

## Protective Refund Claim

**The protective refund claim policy is repealed effective January 1, 2014. N.C. Gen. Stat. § 105-241.6(b)(5), effective January 1, 2014, provides an exception to the general statute of limitations for obtaining a refund of an overpayment due to a contingent event.**

A protective refund claim is a claim filed to protect a taxpayer's right to a potential refund based on a contingent event for a taxable period for which the statute of limitations is about to expire. A protective claim is usually based on contingencies such as pending litigation or an ongoing income tax audit in another state.

The Department of Revenue will accept a protective claim for refund provided it (1) is filed before the expiration of the statutory refund claim period; (2) identifies and describes the contingencies affecting the claim; (3) is sufficiently clear and definite to alert the Department of Revenue as to the essential nature of the claim; and (4) identifies the tax schedule and the specific year for which the protective claim is filed. The six-month period within which the Department must take action on a claim for refund does not begin on a protective claim until the amended return perfecting the claim is filed.

It is not necessary for a taxpayer to file a protective refund claim for a year under examination by the Internal Revenue Service because, under North Carolina law, a taxpayer has six months to file an amended return to report federal changes.

There is no special form for filing a protective claim. The Department of Revenue will accept any written submission provided it contains all the required elements. Upon conclusion of the contingency, a taxpayer may perfect the claim for refund by filing an amended return for the tax year at issue.