465.0000 REMEDIES OF TAXPAYERS

(a) REDETERMINATIONS

465.0010 **Applications of Credit.** The following applies to determinations and the application of credit:

(1) A credit for a different period may properly be offset against a determination which is not final. An offset does not require that a notice of determination be final. (See section 6483.)

(2) The statute of limitation may bar the assessment and collection of any sums, but it does not obliterate the right of the Board to retain payments already received when they do not exceed the amount which might have been properly assessed and demanded.

(3) The application of a credit to an existing liability is a procedural matter, and the Board is not required to grant a hearing on how a credit is applied. 12/3/93.

465.0012 **Interested Party—No Right to Overpayment.** A person permitted to file a petition as an ''interested party'' under section 6561 is not necessarily entitled to any amounts ultimately determined to have been overpaid. For example, if a fully-paid determination is redetermined to zero, the interested party filing the petition would normally not be issued a refund of the amounts overpaid. To do so would be to determine that the interested party had the right to the overpayment rather than just a direct interest in the determination. The only conclusion made when the interested party was permitted to file the petition was that he/she had a direct interest in the matter. 10/2/89.

465.0014 **Limitation Period—Correction of Notice of Redetermination.** The Board issued a determination against a taxpayer on April 25, 1990. The taxpayer petitioned the determination and, after an adjustment was made to the tax liability, a Notice of Redetermination dated January 24, 1994 was issued. That Notice redetermined the amount of tax due, but a computer operator input error was made on the interest portion of redetermination resulting in an overall credit balance. The error in the calculation of interest seemed to indicate that, although an amount of tax was redetermined against the taxpayer and it had not made any payment toward that amount, the taxpayer was entitled to a refund. The taxpayer filed no claim for refund nor was any amount ever refunded by the Board on this erroneous credit balance. The interest error was thereafter discovered and the taxpayer was notified that the Board intended to collect the amount of tax redetermined, plus interest as required by law. The taxpayer claimed that the statute of limitations had expired and the Board had no legal basis to reissue the redetermination.

The statute of limitations does not apply to the above situation and, even if it did, the Board is not barred from collecting the correct amount due. The determination in this case was issued on April 25, 1990 for the period of April 1, 1985 through December 31, 1987, well within the statutory period (the taxpayer had not filed returns). In this case, the taxpayer knew that there was a tax deficiency owed for unpaid taxes. Likewise, the taxpayer knew, or should have known, of the error in calculating interest which resulted in a credit balance since the taxpayer had not made any payment on the deficiency. Had taxpayer believed the credit balance to have been correct, it would have presumably filed a claim for refund of the amount of that credit balance. However, the filing of such a claim would have triggered the Board's review which would have resulted in the Board correcting the mistake. The taxpayer did not file such a claim.

The taxpayer owes the amount of tax reflected in the Notice of Redetermination with interest thereon in accordance with law. No further determination is required. 1/23/97.

465.0015 **Limitation Period—Section 6596.** A taxpayer may claim relief from tax liability determined before the effective date of section 6596 (1/1/85) if the claim is filed before the liability becomes final. If it should become final, it would be necessary for the taxpayer to pay the liability in full and file a claim for refund. The Board may consider claims for relief of liability based on erroneous written Board advice even if the liability became final before the effective date of section 6596 as long as there is some unexpired period for which the taxpayer can file a claim for refund under section 6902. 12/30/85.

465.0017 **Person Directly Interested—Section 6561.** A predecessor sold a business to a successor who subsequently defaulted on the purchase price. The predecessor filed suit and obtained a court order for appointment of a receiver. The receiver sold the business and, except for the liquor license, the proceeds of the sales were distributed to creditors. A notice of successor liability was issued against the successor and the Board placed a withhold on the liquor license to prevent its transfer since it was the only remaining asset available to satisfy the notice of successor liability.

The predecessor filed a petition for reconsideration of the notice of successor liability issued to the successor, contending that he qualifies as an interested party since he is the ''directly benefited creditor.'' The predecessor will receive the proceeds from the sale of the liquor license.

Under the facts described, the predecessor is a person directly interested in the notice of successor liability issued against the successor. Any amounts remaining from the liquor license sale proceeds, after payment of the determination, will be available to satisfy the liability the successor owes to the predecessor. Thus, the predecessor may file a petition for reconsideration and may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties. 10/2/89.

465.0020 **''Preliminary'' Hearing.** The ''hearing'' referred to in section 6563, Revenue and Taxation Code, is the Board hearing on a petition for redetermination, and not the preliminary hearing which may be held for the purpose of accommodating taxpayers at the most convenient location and reducing the controversy to the basic facts in issue. A preliminary hearing in no way prohibits taxpayers from having a Board hearing if one is desired. 1/5/61.

