



TAX FACTS 2021-2

Protective Claim

This Tax Facts provides general information about protective claims.

1 When is a protective claim filed?

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, an ongoing federal income tax audit, or an audit in another state.

2 What types of taxes can I file a protective claim for?

A protective claim may be filed for the following tax types:

- Net income;
- Estate;
- General excise;
- Transient accommodations;
- Use;
- Public service company;
- Franchise; and
- Rental motor vehicle surcharge.

3 What requirements must be met to file a protective claim?

A protective claim for refund must:

- Be filed on or before the expiration of the statutory refund claim period;
- Identify and describe the contingencies affecting the claim;
- Be sufficiently clear and definite to alert the Department as to the essential nature of the claim; and
- Identify the tax and the specific year for which the protective claim is filed.

The time in which the Department must take action on a claim for refund does not begin on a protective claim until an amended return perfecting the claim is filed (after the contingencies are removed and is found in favor of the taxpayer).

4 What form is used to file a protective claim?

There is no special form for filing a protective claim. The Department will accept any written submission provided it contains all the required documents. Upon conclusion of the contingency, a taxpayer must perfect the claim for refund by filing an amended return for the tax year at issue. Oral statements made to the Department are not sufficient to preserve a protective claim. A valid protective claim doesn't have to list a particular dollar amount or demand an immediate refund. However, a valid protective claim must:

- Be in writing and must be signed;
- Include your name, address, SSN or ITIN, and other contact information;
- Identify and describe the contingencies affecting the claim;
- Clearly alert the Department to the essential nature of the claim; and
- Identify the specific year(s) and tax type(s) for which a refund is sought.

5 What do I do once the protective claim is resolved?

Once the contingency which prevents the filing of an amended return has been resolved, you must timely file an amended return to receive a refund. Mail all protective claims and related amended returns to:

Department of Taxation
Attn: Taxpayer Services Manager
P.O. Box 259
Honolulu, HI 96809

6 Can an estate file a protective claim?

Revenue Procedure 2011-48 provides details on who may file a protective claim, methods by which the claim must be prepared and submitted, and identifying and documenting outstanding claims upon an estate and other deductible expenses for which the protective claim is filed.

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For more information, visit the Department of Taxation's website at tax.hawaii.gov

7 How do I determine the taxable estate?

IRC section 2053 identifies types of expenses that may be deducted from the value of the decedent's gross estate for determining the taxable amount of the estate, including funeral expenses, administration expenses, unpaid mortgages on the decedent's property, and other claims against the estate. In some cases, such claims and expenses may not be known at the time of filing Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return, or resolved within the general limitation period allowed for filing a claim for refund of taxes overpaid, which is three years from the filing date or two years from the date taxes are paid, whichever is later. In such cases where the expenses or claims are not yet finally determined, the estate fiduciary may file a protective claim for refund within the general limitation period to preserve the estate's right to claim a refund beyond that period.

8 What must be included in an estate's protective claim?

Under IRC section 2053 and the related regulations, a protective claim must identify the claim or expense and the reason

the payment has been delayed. Once the amount of the claim or expense is finally determined, the estate's fiduciary must, within a reasonable period, notify the Department, which will then process the claim and issue the refund.

9 What form is used to file a protective claim for an estate?

The protective claim may be filed by using federal Form 843 or by attaching one or more Schedule(s) PC to Form M-6. A separate Schedule PC must be filed for each claim or expense.

10 Where do I mail the protective claim for the estate?

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