

**STATE BOARD OF EQUALIZATION**

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October 29, 1996

Mr. A--- C---
Enrolled Agent
XXXX --- ---
---, CA XXXXX

Re: Excess Tax Reimbursement

Dear Mr. C---:

This is in response to your letter dated August 22, 1996, in which you ask how an overage contained in a sales tax accrual account is treated by the Board. In your letter you state:

“As respects sales tax collected by a retailer:

- “1. Can over collection be retained by the taxpayer?
- “2. Can an auditor take the position that an overage in the ‘sales tax’ accrual account is ‘excess tax reimbursement’]?”
- “3. or must auditor prove excess tax reimbursement exists?

“Scenario,

“Taxpayer is a fast food outlet with thousands of transactions per month. Individual price structures plus tax rates cause continuous rounding up or down on individual sales. Cash registers tax computations have been correctly programmed according to Board Sales and Use Tax charts.

“(Correctly, as used above, means: tax was not computed on a transaction which is not subject to tax, tax was not computed on an amount in excess of the amount subject to tax, tax was not computed using a tax rate higher than the rate imposed by law, was not a result of mathematical or clerical errors in computing the reimbursement on the sales tickets.)

“It is my contention that,

- “A. Excess tax reimbursement is not involved here. Reg. 1700(b)(1)
- “B. Taxpayer cannot be made to return ‘overage’ balance in the sales tax account to customers or the State unless excess tax reimbursement is involved. Reg. 1700(b)(2)
- “C. Auditor must prove excess tax reimbursement exists. B of E Field Audit Manual 0417.10. Reg. 1700(b)(2)

Excess tax reimbursement is an amount that was represented by a person to a customer as constituting reimbursement for sales tax which is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the seller. Excess tax reimbursement also includes reimbursement that is computed using a tax rate higher than the rate imposed by law, or when mathematical or clerical errors result in an overstatement of the reimbursement on a billing. (Sales & Use Tax Reg. 1700(b)(1).)

A person who has collected excess tax reimbursement, as determined by the Board, is afforded an opportunity to refund the excess collections to the customers from whom they were collected. If the retailer fails or refuses to make refunds, the excess tax reimbursement collected must be paid to the state plus any applicable interest and/or penalty. (Sales and Use Tax. Reg. 1700(b)(2).)

Auditors may examine sales tax accrual accounts to determine any indications of over-collection of tax; however, an overage is not necessarily excess reimbursement. For example, an overage may have resulted simply from the rounding that occurs by following prescribed reimbursement charts.

If there appears to be excess money contained in a tax accrual account, an auditor will investigate to determine if such amounts constitute excess tax reimbursement. If the auditor determines that these amounts are not excess tax reimbursement, the taxpayer would not be required to return them to the customers nor pay them over to the Board. However, if the auditor determines that such overage constitutes excess tax reimbursement, it would be the taxpayer’s burden to establish otherwise. (*Riley B’s, Inc. v. State Board of Equalization* (1976) 61 Cal.App.3d 610.)

We agree that, if your statement of facts is correct, your client has not collected excess tax reimbursement and is therefore not required to return the “overage” to its customers or pay it to the state. If, however, the auditor were to determine that the facts are other than as stated above, the auditor would need to determine whether or not the “overage” constituted excess tax reimbursement.

The only basis for relief for a person relying on a written opinion from the Board is when that opinion is in response to a written request for advice that discloses all facts, including the identities of the parties. (Rev. & Tax. Code § 6596.) Since you have not identified your client, this letter does not come within the provisions of section 6596.

I trust that the information contained herein satisfactorily answers your questions. If you have need for further information, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: --- District Administrator (--)