

810-14-1-.19 Time Limitations for Filing Petitions for Refund.

(1) A petition for refund must be filed with the Department or an automatic refund pursuant to Section 40-29-71, Code of Alabama 1975, or a credit allowed, within three years from the date the return was filed, or two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax.

(a) Limit where petition filed within three-year period. If the petition for refund made on a return (or a subsequent amended return) is filed within the three-year period from the date the return is due, the amount of the refund shall not exceed the portion of the tax paid (or deemed paid) within that three-year period, plus that amount paid within the period of any extension of time for filing the return.

(b) Limit where petition not filed within three-year period. If the petition was not filed within such three-year period, the amount refunded may not exceed the portion of the tax paid within two (2) years before the petition was filed.

(c) Limit where petition filed for refund/credit of final assessment. A petition for refund or credit of a final assessment must be filed by the taxpayer within two years from the date the final assessment was paid.

(d) In cases involving gasoline, motor fuels, tobacco, and playing cards taxes, certain entities other than the taxpayer who originally paid the taxes to the Department may file a petition for refund. These entities include those associations, nonprofit corporations, and organizations who are expressly exempt by the following sections: 40-9-9 through 40-9-13, 40-9-23, 40-17-104, 40-17-122, 40-17-220, 22-51-13, 11-50-412, and 11-88-16, Code of Alabama 1975. In such cases, the petition for refund must be filed within two years from the date of the purchasing invoice for said taxes.

(2) The return shall be considered as filed on the original due date if the tax is paid or the return was actually filed before the original due date. For purposes of this paragraph, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer. An original return filed after the due date shall be considered as filed on the original due date for purposes of petitioning for refund.

(3) Date of payment. Any tax deducted and withheld at the source during any calendar year under Section 40-18-71, Code of Alabama 1975, shall, in respect of the recipient of the income from which the tax was withheld, be deemed to have been paid by the taxpayer on the due date of the return, whether or not timely filed.

(a) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the income tax return for the tax year in question, whether or not timely filed. This shall be determined without regard to any extension of time for filing such return.

(b) EXAMPLE. On June 15, 1992, the taxpayer filed an amended individual income tax return for calendar year 1988 reflecting an overpayment of taxes paid through withholding. Since such taxes are considered to have been paid on April 15, 1989, the refund of such withholding taxes will be denied since more than three years have passed since the original return was filed and more than two years have passed since such taxes are considered as having been paid.

(c) For purposes of this regulation, the date of payment for privilege licenses shall be the date the license was issued by the appropriate probate judge or license issuing official, whether the license was issued for current or delinquent license years. A license date of payment is evidenced by the issuing date, which appears on the face of the license.

(4) Limitation in case an extension agreement is executed. If an agreement under the provisions of Section 40-2A-7(b)(2)i., Code of Alabama 1975, extending the period for assessment of a tax administered by the Department is made within the period prescribed in paragraph (1) of this regulation for the filing of a petition for credit or refund, then the period within which a petition for refund may be filed or a refund may be allowed, or made if no petition is filed, is the period within which the Department may make an assessment pursuant to such agreement or any extension thereof.

(5) In the case of loss years which began before January 1, 1990, nothing in this regulation shall preclude the application for refund of income taxes pursuant to the provisions of Section 40-18-15, Code of Alabama 1975, relating to the carryback of a net operating loss deduction.

(6) If payments are made after the due date of a return (such as under an extension of time or by examination adjustments), the three-year limitation period prescribed in paragraph (1) of this regulation begins on the date the payments are made, to the extent of those payments. For example, if a taxpayer files his/her calendar year 1988 income tax return on October 15, 1989, under an approved extension and includes a final payment of \$1,000 with the return, a petition for refund not in excess of \$1,000 may be filed after April 15, 1992, but before October 15, 1992. Thus, the taxpayer must file the petition for refund within three years of the extension date on which the taxes were paid.

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Authority: Section 40-2A-7(c)(2), Code of Alabama 1975
History: Filed with LRS May 20, 1993. Certification filed with LRS July 16, 1993, effective August 19, 1993.
Filed with LRS January 19, 1996. Certification filed with LRS April 2, 1996, effective May 7, 1996.