

**M e m o r a n d u m****320.0048**

To: Robert L. Buntjer  
Supervisor, Refund Section (MIC:39)

Date: September 18, 2002

From: Randy Ferris  
Senior Tax Counsel (MIC:82)

Subject: S- - XX-XXX

Your memorandum to Assistant Chief Counsel Janice Thurston, dated September 6, 2002, has been assigned to me for reply. In your memorandum, you request a legal opinion regarding the proper calculation of credit interest with respect to a refund amount due to the above-referenced taxpayer (hereafter claimant). In relevant part, you state:

"[T]his matter involves the audit of [claimant] for the period of December 12, 1983[,] through June 26, 1988. The original audit was telephone billed in three parts because of the limitations of the Board's computer system at the time. The billings for the reporting periods of December 12, 1983 [,] through May 31, 1985, and December 15, 1986, through June 28, 1988[,] were billed timely. However, the billing for the period June 1, 1985[,] though December 14, 1986[,] was not billed until after the statute of limitations had lapsed.

"These determinations were previously the subject of a Petition for Redetermination. However, before this matter was presented to the Board as a petition, claimant agreed to the reaudit report dated November 8, 1994. A redetermination was issued in July 1995. Subsequently, claimant paid the audit liability and filed a claim for refund. During the refund appeals process, claimant provided documentation that substantially reduced the previously redetermined liability. Another reaudit was completed and the case was presented to the Board for final action on August 1, 2002. The Board concluded that [the] audit liability should be redetermined in accordance with the Sales and Use Tax Department's reaudit dated February [1], 2002. The claimant concurred with these reaudit results. The Board also concluded that the claim for refund should be granted to the extent that the payments received exceeded the reaudit report dated February 1, 2002. The amount of the refund has been calculated and claimant is now contesting the Board's method of calculating credit interest on the refund. Claimant is requesting that credit interest be calculated on the total amount of overpayment made, inclusive of tax, penalty, and interest."

You ask whether the Board is permitted to pay credit interest on overpayments related to the interest and penalty portions of this liability.

Revenue and Taxation Code section (Section) 6901, which authorizes the Board to issue credits and refunds under the Sales and Use Tax Law, distinguishes between the overpayment of a tax amount and the interest and penalties that may be associated with that amount. (Rev. & Tax. Code, § 6901 ["If the board determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed.... "] Section 6907, which pertains to credit interest, acknowledges this distinction and provides, in relevant part, that:

"Interest shall be paid upon any overpayment of any amount of tax.... In addition, a refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited."

Thus, assuming that a timely, valid claim is filed, under the plain language of Section 6907, the Board is only authorized to pay credit interest on overpayments of tax amounts, and overpayments of interest are credited or refunded without the payment of credit interest. (Accord Cal. Code Regs, tit. 18, § 1703, subd. (b )(5)(A).) Section 6907 does not mention overpayments related to penalties, but, given that the statute expressly limits the payment of credit interest to refunds or credits arising from the overpayment of tax, overpayments related to penalties should be treated similarly to overpayments of interest (i.e., refunded or credited without payment of credit interest).

Your memorandum does not disclose what authority, if any, claimant relies on in support of its request to receive credit interest on overpayments related to penalty and interest. To the extent claimant has provided, or later provides, such authority, if the foregoing discussion is not comprehensive enough, I would be happy to expand my response to analyze that authority. In light of the information presently available to me, I trust that my response adequately addresses your request. Should any questions or concerns remain, please do not hesitate to contact me.

RMF:rmf