

465.0079

Memorandum

To : Mr. W. Brian Manuel
Supervising Tax Auditor
Refund Section

Date: June 14, 1999

From : David H. Levine
Supervising Tax Counsel

Telephone: (916) 445-5550
CalNet 485-5550

Subject: P--- D--- M---
SN -- XX-XXXXXX-001

This is in response to your memorandum dated June 7, 1999 regarding the applicable statute of limitations under Revenue and Taxation Code section 6902 for a claim for refund. You explain:

“The taxpayer returns in September 1996 for the periods 1990-1996. Payments were voluntarily remitted for tax due on these returns on September 28, 1996 and October 14, 1996 for \$190,842 and \$27,706 respectively. A determination was not issued.

“Taxpayer subsequently filed a claim for refund on May 6, 1997. The claim was not considered timely for payments made to the first quarter 1994 return and all prior return periods. For purposes of refund, we interpreted Section 6902 to mean that the three-year statute begins from the date that the tax was due, not the date that the returns were filed. This interpretation is in accordance with the attached memo dated April 13, 1983. However, given the age of the memo, and the lack of an analysis or specific cite, I would appreciate if you would confirm that this interpretation is current and hence, that the claim was properly handled.

“Secondly, with respect to deficiency determinations, the provisions of Section 6487 provide that the three-year statute of limitations can toll from the date that the returns were actually filed. In following, it seems inequitable that while we are allowed to bill a taxpayer for up to three years from the filing date, we are limited under the above interpretation of Section 6902 to processing a refund based on the due date of the returns....”

I agree you should disregard the memorandum attached to yours; although it is correct, not only does it not have analysis, it has not been annotated. My understanding is that all such non-annotated correspondence in our files was either to be referred for annotation (if it seemed worthy of annotation) or destroyed.

I agree with the August 7, 1997 letter from Senior Tax Auditor William Insalaco attached to your memorandum. Revenue and Taxation Code section 6902 explicitly provides that the three-year statute of limitations for filing claims for refund starts running "from the last day of the month following the close of the quarterly period for which the overpayment was made." So, for example, if a taxpayer self-assesses and pays an amount of tax more than three years from the date the tax was actually due (i.e., the last day of the month following the reporting period for which the tax should have been reported and paid), then at the moment of payment the taxpayer is already barred from filing a claim for refund under the three-year statute of limitations. However, as you understand, the taxpayer still has six more months to file that claim since section 6902 provides an alternate statute of limitations of six months from the date of payment. (In those rare cases where we issue a determination after a voluntary self-assessment for amounts included in that self-assessment, the third statute of limitations of section 6902 would also apply, which allows the filing of the claim within six months of the finality date of the redetermination.)

The Legislature has explicitly provided different statutes of limitations for the issuance of determinations and for the filing of claims for refund. Accordingly, given these explicit differences, it is irrelevant whether they "seem" inequitable. Nevertheless, I believe that the Legislature's scheme for statutes of limitations is entirely reasonable and equitable. The statute of limitations for issuing a determination is eight years if the taxpayer does not file a return. Once a taxpayer files a return, the eight-year statute of limitations no longer applies. Thus, if we were required to issue the determination within three years of the due date even when a taxpayer files a late return, a taxpayer could simply wait until three years had passed and then file a zero return. Under such circumstances, unless we could prove fraud, we would be unable to issue a determination. Accordingly, the three-year statute of limitations for issuing a determination must run from the date of the late return rather than its due date. Contrary to this, in the situation of a claim for refund related to such a return, even if the return is filed more than three years from the due date, the taxpayer is never completely barred from filing a claim for refund since the taxpayer always has another six months from the date of payment to file his or her claim.

DHL/cmm

cc: Mr. Robert Buntjer (MIC:39)
Mr. William Insalaco (MIC:39)