# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1866**
**Bill Subtitle: TO ALLOW A TAXPAYER TO CLAIM A REFUND OR CREDIT FOR AN OVERPAYMENT OF A STATE TAX DURING THE SAME PERIOD OF TIME THAT THE STATE MAY ASSESS OVERDUE TAXES.**

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**Basic Change :** Sponsor: Representative Gates

The bill increases the amount of time in which a taxpayer can file a claim for refund. Current law provides that a taxpayer has the later of 3 years from the time a tax return was required to be filed or 2 years from the time the tax was paid to file a claim for refund. This bill would allow a taxpayer to file a claim for refund if the taxpayer is subject to an audit that extends beyond the 3 year refund claim period and the taxpayer discovers an overpayment of tax for the tax return periods subject to the audit. The bill would become effective 90 days after final adjournment of the 90$^{th}$ General Assembly.

**Revenue Impact :**

Expired tax return periods eligible for tax refund claims would be opened for refund claim if those same periods undergo audit. Refund claims resulting from the opened tax periods could exceed any audit amount determined to be due resulting in a net loss of revenues.

**Taxpayer Impact :**

Taxpayers subject to an audit may file an amended return or verified claim for credit or refund of an overpayment of a state tax that occurred at any time during the time period for which an audit is performed.

Taxpayers who fail to file a tax return or who commit fraud on a return may be currently assessed at any time. This bill would allow those taxpayers who fail to file or commit fraud to seek a refund at any time. Taxpayers who comply with their filing obligations as required by law will be subject to the current 3 year limitations period for refunds.

**Resources Required :**

None

**Time Required :**

Adequate time is provided.

**Procedural Changes :**

Education of staff and updates to all state tax rules to implement the change in the law.

**Other Comments :**

The bill does not provide a time period in which the taxpayer may file a refund claim after the audit is completed. The bill should be amended to establish a time period limitation for filing the refund claim.

**Legal Analysis :**

Section 1 of the bill amends § 26-18-306(i) to increase the amount of time in which a taxpayer can file a claim for refund. Under current law, a taxpayer has the later of 3 years from the time a tax return was required to be filed or 2 years from the time the tax was paid to file a claim for refund.

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Section 1 of the bill would amend state law to permit a taxpayer to file a claim for refund for any tax administered by DFA, regardless of when the return was due or tax was paid, if the taxpayer is "subject to an audit" and the taxpayer made an overpayment of a state tax at any time "during the time period for which an audit is performed." As written, it is unclear if this means that a taxpayer is entitled to a refund or credit of an overpayment of tax if an audit is actually performed, if a taxpayer is merely subject to audit, or if a taxpayer has been previously audited. Under § 26-18-305, a taxpayer is subject to an audit at any time if they fail to file a return or file a fraudulent return. The bill would allow a taxpayer an unlimited amount of time to file an amended return or claim for refund for an overpayment of tax in the case of fraud or failure to file.

DFA, as a matter of policy, already permits credit for overpayments made during the time period included within an audit. In other words, field auditors currently reduce taxable transactions for which a taxpayer erroneously failed to collect and remit tax by the amount a taxpayer paid tax in error for time periods included in an audit. In addition, state law already provides taxpayers who are being audited with a mechanism to extend the time in which a claim for refund may be filed. Specifically, under § 26-18-306(d), when the time to file a claim for refund has not expired at the time a waiver extending the date of assessment is signed, the time for filing a claim for refund is extended to the date for assessment of the tax plus an additional 60 days thereafter.

The provisions of § 26-18-306(i)(2) currently prohibit entitlement to a refund more than 3 years after the due date of a return when a taxpayer fails to file the return, underreports income by 25% or more, or fails to notify DFA of a change or correction by the IRS. As written, the bill could be interpreted to override this prohibition if a taxpayer is subject to an audit for the time period for which it failed to file a return, notify the director of a change, or underreported income. As such, the bill would have the consequence of rewarding noncompliant taxpayers who fail to observe the tax laws of the state.

The bill does not contain an emergency clause and would become effective 90 days after adjournment.