment affected, and state in clear terms the basis for and an estimated amount of the overpayment.
  - b. Other Event. – If a taxpayer contends that an event has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations. The taxpayer must file a written request to the Secretary prior to expiration of the statute of limitations under this section. The request must establish by clear, convincing

proof that the event is beyond the taxpayer's control and prevents the taxpayer from timely filing an accurate and definite request for a refund of an overpayment. The Secretary's decision on the request is final and is not subject to administrative or judicial review. If the Secretary agrees to the request, the period to file a request for a refund of an overpayment is six months after the event concludes.

- (6) Expired. (2007-491, s. 1; 2013-414, s. 47(a); 2015-6, s. 2.16; 2016-6, s. 5(a); 2019-169, s. 6.1(a); 2021-180, s. 42.13A(f); 2022-13, s. 5.2.)