

## Refunds - 116

### General – 116.1

- A. The overall objective of auditing credit or refund claims ("Refund") is to determine whether or not the taxpayer is entitled to the refund claimed. The manner in which the claim is audited is dependent upon what the claim is being filed for. The taxpayer may request a refund or apply the credit to a future sales tax return. There are different ways that an auditor will encounter a refund during the course of an audit.
1. The taxpayer may file an AU-11, *Application for a Refund or Credit of Sales or Use Tax*, with the Department; or
  2. The auditor may discover a refund during the course of the field audit.

The Tax Law requires the Department to process a refund request within six months of the receipt of a processible application. The application will be considered to be in processible form only if it is properly filled out, signed and includes a breakdown to mathematically verify the refund or credit requested.

### Requesting Information to Verify the Refund Claim – 116.2

- A. Upon receipt of an AU-11, the auditor should renew the claim to determine if it contains enough documentation to allow the auditor to either approve or deny the claim.
- B. If no information, or not enough information, is provided with the Application for a Credit or Refund of Sales or Use Tax, send a letter requesting the information needed to review the claim. Give the claimant thirty days to respond with the information.
- C. If the taxpayer does not respond or does not provide enough information after the thirty days given, the auditor should process the claim as follows:
1. If no information is provided, deny the Application in full.
  2. If not enough information is provided, deny the portion of the refund claimed that has not been substantiated.

### Verifying Refund Claim was Timely Filed – 116.3

- A. There are five different sections of the Law to consider when determining if a refund is within statute:
1. Section 1139(a)(i): The claim must be filed within three years from the date the tax was payable to the Department of Taxation and Finance.
  2. Section 1147(c): The claim must be filed within six months from the expiration date of a properly executed extension of the statute of limitations, for any period covered

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by such extension.

3. Section 1139(c):
  - a. For taxable years starting prior to 1/1/97, the claim must be filed within two years from the date of payment to DTF when payment was remitted pursuant to a signed consent to fix tax.
  - b. For taxable years starting on or after 1/1/97, the claim must be filed within two years from the date of payment to DTF.
4. Section 1139(f): The claim must be filed within three years from the date a customer receives a refund from a motor vehicle manufacturer pursuant to the lemon law.
5. Article 41, Section 3004-a: The claim must be filed within one hundred twenty days from the date DTF notifies a taxpayer of an overpayment in a period which is still open under the statute of limitations.

Verifying the refund amount - 116.4

- A. The auditor must take the following steps before approving the refund claim:
  1. Verify that the refund being claimed has not already been addressed or is not currently assigned to Transaction Desk Audit Bureau.
  2. Verify that the refund being claimed has not already been taken as a credit on a return.
  3. For purchases, the auditor must determine the taxability of the transaction to determine if tax was actually due. Then the auditor must verify that the tax was actually paid by the taxpayer to the vendor or accrued by the taxpayer and remitted to the Department on the Sales and Use Tax return.
  4. For sales, if a taxpayer is claiming a refund of tax that was paid by a customer, the taxpayer must prove that tax was refunded to the customer before it can be refunded to the taxpayer. In addition, the taxpayer must also provide documentation to show that the customer or sale is tax-exempt.
- B. Disposition of a refund claim
  1. A disposition letter should be mailed as soon as a determination is made. If any portion of a refund claim is denied, the taxpayer has a right to protest the denial within 90 days of the determination. **Be sure to include text in the disposition letter explaining both the allowed and denied portions of the refund claim.**
  2. Include Form CMS-1, *Request for Conciliation Conference*, with the disposition letter if any of the claim was denied.
  3. An entry must be made in the DO-220.5 that the disposition letter has been mailed.

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Completing the refund claim – 116.5

- C. The results of the audit will determine what documentation needs to be prepared by the auditor.
1. If any tax was found due during the course of the audit, an AU-346 must be prepared that shows the tax and refund amounts separately.
  2. If no tax was found due, no AU-346 needs to be prepared.
  3. For either of the above scenarios, entries must be made on EONLINE.
- D. Once a determination has been made on the claim, information needs to be entered in EONLINE to create an AU-316 for administrative purposes.
1. EC2.3 (Activity Profile)
    - a. The only information that needs to be entered on this screen is the processible date. This must be entered before generating the AU-316.
  2. EC2.11 (Auditors Approval Detail Menu) lists the screens information needs to be entered on in order to print the AU-316.
    - a. EC2.11.1 is where the amount approved is entered;
    - b. EC2.11.2 is where the jurisdiction breakdown of the refund is entered;
    - c. EC2.11.3 is where a description of the refund is entered and where the AU-316 is generated.
  3. If a refund is fully denied, an AU-316 does not need to be prepared. Prepare a memo to TFAB Refund indicating the refund is fully denied.
- E. Effective for claims filed on or after June 1, 2009: Interest is not paid on a refund if it is paid within three months of the processible date. If the refund is not paid within three months of the processible date, interest would begin accruing from the date the claim was filed and is in processible form.
- F. If any quarter has a net refund (without interest) greater than \$150,000, then a DTF-310 must be prepared for the Commissioner's signature. This is the case whether the audit result is a net refund or net tax due.

\*Please see the Refund Instructions on LiveLink for additional information.

- the reason for the taxpayer's disagreement, if known.

- G. Multiple refund claims should be combined into one AU-316 unless extenuating circumstances exist. Use the oldest claim number to process the refund.

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- H. Refunds of \$10 Million or More: The Comptroller's Office cannot write a refund check for \$10 million or more, therefore multiple checks must be prepared for very large refunds. If the refund plus interest exceeds the \$10 million limit, it must be broken out into multiple refund claim numbers in order to generate multiple AU-316s for multiple refund checks. The refund should be divided into smaller periods that will not exceed \$10 million after refund interest.
- I. Once the refund has been processed, review and complete the "refund checklist" and "arranging the FAM refund folder" in Section 1 of the Refund Instructions.

\*Path to the Refund Instructions on LiveLink:

- 1. Intranet Homepage
- 2. Click *Find tools to do my job*
- 3. Click *LiveLink*
- 4. Under Reference Library – Click *Sales Tax*
- 5. Under Guidelines – Click *Guidelines – Sales Tax Field Audit*
- 6. Click Refund Instructions – Sales Tax Field Audit