

M e m o r a n d u m**460.0141**

To: Mr. J. W. Cornelius
Supervisor, Petition Section

Date: January 8, 1992

From: David H. Levine
Senior Tax Counsel

Subject: C--- S---, Inc.
SC OH XX-XXXXXX

This is in response to your memorandum dated November 17, 1991 regarding the availability of the offset provisions in Regulation 1700 to this taxpayer.

C--- purchased equipment extax and thereafter transferred the equipment to purchasers pursuant to contracts designated as leases. C--- then assigned these "leases" to O---. O--- apparently had been collecting tax measured by the "lease" payments. Upon audit of C---, we concluded that the contracts designated as leases were actually sales at inception and assessed tax against C--- on this basis. An offset was allowed against that assessment with respect to amounts paid by O--- to the state as taxes on the "leases."

The Out-of-State District Office has told O--- to discontinue collecting tax on "lease payments" under the subject "leases." C--- states its belief that O--- will continue to collect and remit tax in order to avoid future problems with the Board. You ask:

"If C--- refuses to pay the remaining liability and O--- continues to collect and remit tax, can amounts reported by O--- still be applied as offsets to C---'s liability even though O--- has been instructed not to collect the tax? If C--- pays the liability, can they receive a refund of future tax payments by O--- through the offset provisions by filing a claim for refund (the regulation states that 'The offset can be made . . . when a refund is claimed')? Is it true that offsets in general can be extended into the future so long as the person seeking an offset may file a claim for refund or has an unpaid liability?"

Once the parties were advised as to the proper application of tax, the offset provisions of subdivision (b)(4) of Regulation 1700 no longer applied. Thus, future amounts reported and paid by O--- may not be applied as offsets against C---'s liability. C--- may not receive a refund of such payments made by O---. It is not true that offsets may generally be extended into the future as long as the person seeking an offset may file a claim for refund or has an unpaid liability. Rather, your memorandum dated October 15, 1991 to Mr. M--- R--- correctly states that such a rule would be inappropriate. As you stated, the tax liability in question here is that of C--- and if further amounts are collected by O--- which are represented as tax, those amounts must either be returned to the customer or paid to the state. They will not be applied to the liability of C---.

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