

**STATE BOARD OF EQUALIZATION**

(916) 445-2242

May 14, 1987

Mr. T--- L. P---
--- & ---
XXX --- --- Street, Suite XXX
--- ---, CA XXXXX

Re: S--- D--- S---, Inc.
SR --- XX-XXXXXX-010

Dear Mr. P---:

This is in response to your letter dated May 4, 1987 to Mr. E. L. Sorensen. You have asked us to confirm that the five statements listed in your letter are correct.

It is our understanding that your five statements are based upon the following facts. Your client, S--- D--- S---, Inc. (S---) received a Notice of Determination from the Board dated October 23, 1986 for the tax due amount of \$217,006.75. This deficiency determination was for the period of August 1, 1977 to September 30, 1980. S--- has filed a petition for redetermination. S--- desires to stop the running of the interest on the previously determined amount by paying it in full prior to the determination becoming final without jeopardizing their right to the redetermination procedure and, if necessary, to the claim for refund procedure.

Our discussion will follow each of the following five statements you have asked us to confirm as being correct.

1. "The payment will not convert the Petition for Redetermination into a Claim for Refund."

We confirm that this statement is correct. It is the Board's position that the petition for redetermination (Revenue and Taxation Code §§6561-6566.) and the claim for refund (Revenue and Taxation Code §§6901-6908.) are two separate and distinct procedures. A determination of tax liability is "...due and payable at the time they become final." (Revenue and Taxation Code §6565.) If a petition for redetermination is not filed within 30 days after service of a Notice for

Determination, the determination becomes final at the expiration of that period (Revenue and Taxation Code §6561.) If a petition for redetermination is filed, the "...order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner upon notice thereof." (Revenue and Taxation Code §6564.) When a payment on a determination is made before it is due and payable, no mechanism is triggered whereby the payment will convert the petition for redetermination into a claim for refund.

2. "The payment of the tax in full will not cause the determination to become final within the meaning of Revenue and Taxation Code Section 6902."

We confirm that this statement is correct. The term "final," as used in Revenue and Taxation Code Section 6902, has the same meaning as it is used in Revenue and Taxation Codes Sections 6561 and 6564. Payment of a determination before it is due and payable will not cause the limitation period in Section 6902 to start running.

3. "Notwithstanding the payment of tax in full, the taxpayer will be entitled to continue its Petition for Redetermination and have an informal hearing before a hearing officer and, if it desires, a hearing before the State Board of Equalization."

We confirm that this statement is correct, provided that the taxpayer has complied with the requirements of Revenue and Taxation Code Section 6562. Section 6562 states in pertinent part:

"If a petition for redetermination is filed within the 30-day period, the board shall consider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing."

4. "After the action by the State Board of Equalization becomes final pursuant to the procedure outlined in No. 3 above, the taxpayer will have six months after such action, or such later date as provided in Revenue and Taxation Code Section 6902, in which to file its Claim for Refund."

We confirm that this statement is correct. Please see our reply to statements 1, 2 and 3.

5. "The payment of the tax in full does not, in any respect, limit the taxpayer's right to include additional grounds in its Claim for Refund or accelerate the date on which the Claim for Refund must be filed."

We confirm that this statement is correct. The payment of the determination before it is due and payable will not limit the taxpayer's right to include additional grounds in its Claim for Refund. We note that the Claim for Refund "...shall be in writing and shall state the specific grounds upon which the claim is founded." (Revenue and Taxation Code §6904.) If specific grounds are not set forth in the claim, the claimant will be barred from raising other grounds when the suit for refund is commenced. (King v. State Board of Equalization (1972) 22 Cal. App. 3d 1006, 1015.)

Furthermore, the payment of the determination in full will not accelerate the date on which the claim for refund must be filed for the reasons stated in our reply to statement 2.

If we can be of any further assistance, please do not hesitate to write us again.

Very truly yours,

John S. Wong
Tax Counsel

JSW:jb