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2001



HOUSE BILL 01-1304

BY REPRESENTATIVE(S) Cadman;
also SENATOR(S) Takis.

CONCERNING THE STATUTE OF LIMITATIONS RELATING TO CLAIMS FOR
REFUND OR CREDIT OF INCOME TAX.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The purpose of this act is not to change but rather to clarify the deadline for taxpayers to file claims for refund or credit of income tax.

(b) The further purpose of this act is to clarify the limitation period after which the state will not make income tax refunds credits and to apply this period to all income taxpayers.

(c) The further purpose of this act is to clarify that the statute of limitations for filing a claim for refund of income tax applies to persons who fail to file tax returns or file fraudulent returns.

SECTION 2. 39-21-108 (1) (a), Colorado Revised Statutes, is

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

amended to read:

39-21-108. Refunds. (1) (a) In the case of income tax imposed by article 22 of this title, the taxpayer must file any claim for refund or credit for any year not later than ~~one year after the expiration of the time~~ THE PERIOD provided for filing a claim for refund of federal income tax ~~including~~ PLUS ONE YEAR. HOWEVER, any extensions of the period by agreement between the taxpayer and the federal taxing authorities ~~but nothing in this subsection (1) shall be construed to shorten the period for filing claims provided by section 39-22-601 (6) (f)~~ SHALL EXTEND THE PERIOD ESTABLISHED IN THIS SECTION BY THE SAME AMOUNT OF TIME. THE DEPARTMENT SHALL NOT PAY ANY REFUND FOR WHICH THE CLAIM IS FILED LATER THAN THE PERIOD PROVIDED FOR THE PAYMENT OF A REFUND OF FEDERAL INCOME TAX PLUS ONE YEAR. HOWEVER, NO REFUND OR CREDIT OF INCOME TAX SHALL BE MADE TO ANY TAXPAYER WHO FAILS TO FILE A RETURN PURSUANT TO SECTION 39-22-601 WITHIN FOUR YEARS FROM THE DATE THE RETURN WAS REQUIRED TO BE FILED. EXCEPT IN THE CASE OF FAILURE TO FILE A RETURN OR THE FILING OF A FALSE OR FRAUDULENT RETURN WITH INTENT TO EVADE TAX AND OTHERWISE NOTWITHSTANDING ANY PROVISION OF LAW, THE STATUTE OF LIMITATIONS RELATING TO CLAIMS FOR REFUND OR CREDIT FOR ANY YEAR SHALL NOT EXPIRE PRIOR TO THE EXPIRATION OF THE TIME WITHIN WHICH A DEFICIENCY FOR SUCH YEAR COULD BE ASSESSED. In the case of the charge on oil and gas production imposed by article 60 of title 34, C.R.S., and the passenger-mile tax imposed by article 3 of title 42, C.R.S., or the severance tax imposed by article 29 of this title, the taxpayer ~~must~~ SHALL file any claim for refund or credit for any period not later than three years after the date of payment. Claims for refund of other taxes covered by this article shall be made within the time limits expressly provided for the specific taxes involved. No suit for refund may be commenced before the expiration of six months after the date of filing the claim for refund required under this section unless the executive director of the department of revenue renders a decision thereon within that time, nor after the expiration of two years after the date of mailing, by first-class mail as set forth in section 39-21-105.5, by the executive director to the taxpayer of a notice of disallowance of the part of the claim to which the suit relates. The said two-year period shall be extended for the period as may be agreed upon in writing between the taxpayer and the executive director. This subsection (1) shall not apply to sales and use taxes.

SECTION 3. Repeal. 39-22-601 (6) (f), Colorado Revised Statutes, is repealed as follows:

39-22-601. Returns. (6) (f) ~~Notwithstanding any provision of law, the statute of limitations relating to claims for refund or credit for any year shall not expire prior to the expiration of the time within which a deficiency for such year could be assessed.~~

SECTION 4. 39-22-604 (10), Colorado Revised Statutes, is amended to read:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien. (10) ~~No refund shall be made to any employee who fails to file a return as required by this section within four years from the date the return was required to be filed and against which the tax withheld might have been credited.~~ In the event the excess tax deducted and withheld is one dollar or less, no refund shall be made, unless a specific claim for refund is filed by the taxpayer at the time the return is filed. The excess, subject to being refunded, shall in no event and under no condition be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which the wages were received, and can only be credited against a tax accruing upon a return of wages from which such excess was deducted and withheld.

SECTION 5. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to tax years beginning on or after January 1, 2001.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO