

Add Section 6483.5 to the Sales and Use Tax Law to allow the Board to offset an unapproved prior period credit claimed on a return against a non-final liability under specified circumstances.

Source: Honorable Bill Leonard

Existing Law

Under existing law, whenever an overpayment of tax, interest, or penalty is made to the Board, a claim for refund must be filed within a specified period of time in order to recover any amounts overpaid. The law requires that a claim for refund be in writing, and that it must state the specific grounds upon which it is founded.

This proposal would allow the Board to allow as an offset against a non-final liability, an amount equal to the amount of an unapproved credit or deduction claimed or netted on a return for a valid overpayment made in a prior period, when the taxpayer is barred by the statute of limitations for filing a claim for refund for that overpayment, and liability for that unapproved credit is assessed in the determination establishing the non-final liability.

This Proposal

This proposal is seeking to provide some equitable relief to taxpayers who 1) erroneously claim credit for valid overpayments from prior periods on subsequent returns, 2) fail to file a timely claim for refund for the overpayments, and 3) are assessed tax and interest on those credits or deductions claimed on the basis that no claim for refund was timely filed, and 4) are barred from filing a valid claim for refund because of the limitation period specified in law is expired.

Currently, when the Board determines that a taxpayer has erroneously claimed a credit or deduction for an otherwise valid overpayment made in a previous period on a subsequent return, the Board may not allow that credit or deduction, and may make an assessment for the amount of tax attributable to that credit or deduction. The taxpayer's administrative remedy is to file a claim for refund for the overpayment that was made in the earlier reporting period. However, if the period for which a timely claim for refund has expired, the taxpayer has no administrative remedy. The taxpayer is billed for the tax, associated interest, and possible penalty on the otherwise valid overpayment.

This proposal was prompted by a specific case that is currently under review in the administrative process in which a taxpayer discovered many manual credit memos issued to its customers for sales tax in connection with returned merchandise, invoicing errors, and nontaxable sales. Because of the high turnover in the taxpayer's tax department, these credit memos were overlooked, and the credit for the sales tax wasn't claimed on the returns during which the

credits were issued to customers. Instead, the taxpayer claimed credit for these overpayments on subsequent returns. In the course of an audit, a Board auditor disallowed the credits on the basis that a claim for refund for such an overpayment should have been filed for recovery of the amounts. Unfortunately, at the time the audit was being conducted, the statute of limitations had expired for filing a claim for refund for those overpayments. Consequently, the credits claimed on the subsequent returns were disallowed, and the taxpayer was assessed tax and interest on the amount of credits claimed.

This proposal would seek to remedy such situations by allowing the Board to allow as an offset against a non-final deficiency determination, an amount equal to a prior period overpayment when 1) the liability for the credit or deduction claimed is included as part of the deficiency determination, 2) the credit or deduction was claimed or netted on a return that was due within the statute of limitations period for filing a claim for refund for the overpayment, 3) the taxpayer would have been granted a refund or credit for the overpayment had a timely claim for refund been filed at the time the overpayment was made, and 4) the date the Board mails its deficiency determination is beyond the period in which a timely claim for refund could be filed for that overpayment.

Section 6483.5 is added to the Revenue and Taxation Code to read:

6483.5. (a) In making a determination, the board may allow as an offset an amount equal to an overpayment made with respect to a return or returns for periods prior to the period of the determination if all of the following apply:

(1) The taxpayer erroneously claimed or netted a credit, deduction, or exclusion on a return or returns included in the period for the determination.

(2) The board has disallowed the amount of the credit, deduction, or exclusion as part of a deficiency determination under Section 6481 that has not become final.

(3)(A) The credit, deduction, or exclusion should have been claimed with respect to a return or returns for periods prior to the period of the determination, and the taxpayer's failure to claim the credit, deduction, or exclusion resulted in an overpayment or overpayments on such return or returns, or

(B) The taxpayer should have filed a claim for refund for an overpayment or overpayments arising from a credit, deduction, or exclusion that applies to a return or returns for periods prior to the period of the determination.

(4) The board agrees that a refund or credit of the amount of overpayment would have been approved if a valid claim for refund had been filed pursuant to Sections 6902 and 6904.

(5) The date the board mails the notice of the deficiency determination described in paragraph (2) is beyond the limitation period for which a valid claim for refund for that overpayment may be filed pursuant to Section 6902.

(b) For purposes of this section, "an amount equal to an overpayment" shall be limited to the amount of the overpayment, the determined deficiency attributed to the disallowed credit, deduction, or exclusion, or the total deficiency, whichever is less.

(c) For purposes of this section, the offset allowed under this section must arise from the same transaction or transactions as the transaction or transactions for which the taxpayer erroneously claimed the credit, deduction, or exclusion.

(d) The amount allowed as an offset shall not include any interest that may have otherwise been allowed under Section 6907.

(e) This section shall apply to either of the following:

(1) Any deficiency determination that has not become final as of the effective date of this section.

(2) Any deficiency determination mailed on or after the effective date of this section.