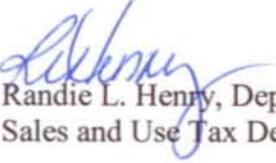


Memorandum

To : Mr. Ramon J. Hirsig
Executive Director (MIC 73)

Date: March 4, 2010

From :  Randie L. Henry, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : Board Meeting, March 23 – 25, 2010

Item N**Administrative Agenda****Proposed Revisions to Audit Manual Section 0434.30,**

Application of Overpayments to Expired Liabilities but within the Claim for Refund Period

Attached are proposed revisions to Audit Manual (AM) section 0434.30, *Application of Overpayments to Expired Liabilities but within the Claim for Refund Period*. We request your approval to place the proposed revisions on the Administrative Agenda for Board approval. These revisions incorporate the California Court of Appeals decision in *Sprint Communications Company v. State Board of Equalization (1995) 40 Cal.App.4th 1254*, which determined that a timely filed claim for refund opens up the entire claim period to the assessment of underpaid tax as well as overpaid tax.

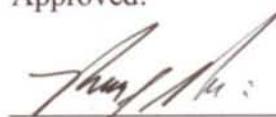
The proposed revisions were previously provided to Board Members, and posted at <http://www.boe.ca.gov/sutax/staxmanuals.htm> on the Board's website for two months to solicit comments from interested parties. We received no comments from the public.

If you have any questions regarding this request, please let me know or contact Mr. Jeff McGuire at 324-1825.

Attachment: Copy of revised AM section 0434.30

RLH:nvm

Approved:



Ramon J. Hirsig
Executive Director

Item N
3/23-25/10

cc: (all without attachments)
Mr. Stephen Rudd (MIC 46)
Ms. Freda Orendt (MIC 47)
Mr. Jeff McGuire (MIC 92)
Mr. Kevin Hank (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

**APPLICATION OF OVERPAYMENTS TO EXPIRED LIABILITIES
BUT WITHIN THE CLAIM FOR REFUND PERIOD¹ 0434.30**

A timely filed Claim for Refund opens up the entire claim period to the assessment of underpaid tax as well as overpaid tax. This is true even if the statute of limitations for part or all of the claim period has otherwise expired. As such, even though the Board of Equalization is barred from issuing a deficiency determination for the expired periods, auditors should apply any underpayments discovered to the verified overpayments up to the point the claim is reduced to zero. Underpayments may be offset against any overpayment period within the claim, not just the period in which the underpayment occurred. However, if an underpayment occurred in an expired period that is not included in the Claim for Refund, it cannot be used to offset any overpayments.

In the following examples, a timely Claim for Refund was received for the period 1Q02-2Q04. Subsequently, based upon the volume of records required to validate the claim, it was decided to audit the taxpayer's records and a waiver for the period 3Q04 & 4Q04 was obtained to protect the statute of limitations. Column C represents the allowable refund measure for each period and Column F represents the additional debit measure disclosed in the audit. Column G is the net debit or credit measure. Column H displays the periods with net credits that may be offset by debit measure from other periods. Credit measure should be offset in the earliest periods first. For example, the credit disclosed in 2Q02 (-\$10,000) should be applied to the 1Q02 liability (\$30,000) and not subsequent liabilities. Doing so minimizes the impact of fluctuations in quarterly debit and credit interest.

In Example 1, total debit measure of \$790,000 is disclosed for the claim period. After the claimed credit amounts are offset by the additional debit measure disclosed, a net credit measure of \$10,000 is remaining for the claim period. This amount is included in Column J, "Measure per Audit" and will be refunded to the taxpayer.

In Example 2, total debit measure of \$830,000 is disclosed for the claim period. Of that amount, \$800,000 is offset by available credits. The balance of \$30,000 cannot be assessed or offset and is excluded from Col K, "Measure per Audit."

¹ California Court of Appeals decision *Sprint Communications Company v. State Board of Equalization* (1995) 40 Cal.App.4th 1254

SCHEDULE: 12 A
012-345678
Auditor: J. Smith
01/10/09

EXAMPLE #1: Period of Timely Claim for Refund is 1/1/02 to 6/30/04.

