



July 2, 2019

## Important Notice: Decision in the *Kaestner* Case

On June 21, 2019, the United States Supreme Court decided *North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*. You can read the opinion here: [https://www.supremecourt.gov/opinions/18pdf/18-457\\_2034.pdf](https://www.supremecourt.gov/opinions/18pdf/18-457_2034.pdf).

### North Carolina Law

The general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following: (1) three years after the due date of the return, or (2) two years after the payment of tax. See [N.C. Gen. Stat. § 105-241.6\(a\)](#). N.C. Gen. Stat. § 105-241.6(b)(5) provides an exception to the general statute of limitations for obtaining a refund of an overpayment in the case of a contingent event or an event or condition other than a contingent event. The statute addresses specific situations when the general statute of limitations in N.C. Gen. Stat. § 105-241.6(a) may not apply. As defined, a contingent event includes litigation initiated prior to the expiration of the statute of limitations, which prevents a taxpayer from possessing the information necessary to file an accurate and definite request for refund of an overpayment.

Under North Carolina law, if a taxpayer is subject to a contingent event and files a written notice with the Secretary of Revenue (“Notice of Contingent Event”) before the expiration of the general statute of limitations for refunds, the period to request a refund of an overpayment is six months after the contingent event concludes. See N.C. Gen. Stat. § 105-241.6(a). The Notice of Contingent Event must identify and describe the contingent event, identify the type of tax affected by the contingent event, list the return or payment affected by the contingent event, and state in clear terms the basis used to determine the estimated amount of the overpayment. See N.C. Gen. Stat. § 105-241.6(a).

### Contingent Event for *Kaestner* Case

The contingent event related to the *Kaestner* case concluded on June 21, 2019, the date of the United States Supreme Court’s decision. Therefore, taxpayers who believe that the *Kaestner* decision applies to their particular facts and circumstances and who filed a Notice of Contingent Event that met the requirements of N.C. Gen. Stat. § 105-241.6(b)(5) must file an amended return with the Department on or before December 21, 2019.

Taxpayers who believe that they are entitled to a refund under the *Kaestner* decision but who have not filed a Notice of Contingent Event may request a refund of an overpayment from the Department by taking one of the following actions within the statute of limitations for obtaining a refund:

- (1) filing an amended return reflecting an overpayment due the taxpayer, or
- (2) filing a claim for refund.

See N.C. Gen. Stat. § 105-241.6(a).

### **General Information**

To amend a North Carolina estates and trusts income tax return, [Form D-407](#), enter the corrected information for the specific tax year and fill in the circle to indicate that the return is an amended return. To facilitate the review of the amended return, the Department requests that the amended return be mailed to the following address:

N.C. Department of Revenue  
ATTENTION: Partnership, Gift, Estate, and Fiduciary Unit  
P.O. Box 871  
Raleigh, North Carolina 27602-0871

### **Assistance**

If you have any questions about this notice, you may call the Tax Practitioner line at 919-754-2500 (8:00 am until 5:00 pm EST, Monday through Friday), or write to Customer Service, PO Box 1168, Raleigh, NC 27602.

*To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.*