

## X. Refunds

### A. Authority to Claim Refund

#### 1. Recordation Tax

TP § 14-907 – A person who submits a written refund claim for recordation tax that has been erroneously or mistakenly paid to or illegally or erroneously assessed or wrongfully collected by the clerk of a circuit court, the Director of Finance in Prince George's County, or [SDAT], or paid on property exempt wholly or partly from the recordation tax is eligible for a refund from [SDAT], clerk, or the Director of Finance that collected the recordation tax.

NOTE: This section should be expressly revised (and, we believe, is implicitly revised) to make clear that the other county collectors of recordation tax are included with SDAT, the Clerks and the Prince George's County collector of the tax.

#### 2. State Transfer Tax

TP § 14-908 – A person who submits a written refund claim for [state] transfer tax that has been erroneously or mistakenly paid to or illegally or erroneously assessed or wrongfully collected by the clerk of a circuit court, the Department, or other collector, or paid on property exempt wholly or partly from the [state] transfer tax is eligible for a refund from the Department, clerk, or collector that collected the transfer tax.

#### 3. County Transfer Tax – a matter determined under the charter / county code / public local laws / ordinances of each jurisdiction

B. Form of Claim for Refund

TP § 14-914 – (a) [T]o apply for a refund under this subtitle, a person shall submit a written refund claim:

- (1) on the form required under subsection (b) of this section;
- (2) under oath [see TP § 1-201 for definition of "under oath"];
- (3) supported by the documents required under subsection (b) of this section;<sup>1</sup> and
- (4) that contains the information required under subsection (b) of this section.

(b) A claim for refund under subsection (a) of this section shall be as required by . . .

- (3) the Comptroller or the chief fiscal officer of the county, for a claim under § 14-907 or § 14-908 of this subtitle.

If the chief fiscal officer of a county has not established a form for claims for refunds in a county, the Clerk or other tax collector may use the form created by the Comptroller's office. The Clerk or other tax collector may obtain the Comptroller's form upon request. Whether the Comptroller's form or a county form is used, each Clerk and tax collector should have copies of the form of Claim for Refund available to give to potential claimants upon request.

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<sup>1</sup> The lack of supporting documentation seems to be the most common reason that a claim for refund must be rejected by a Clerk or other tax collector – at least when the claim is first submitted.

C. Statute of Limitations for Filing Claim for Refund

TP § 14-915 – To be eligible for a refund, a person must submit a refund claim on or before . . .

- (2) 3 years from the date that the recordation tax is paid, for a claim under § 14-907 of this subtitle;
- (3) 3 years from the date that the [state] transfer tax is paid, for a claim under § 14-908 of this subtitle . . .

TP § 14-916(b) – The appropriate official may not pay a refund claim under [TP] § 14-907 or § 14-908 if . . .

- (2) the refund claim is not submitted within the time required by [TP] § 14-915

D. Determination of Claims for Refund

1. Initial duties of the Clerk or other tax collector –

TP § 14-911(c) – If a refund claim is made under [TP] § 14-907 or § 14-908, the Department, clerk, or Director of Finance<sup>2</sup> considering the refund claim shall:

- (1) investigate the claim;
- (2) notify the claimant of an opportunity for a hearing on the claim;<sup>3</sup> and
- (3) if the claimant requests a hearing on the claim, conduct a hearing.

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<sup>2</sup> As noted with respect to TP § 14-907, TP § 14-911 should be (and, we believe, is implicitly) revised to include the county collectors of recordation tax.

<sup>3</sup> **Due to a recent decision by the Tax Court, we advise that, although the statute is unclear in this respect, the most cautious approach would be to send a letter to each claimant acknowledging receipt of the claim for refund and advising the claimant of claimant's right to a hearing.**

2. If collector approves claim for refund, collector must request authorization for payment of refund –

TP § 14-911(d) – If a claim is determined to be eligible for refund, the agency considering the claim shall request authorization of payment for a claim under . . .

