

## **Are Wynne Refund Claims Still Timely?**

A Closer Look at Md. Code Ann., Tax-General § 13-1104(j)

Aside from constitutional issues related to the potentially retroactive reduction of interest in light of *Comptroller of the Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015), it is also unclear which affected Maryland taxpayers may still file a refund claim and which tax years are still within the statute of limitations for filing timely refund claims. While a significant number of taxpayers filed protective refund claims, pursuant to administrative guidance of the Comptroller and in accordance with the general three-year statute of limitations for refunds under Md. Code Ann., Tax-General (“TG”) § 13-1104(a), is there still recourse available for those who did not identify this issue until recently and did not file protective refund claims? Perhaps.

While TG § 13-1104(a) provides a three-year period to make a refund claim, there are a number of statutory exceptions that may extend the time for filing a refund claim. Of particular interest is TG § 13-1104(j), which provides:

Notwithstanding subsection (c) of this section, a claim for refund or credit for overpayment of income tax attributable to a right to a reduction in a person's Maryland income tax that is established by a decision of an administrative board or by an appeal of a decision of an administrative board may be filed within 1 year after the date of a final decision of the administrative board or a final decision of the highest court to which an appeal of a final decision of the administrative board is taken.

Since the decision in *Wynne* was not entered until May 18, 2015, if TG § 13-1104(j) applies, a taxpayer may still be able to file a refund claim until May 18, 2016 for any tax years affected by the *Wynne* opinion. But are refund claims involving the credit for out-of-state taxes deemed “**attributable**” to a right to a reduction in a person’s Maryland income tax that is established by...a final decision of the highest court”? *Emphasis supplied*. That is, are other taxpayers’ refund claims “attributable” to *Wynne*, in the sense envisioned by the statute? The answer is unclear.

Neither the fiscal note to the legislation nor any administrative releases of the Comptroller interpret the coverage of the statute. Nonetheless, at least with respect to the legislative reduction to the interest rate stemming from *Wynne*, such claims were deemed “refunds **resulting** from the final decision under...*Wynne*.” See Budget Reconciliation and Financing Act of 2014, Senate Bill 172, at Section 16 (*emphasis supplied*). Based on this related statute’s use of the word “resulting” and the use of “attributable” in TG § 13-1104(j), one can make an argument that TG § 13-1104(j) was intended to provide additional time to file such claims. (That is, if the entitlement to a refund resulted from *Wynne*, then surely the entitlement to the refund is also attributable to *Wynne*.) On the other hand, such an interpretation could create an unintended extension on the time to file many refund claims for taxpayers and would likely cost Maryland millions of dollars. Therefore, it is likely that Maryland would argue that the language of TG § 13-1104(j) is only intended to affect the specific taxpayer involved in a given court decision.

As there is little guidance regarding the meaning of these terms, any claims filed pursuant to TG § 13-1104(j) hinge on its statutory interpretation and are likely to be administratively denied by the Comptroller, at least until appealed outside of the administrative context. Still, if there is a significant amount that can be claimed as a refund, it may be worthwhile to test the limits of this exception to the general statute of limitations.

***These descriptions are provided for informational purposes only. For a consultation to discuss your specific tax issues and concerns, please contact Brandon Mourges at 410.951.1149 or [bmourges@rosenbergmartin.com](mailto:bmourges@rosenbergmartin.com).***