

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE CHIEF FINANCIAL OFFICER  
OFFICE OF TAX AND REVENUE



**OTR REVENUE RULING 2008-02**

***Refunds-Protective Claim  
Protective Claim***

Question: Will the Office of Tax and Revenue (“OTR”) accept a “protective claim?”

A protective claim is a claim, filed by a taxpayer, for a refund of an overpayment of tax that does not state a particular dollar amount or demand an immediate refund. A protective claim is filed to preserve the taxpayer’s right to claim a refund when the taxpayer’s right to the refund is contingent on a future event and the amount may not be determinable until after the statute of limitations has expired.

A valid protective claim must:

1. Identify a specific year or years for which a refund is sought.
2. Be filed within the later of :
  - a) Three years from the due date of the return, or
  - b) Three years from the date the tax was paid.
3. Identify and describe the contingency(ies) affecting the claim.
4. Be sufficiently clear and definite to alert OTR as to the essential nature of the claim.

**Example:**

On 04/15/0002, the taxpayer timely files its 0001 return and fully pays the tax.

In filing its 0001 return, the taxpayer reported income from an investment in a partnership. The IRS determined that the investment in the partnership was an investment in an abusive tax shelter and disallowed all losses and income from the tax shelter reported by the investors. The promoters of the tax shelter are litigating the issue with the IRS in U. S. Tax Court.

On 04/10/0005, the taxpayer files a protective claim for tax year 0001 that does not state a particular dollar amount. The taxpayer states in the comment section of the protective claim that:

1. The basis of the refund is investment income that was reported on the return, which the IRS determined was reported in error.
2. The amount of the refund cannot be determined until the present litigation, Tax Shelter v Comm., Doc. No. 0000000, is finally concluded.

Since the protective claim was filed within three years of the due date of the return and the claim identified and described the contingency affecting the claim, OTR will accept the protective claim as a valid claim that tolled the statute of limitations.