- (3) [TP] § 14-907 or § 14-908 of this subtitle, from the Comptroller [for a refund of state transfer tax] or the chief fiscal officer of the county [for a refund of recordation tax]

If authorization for payment is denied, the collector must inform the claimant –

TP § 14-911(e) – The agency determining a claim made under TP § 14-907 or § 14-908 shall give written notice to the claimant of . . .

- (2) a denial of payment authorization under subsection (d)(3) of this section by the Comptroller or chief fiscal officer of the county

As part of determining whether to authorize payment, the Comptroller or chief fiscal officer of the county should determine whether the claimant is delinquent with respect to other taxes, charges or fees –

TP § 916(b) – The appropriate official may not pay a refund claim under [TP] § 14-907 or § 14-908 if . . .

- (3) the claimant has delinquent State, county, or municipal corporation taxes, charges, or fees

If the claim is approved and payment authorized, the claimant is entitled to interest at 6% per year on the amount to be refunded unless the overpayment of tax was due to a mistake or error attributable only to the claimant and not to the tax collector –

TP § 14-916(a) – Except as otherwise provided in [subsection (b) of] this section, the appropriate official shall pay a refund claim that meets the requirements of this subtitle, and shall pay the interest allowed in [TP] § 14-917.

TP § 14-917 – (a) Except as provided in subsection (b) of this section, interest shall be paid on a refund claim under [TP] § 14-907 or § 14-908 at the rate of 6% a year on

the amount of the refund from the date that the tax was paid.

- (b) Interest may not be paid on a refund claim based on a mistake or error that is attributable only to the claimant and not to the Department, a clerk of the court, or the Director of Finance in Prince George's County.<sup>4</sup>

3. Effect of inaction on claim for refund –

TP § 14-911(b) – If a refund claim made under [TP] § 14-907 or § 14-908 is not allowed and is not denied on or before **6 months** from the date the refund claim is submitted, the person submitting the claim may [but is not required to] treat the claim as denied.

4. If collector denies a claim for refund, collector must notify the claimant –

TP § 14-912(e) – The agency determining a claim made under [TP] § 14-907 or § 14-908 shall give written notice to the claimant of:

- (1) a denial of the claim by that agency . . .

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<sup>4</sup> As noted with respect to TP §§ 14-907 & § 14-911, TP § 14-917 should be (and, we believe, is implicitly) revised to include the county collectors of recordation tax.

5. If a claim for refund is denied, claimant must file an appeal in the Maryland Tax Court within thirty (30) days after claimant receives the notice of denial (or if claimant is electing to treat inaction as a denial pursuant to TP § 14-911(b), claimant may file an appeal in the Maryland Tax Court at any time prior to either approval of the claim or 30 days after actual denial of the claim) –

TP 14-512 – (d) The person who submitted a tax refund claim under [TP] § 14-907 or § 14-908 may appeal any final action taken under [TP] § 14-911 to the Maryland Tax Court on or before 30 days from the date that the notice of disallowance is received by the person. However, if a refund claim under [TP] § 14-911 of this title is not allowed or disallowed on or before 6 months from the date of filing the claim, the person who filed the claim may:

- (1) deem the claim to be finally disallowed; and
- (2) submit an appeal to the Maryland Tax Court.

(g) An appeal to the Maryland Tax Court under this section shall be deemed to be filed within the time allowed for the appeal if a written petition is mailed to the Maryland Tax Court with a postmark date within the time allowed for the appeal.

6. If the denial of the claim for refund is upheld by the Maryland Tax Court, the claimant may appeal such decision to the Circuit Court for the applicable jurisdiction –

TP § 14-513 – Any party to a Maryland Tax Court proceeding may appeal a final decision of the Maryland Tax Court to the circuit court for the county in which the property is located.

7. If the denial of the claim for refund is upheld by the Circuit Court, the claimant may appeal such decision to the Court of Special Appeals –

TP § 14-515 – Any party to a proceeding in the circuit court under [TP] § 14-513 may appeal a final decision of the circuit court to the Court of Special Appeals.

8. If the denial of the claim for refund is upheld by the Court of Special Appeals, the claimant may file a petition to the Court of Appeals to hear the case, but does not have any appeal of right to the Court of Appeals