

E. MARTIN DAVIDOFF & ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS

E. Martin Davidoff, CPA, ESQ.

353 Georges Road - Suite K
P.O. Box 835
Dayton, NJ 08810-0835
EMDCPA@aol.com

TEL: 732-274-1600

FAX: 732-274-1666

ALLOW FOR UNRESTRICTED CLAIMS FOR INCOME TAX REFUNDS FOR 2 YEARS

It is my recommendation that the rules with effect to claims of refunds of income taxes in New Jersey be revised to mirror that of Federal tax procedures. The New Jersey law with respect to refunds is fraught with traps.

The basic tenet of Federal law is an individual may claim a refund within two years of payment, with no limitation. Unfortunately, the New Jersey law places several obstacles such as:

1. The Taxpayer must have paid the assessment within one year after the expiration of the period allowed for filing of a protest of the assessment; and,
2. The Taxpayer files the claim for the refund within 450 days of the expiration of the period allowed for filing such a protest.

Let's assume Joe Taxpayer receives a Notice of Assessment from the State of New Jersey for \$25,000 and, through a series of errors, fails to appeal that assessment within 90 days. This happens frequently. Often, Taxpayers are in a state of denial. In other cases, it is due to errors by accountants or attorneys. Under current law, Taxpayers only have the opportunity to have an appeal on the merits of a case if they file a claim for refund. However, the Taxpayer cannot file a claim for refund if he is unable to pay the tax within 450 days. If the Taxpayer is unable to pay within the requisite time, and the State of New Jersey succeeds in enforcing collection after 450 days, the Taxpayer will never have the ability to appeal the case on its merits. Thus, there is no incentive by the Division of Taxation to hear the case on the merits in any informal proceedings, during the 450-day period, because after that period the Taxpayer loses his or her rights to appeal the merits of the case.

Under the Federal rules, the two-year statute is unfettered by traps. Thus, when a Taxpayer is unable to pay, the IRS will often listen to the merits of the Taxpayer's case due to the fact if the IRS is able to enforce collection at a later date, the Taxpayer will still have the right to claim a refund within two years. Thus, it is in the interest of the IRS to resolve cases at the lowest level and many cases are resolved even though the tax had been unpaid. New Jersey should follow this lead.