465.0025 **Taxpayers' Rights Advocate—Effect of Stay.** The language of section 7083 ''Applicable statute of limitations shall be tolled during the pendency of a stay'' means that while the action is stayed, all applicable statutes of limitation are held in abeyance or tolled. For example, a taxpayer will have additional time to file a petition for redetermination. The taxpayer must be notified when the stay is lifted that the statutes of limitation are again applicable and that the taxpayer must comply with the time limits prescribed by law. 5/9/90.

465.0030 **Withdrawal of Petition for Redetermination.** At a preliminary hearing on a taxpayer's petition for redetermination, the audit staff orally stated that the petitioner might be liable for additional tax on manufacturing aids. The staff indicated its intention to ascertain the amounts of such tax by further review of petitioner's records. The petitioner then sent a letter to the Board's headquarters' staff to withdraw its petition for redetermination. Thereafter, the Decision and Recommendation of the hearing officer was mailed to the petitioner, which directed the audit staff to make a reaudit to determine the amount of the additional tax with respect to manufacturing aids. Subsequently, the headquarters' staff sent a letter to petitioner notifying petitioner of a proposed increase in the determination for use tax on manufacturing aids.

The taxpayer contends that since its petition for redetermination has been withdrawn, the determination cannot now be increased.

There is nothing in the Sales and Use Tax Law which expressly authorizes or expressly prohibits withdrawal of a petition for redetermination. The Board, as a matter of administrative practice, does not allow petitions to be withdrawn. For every petition which is filed, a notice of redetermination is ultimately issued by the Board even if the taxpayer has indicated a desire not to pursue the matter any further. No petition for redetermination is simply dropped without a redetermination by the Board. If the Board allowed petitions to be withdrawn without redetermination, the original determination would therefore never become final and could never be collected. Since petitioner could not withdraw its petition, petitioner's attempt to do so is merely a waiver of attendance at any future hearings. (Petitioner will not be bound by this waiver. If petitioner wishes to have a Board hearing; one will be granted.)

The waiver of attendance at the Board hearing does not prohibit the Board from asserting a valid claim for increase or from increasing a determination. section 6563 provides that the Board may increase a

determination at any time before it becomes final provided only that a claim for the increase is asserted at or before the Board hearing. The occurrence of a Board hearing is merely a limiting factor and not a condition precedent to asserting the increase. That is, if a Board hearing is held, the claim for increase must be asserted at or before the hearing. However, if a Board hearing is not held, the claim for increase may be asserted and the determination may be increased at any time before the determination become final.

In the above situation, although petitioner attempted to withdraw its petition; a redetermination has not been issued and the matter has not become final. Furthermore, a Board hearing has not as yet been held. Accordingly, the staff's letter to the petitioner is a timely claim for increase. 6/28/83.

465.0031 **Withdrawal of Petition for Redetermination.** The withdrawal of a petition for redetermination does not prohibit the Board from increasing a determination within the following time frames. If a Board hearing is held, the claim for increase must be asserted at or before the hearing. However, if a Board hearing is not held, the claim for increase may be asserted and the determination may be increased at any time before the determination becomes final, provided the limitation of section 6563 has not expired. Under section 6561, once a petition has been timely filed, the original determination does not become final. Under section 6564, the decision of the Board on the petition becomes final only after notice of redetermination is issued. If the Board allowed petitions to be withdrawn without redetermination, the original determination would therefore never become final and could never be collected. 6/28/83.

(b) REFUND.

(1) GENERALLY

465.0035 **Assignment of Refunds.** Tax refund warrants must be issued with only the taxpayer as the payee. The Board cannot honor a power of attorney which contains an assignment provision by which the claimant purports to assign the total refund of sales or use tax to another person. 4/6/90.

465.0040 **Illegal Collection.** Section 6901 permits refunds where tax ''has been paid more than once or has been erroneously or illegally collected or computed.'' Where a jeopardy determination is issued against a purported partnership and a lien is recorded on one of the purported partner's real estate, a protested payment by the purported partner is involuntary and coerced. He is entitled to a refund under section 6901 upon a showing that he did not, in fact, have an interest in the business even though the tax is clearly due because the coerced payment constitutes an ''illegal collection'' within the meaning of the refund statute. 9/4/64.

465.0050 **Offsets Against Nonfinal Liabilities.** A pending refund may be offset against a nonfinal determination. Although section 6901 requires the Board to refund any amount not offset against taxes then due and payable, it is not necessary that a determination be final for the taxes thereon to be ''due and payable.'' In *People* v. *Buckles*, 57 Cal.App.2d 75 (1943), the court said: ''This does not justify a holding that such taxes were 'not due and payable' . . . because as a matter of plain fact they were taxes which the vendor had failed to pay but which he became obligated to pay under the action when the taxable sales were made.'' A determination does not create a new obligation or liability but merely is a determination by the Board of the amounts the taxpayer had failed to pay. 7/28/92.