A	B	C	D	E	F	G	H	I	J	K
REF	PERIOD	CREDIT MEAS. <12C>	DEBIT MEAS. <12D>	DEBIT MEAS. <12B>	TOTAL DEBIT MEAS. (D+E)	NET MEAS. (C+F)	CREDITS AVAILABLE TO OFFSET OUTLAWED DEBITS	OUTLAWED DEBITS	OFFSETS	MEASURE PER AUDIT
1	1Q-02	-100,000	60,000	70,000	130,000	30,000		30,000	-30,000	0
2	2Q-02	-20,000	10,000	0	10,000	-10,000	-10,000		10,000	0
3	3Q-02	-80,000	10,000	30,000	40,000	-40,000	-40,000		40,000	0
4	4Q-02	-50,000	110,000	10,000	120,000	70,000		70,000	-70,000	0
5	1Q-03	-50,000	10,000	60,000	70,000	20,000		20,000	-20,000	0
6	2Q-03	-220,000	10,000	30,000	40,000	-180,000	-180,000		180,000	0
7	3Q-03	-30,000	60,000	140,000	200,000	170,000		170,000	-170,000	0
8	4Q-03	-90,000	120,000	10,000	130,000	40,000		40,000	-40,000	0
9	1Q-04	-40,000	10,000	10,000	20,000	-20,000	-20,000		20,000	0
10	2Q-04	-120,000	20,000	10,000	30,000	-90,000	-90,000		80,000	-10,000
Claim Period Total		-800,000	420,000	370,000	790,000	-10,000	-340,000	330,000	0	-10,000
11	3Q-04	-50,000			0	-50,000	0	0		-50,000
12	4Q-04	-220,000			0	-220,000	0	0		-220,000
13	1Q-05	-30,000			0	-30,000	0	0		-30,000
14	2Q-05	-150,000			0	-150,000	0	0		-150,000
15	3Q-05	0			0	0	0	0		0
16	4Q-05	0			0	0	0	0		0
17	1Q-06	0			0	0	0	0		0
18	2Q-06	0			0	0	0	0		0
19	TOTALS	-1,250,000	420,000	370,000	790,000	-460,000	-340,000	330,000	0	-460,000

There is a net refund for the claim period. All debits may be offset and the net credit amount for the claim period is subject to refund or offset to periods still open under the statutes.

The difference between the totals of Column C and Column F must be equal to either a credit amount or zero (0). It cannot be a debit amount.

The difference between the total of Column C and Column F must equal Column K for the Claim Period (1Q02-2Q04).

The totals in Column K reflect the credit allowed after applying all offsets as well as that portion of the refund for which either a waiver of limitation was secured or the periods are still open under the three year statute.

SCHEDULE: 12 A

012-345678

Auditor: J. Smith

01/10/09

EXAMPLE #2: Period of Timely Claim for Refund is 1/1/02 to 6/30/04.

A	B	C	D	E	F	G	H	I	J	K
REF	PERIOD	CREDIT MEAS.	DEBIT MEAS.	DEBIT MEAS.	TOTAL DEBIT MEAS.	NET MEAS.	CREDITS AVAILABLE TO OFFSET OUTLAWED DEBITS	OUTLAWED DEBITS	OFFSETS	MEASURE PER AUDIT
		<12C>	<12D>	<12B>	(D+E)	(C+F)				
1	1Q-02	-100,000	60,000	70,000	130,000	30,000		30,000	-30,000	0
2	2Q-02	-20,000	10,000	0	10,000	-10,000	-10,000		10,000	0
3	3Q-02	-80,000	10,000	30,000	40,000	-40,000	-40,000		40,000	0
4	4Q-02	-50,000	110,000	10,000	120,000	70,000		70,000	-70,000	0
5	1Q-03	-50,000	10,000	60,000	70,000	20,000		20,000	-20,000	0
6	2Q-03	-220,000	10,000	30,000	40,000	-180,000	-180,000		180,000	0
7	3Q-03	-30,000	60,000	140,000	200,000	170,000		170,000	-170,000	0
8	4Q-03	-90,000	120,000	10,000	130,000	40,000		40,000	-10,000	0 (1)
9	1Q-04	-40,000	10,000	10,000	20,000	-20,000	-20,000		20,000	0
10	2Q-04	-120,000	20,000	50,000	70,000	-50,000	-50,000		50,000	0
Claim Period Total		-800,000	420,000	410,000	830,000	30,000	-300,000	330,000	0	0
11	3Q-04	-50,000			0	-50,000	0	0		-50,000
12	4Q-04	-220,000			0	-220,000	0	0		-220,000
13	1Q-05	-30,000			0	-30,000	0	0		-30,000
14	2Q-05	-150,000			0	-150,000	0	0		-150,000
15	3Q-05	0			0	0	0	0		0
16	4Q-05	0			0	0	0	0		0
17	1Q-06	0			0	0	0	0		0
18	2Q-06	0			0	0	0	0		0
19	TOTALS	-1,250,000	420,000	410,000	830,000	-420,000	-300,000	330,000	0	-450,000

(1) Offsets can only be applied to debits using credits within the claim period. The available credits during the claim period totalled \$300,000 and the debits disclosed were \$330,000. The remaining debit measure of \$30,000 cannot be assessed due to the statute of limitations. The measure of tax will only include post claim period credits and debits.

The difference between the total of Column C and Column F during the claim period must be equal to either a credit amount or zero (0). It cannot be a debit amount. In the example above, the \$30,000 remaining debit amount on Line 8 was eliminated because there was no remaining credit measure in the claim period.

The difference between the total of Column C and Column F will not equal Column K for the claim period (1Q02-2Q04). The totals in Column K reflect the credit allowed after applying all offsets as well as that portion of the refund for which either a waiver of limitation was secured or the periods are still open under the three year statute.