

M e m o r a n d u m

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To : Mr. Robert Wils (MIC:39)
Supervisor, Allocation Group

Date: January 19, 1996

From : John L. Waid
Senior Staff Counsel

Subject: S- -- XX-XXXXXX
Reallocation of Revenues

I am responding to a memorandum dated November 20, 1995, from Mr. John Hadley of the Local Revenue Allocation Section to Assistant Chief Counsel Gary J. Jugum regarding an issue in local tax reallocation procedures. Mr. Hadley asked that the Legal Division respond directly to you.

As we understand it, [M] notified the Local Tax Section, as it was then known, by letter dated March 29, 1993, that the taxpayer was reporting tax under an incorrect Tax Area Code (TAC) and requesting reallocation to the City of [X]. The file indicates that the error was corrected on-line on July 1, 1993. According to Mr. Hadley, however, although the --- --- District Office corrected the TAC, an error in a registration field prevented the on-line correction from going through, so that all periods from the Third Quarter 1993 went to a different jurisdiction. On October 30, 1995, the Local Revenue Allocation Section received a letter to --- District Administrator Frank Goldberg, dated October 25, 1995, notifying the district of the error and requesting reallocation back to Third Quarter 1993. Mr. Hadley indicates that the First and Second Quarters 1995 have been redistributed but is of the opinion that the earlier periods cannot be.

OPINION

Section 7209, enacted in 1959, provides as follows:

“The Board may redistribute tax, penalty and interest distributed to a county or city other than the county or city entitled thereto but such redistribution shall not be made as to amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.”

Section 7209 is interpreted and implemented by Business Taxes General Bulletin 59-12, rev. 1987. Regarding reallocation of local taxes occasioned by discovery of misallocation information contained in Board records, it provides as follows:

“2. WHAT CONSTITUTES KNOWLEDGE OF IMPROPER DISTRIBUTION?”

“[W]here the facts [indicating the probability of an improper distribution] are in the records of the Board, the Board will not be considered to have knowledge of the erroneous allocation until an employee of the Board has examined the documents and questioned the tax allocation.

“In other words, facts actually in possession of the Board do not constitute knowledge of an erroneous allocation unless the taxpayer, an employee or the Board, or some other person questions the correctness of the local tax allocation....”

The above statements answer this question. In the case of information already contained in Board files, the Board obtains such knowledge in the quarter in which a Board employee reviews the file and actually questions the prior allocation. Here, the Board records showed that case was assigned to the district on March 31, 1993 and that it corrected the original error on July 1, 1993, effective April 1, 1992.

The taxpayer's records indicate that the error was cleared on July 1, 1993. There is no indication in the documents available at this time that the Board had any knowledge that the error was not corrected. Consequently, the October 25 letter constitutes a notification in the Fourth Quarter of 1995 of a new error. As a result, based on the information currently available, Section 7209 does not authorize reallocation back further than First Quarter 1995.

JLW:sr

cc: Mr. Larry Micheli (MIC:27)