

M e m o r a n d u m

802.0090

To : Mr. Vic Anderson, Supervisor
Petitions Section (MIC:38)

Date: April 28, 1997

From : Pat Hart Jorgensen
Senior Tax Counsel

Subject: *U--- A--- - Section 6483 Offsets*
SY --- XX-XXXXXX-010, -020, -030, -005, -006

This is in response to your memorandum of March 12, 1997 in which you inquire about the application of Section 6483 offsets involving special taxing districts. This question arises in conjunction with a reaudit conducted in accordance with the holding of Sprint Communications v. The Board of Equalization (1995) 40 Cal.App.4th 1254.

As you are aware, the holding in Sprint Communications is that, even though the Board was barred by the statute of limitations from issuing a deficiency assessment for an underpayment of tax in one reporting period, it was proper for the Board to set off that underpayment against the taxpayer's overpayment in another reporting period **provided** that both reporting periods were covered by the taxpayer's claim for refund. The court made it clear that set off was not allowed for an underpayment of tax in a reporting period for which the Board was barred by the statute of limitations from issuing a deficiency assessment if that time barred period is not included in the claim for refund.

As I understand the facts with U---, the situation is somewhat reversed. In this case the taxpayer filed a claim for refund for the entire audit period after a staff audit which resulted in a deficiency of \$16 million. The claim for refund, which was not timely for the entire period covered in the audit, was filed before the assessment had become final. Applying the rationale of Sprint, staff allowed offsets attributable to the otherwise "time-barred" claims for refund against all of the periods included in the audit period. As you have correctly concluded, in accordance with the holding of Sprint under section 6483, an overpayment in any one reporting period of a timely issued deficiency may be offset against an underpayment in a different period of the deficiency even if the claim would otherwise be time barred. However, as was espoused in Sprint, a time-barred overpayment outside of the period covered by a timely issued deficiency remains time-barred.

The subsidiary issue which has arisen in the recomputation of U---'s liability is the manner in which taxes attributable to special taxes are to be offset. You explain that the reaudit was computed to apply state and Bradley Burns taxes against deficiencies for special taxes. It is your position that offsets can only be made within categories of taxes. For example

overpayments of Bradley Burns taxes can only be used to offset deficiencies of Bradley Burns taxes and **cannot** be used to offset state sales tax or special district taxes. In addition, overpayments of special district taxes in a county must be segregated to ensure that the overpayments attributable to each district is offset against the deficiency attributable to the district for which the overpayment is made. For example assume that Sacramento has two separate taxing districts, one for jails and one for the arts, in computing an offset those taxes overpaid to the taxing district funding the jails can **only** be used to offset deficiencies attributable to the jails taxing district. This is in accordance with the conclusions of a memorandum from Gary Jugum, dated February 3, 1995, regarding the issue as to whether special taxing districts could be combined for interest calculation purposes. Mr. Jugum responded that:

“We are of the opinion that it is illegal to combine the districts for interest calculation purposes. The effect would be to treat the districts as if their taxes were enacted under one law, as is the case with the statewide sales and use tax.”

In this memorandum it was further explained that all taxes administered and enforced by the Board are done so under statutory authority. Specifically section 7101 for the state's sales and use taxes; section 7204 for the Bradley-Burns local tax; and section 7270 for District taxes. Each of these taxes are, as a matter of fact and law, levied individually under authority found in the applicable chapters of the tax code pertaining to business taxes. Accordingly, while all of these taxes are centrally enforced and administered by the Board, they are **individually** imposed.

The taxes collected by the Board are in the nature of trust funds which the Board administers on behalf of each respective levying district. Both the State Administrative Manual (§ 7430) and the California Manual of State Funds (Fund No. 094) specify that the state taxes, Bradley-Burns local taxes, and District taxes are Fiduciary/Trust funds held in a trust capacity for individuals, private agencies, and state and local entities. Each fund must therefore be specially administered for the benefit of the entity imposing the tax. In addition, the Board administers and enforces the Bradley-Burns local taxes and each district's tax under a contract executed with the Board. (Rev. & Tax §§ 7204, and 7270.) The Board is, thus, contractually obligated to act in good faith and fair dealing to ensure that each taxing entity receives the revenues properly due it.

In sum, the state sales tax, the Bradley-Burns local tax and each of the district taxes are imposed by and on behalf of each authority, individually, and the revenue derived therefrom must go to the entity imposing the tax. The Board may not offset one entity's tax against another's.

PHJ:cl

cc: Mr. Glenn A. Bystrom (MIC:43)
Mr. Gary J. Jugum
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