

M e m o r a n d u m**465.0076**

To: Out-of-State – Auditing (MGR)

Date: May 14, 1987

From: William D. Dunn
Assistant Principal Tax Auditor

Subject: Section 6483 - Offsets

Your memorandums concerning H--- G---, S--- - T--- F--- Corp., and A--- P---, and the utilization of offset provisions, were only recently brought to my attention.

Your questions were, basically, how did the offset provisions apply, given the factual circumstances of each of the above named cases. Since each of the cases involves a slightly different set of facts, I will provide a separate discussion for each.

Before beginning our analysis, we need to keep in mind our administrative late protest procedures, in addition to our refund procedures. Section 6483, "Offsets", provides that the Board may offset overpayments, for a period or periods, against underpayments for another period, or periods. Section 6902 contains refund and credit limitation provisions specifically applicable to determinations. In effect, Section 6902 states that no refund or credit may be approved after six months from the date the determination becomes final unless a claim is filed. This has been interpreted to mean that, within the stated six month period, the entire determination period is open to credit adjustment. Additionally, our late protest administrative procedures allow for offsets to the amount of the determination as long as the credit (offset) does not result in a net refund for the period covered by the determination. We believe that a taxpayer should not be denied the advantage of our late protest procedures simply because the determination was paid, as long as a claim was filed within six months of the date the determination became final.

H--- G---, SY --- XX XXXXXX

In this case an audit was made for the period August 3, 1980 to June 30, 1983. A waiver agreement had been signed that expired on July 31, 1984. The resulting determination for \$XX,XXX.XX, tax and interest, was issued on June 6, 1984. Payments on the determination were made on March 10, 1984, for \$XX,XXX.XX, and June 28, 1984, for \$XXX.XX. On November 14, 1984, the taxpayer filed a claim for refund for 1981 through 1983. The grounds for the claim are that the taxpayer failed to claim bad debts. The claim was filed within six months of the date that the determination became final.

The claim for refund was filed timely for the period 10-1-81 to 6-30-83. For the period from 8-30-80 to 9-30-81, we should allow offsets for any credit developed, regardless of whether the credit was in the same quarter as the deficiency, and regardless of whether the credit item was related to the matter under protest. The total period is taken into account when offsetting credits against debits are applied. Of course, no refund can be made for any periods beyond the three-year statute of limitations if the reaudit results in a credit which exceeds the original determination. The offsets for the period beyond the statutes should be determined first, and then the periods covered by the claim for refund. This should provide the greatest benefit to the taxpayer.

S--- T--- - F--- CORP., SS --- XX-XXXXXX

In this case a determination was issued on January 15, 1986, for \$XXX,XXX.XX, taxes and interest. The determination was issued due to audit of the period January 1, 1982 through December 31, 1984. Two payments have been made. The balance owing as of this date is \$XXX,XXX.XX, comprised of \$XX,XXX.XX tax, \$XX,XXX.XX interest, and \$XX,XXX.XX penalty. There is no additional outstanding liability. The taxpayer filed a claim for refund on June 30, 1986, for \$XXX,XXX in taxes. The grounds of the claim are that this tax was erroneously reported as taxable on their self-assessed sales and use tax returns. All tax returns have been paid as reported. The claim was filed within six months of the date that the determination became final.

The claim for refund was filed timely for the period 4-1-83 to 12-31-84. For the period 1-1-82 to 3-31-83, we should allow offsets for any credit developed, regardless of whether the credit was in the same quarter as the deficiency, and regardless of whether the credit item was related to the matter under protest. My comments made with regard to the H--- G--- account also pertain to this account.

A--- P--- INC., SS --- XX XXXXXX-010

In this case a determination was issued on January 21, 1987, for \$XXX,XXX.XX tax and interest. The determination covers the audit period January 1, 1980 to December 31, 1982. The determination was paid in full on December 31, 1986. The taxpayer filed a claim for refund by letter dated February 20, 1987.

In keeping with our policy, the claim for refund in this case was recognized as a joint petition and a claim for refund of the fully paid determination, since the claim was filed within 30 days of the determination. However, you are correct that the claim is not timely for periods prior to 1-1-84. Accordingly, as explained in Mr. Bystrom's memo of November 25, 1987, the credit can be offset only to the extent of the audit determination.

WDD/smt:0604M

Cc: Mr. Gary J. Jugum
Mr. Donald J. Hennessy
Mr. Glenn A. Bystrom
Audit Review and Refund Unit
Petition Unit

Memorandum

465.0076

To: Out-of-State – Auditing (MGR)

Date: June 14, 1988

From: William D. Dunn
Assistant Principal Tax Auditor

Subject: My Letter of April 29, 1988

It has been pointed out to me that my letter of April 29, 1988, has an error in the last paragraph on Page 3. In that paragraph the date of 4-1-83 should be 1-1-84. I believe this has little consequence with regard to the Avon Products case, however, I have attached a revised memorandum for future reference.

WDD/smt:0659M

Attachment

cc: Mr. Gary Jugum
Mr. Don Hennessy
Mr. Glenn Bystrom
Audit Evaluation & Planning Unit
Audit Review and Refund Unit
Petition Unit