465.0056 **Offsets to Refunds—''Due and Payable.''** Some taxpayers who have made overpayments of sales or use tax object to the delay in issuing a refund, while nonfinal items representing underpayments are being considered. They oppose the offset of the overpayment against the nonfinal underpayment on the grounds that section 6901 says overpayments shall be offset against ''amounts then due and payable,'' and allege that nonfinal items are not due and payable. They rely on the fact that determinations are ''due and payable'' when they become final.

The language governing the meaning of due and payable is in section 6451, which states, ''The taxes imposed by this part are due and payable to the Board quarterly on or before the last day of the month next succeeding each quarterly period.'' Therefore, sales and use taxes are due and payable when they are required to be reported, and if, upon audit, an underpayment of reported amounts is discovered and an

assessment is made, the amount of the tax assessed was due and payable on the due date of the return on which the tax should have been reported. That is why interest begins to accrue on the due date of that return.

Even when there is a petition for redetermination, when the determination becomes final and thus due and payable under section 6565, the interest is nevertheless calculated from the date the tax was due and payable under section 6451. The use of the term ''due and payable'' in the context of a determination means that, until it is final, efforts to collect funds in the hands of the taxpayer or third parties on behalf of the taxpayer are stayed. Although collection action has been stayed, the Board has determined that there is an underpayment and there has been no administrative decision overturning that determination. Section 6483 contemplates the use of offsets on both notice of determination which have been issued as well as any unpaid self assessed taxes. 8/25/94.

465.0058 **Partial Payment Claims for Refund.** The Board of Equalization received a timely refund claim for partial payments that were applied against a final Board-assessed liability. The payments had been applied to interest and penalty because the tax portion of the liability was already paid in full. The grounds presented in the claim for refund were confined to audit issues that resulted from the determination of the tax.

With respect to partial payments that are applied to interest and/or penalty assessments, the grounds for refund claims must pertain to one or more of the following: 1) the propriety of the imposition of interest or the subject penalty; 2) the proper measure on which such interest accrues or on which the penalty is assessed; or 3) some statutory basis for claimed relief from the interest and/or penalty assessments.

Once the tax assessment portion of a final Board-assessed determination has been fully paid, any subsequent partial payments of interest and/or penalty assessments should only be applied to the outstanding interest and/or penalty assessments. The application or reapplication of partial payments in a way that extends or reopens the statute of limitations with respect to claims for refunds pertaining to claimed overpayments of tax assessments is an impermissible violation of the Board's constitutionally mandated duty to enforce the prompt payment of public tax revenues. 5/12/03. (2004–1).

465.0060 **Refund to Customer.** A refund to a construction contractor will not be denied where the contractor refunded to the customer only the tax measured by the difference between the gross contract price and the taxable material cost. Under the rule in the Decorative Carpets case, the California Supreme Court indicated that a taxpayer, under similar circumstances, could have secured a refund by returning to its customer the amount of the refund sued for. It is not required that the taxpayer refund the total amount of tax reimbursement collected before any refund may be had. 4/13/64.

465.0062 **Refund of Sales Tax Paid on Exempt Transaction.** A licensed auto dealer wants to export a new auto overseas which it will purchase from a new car franchised dealer. The franchised dealer is required by the factory to collect amounts as sales tax and license fees on all sales of vehicles at wholesale or retail. The vehicle will be picked up at the franchise dealer's location by a PUC licensed trucking company and taken directly to the port and loaded on a boat.

An amount paid to the retailer by the purchaser itemized as sales tax is not imposed by the state on the purchaser. It is a tax imposed on the retailer. The purchaser has no standing to file a claim for the refund with the Board for such amounts since the purchaser made no payments of sales tax to the Board. Instead, the retailer is the only person who may file a claim for refund of sales taxes which the retailer believes it overpaid. When a retailer has collected reimbursement for sales tax and the retailer claims it overpaid to the Board, the Board will not grant the refund unless the retailer refunds any such reimbursement to the purchaser. (Regulation 1700(b)(2).) In this case, only the new car franchise dealer may make a claim for refund of sales taxes to the Board. 5/10/95.

465.0064 **Refund to Person Making Overpayment.** A demand is made on the surety company for $2,000 which is the amount paid to the Board. Subsequently, the trustee for the taxpayer sent the Board a

check for $3,666.90 in payment for the liability owed by the taxpayer. This resulted in an overpayment of $2,000.

Under section 6901 a refund can only be made to the person who made the overpayment. As the overpayment in this case did not occur until the trustee paid the $3,666.90, it is the trustee to whom the Board has the authority to pay the refund. There is no statutory authority to pay a surety unless it is the surety's payment which causes the overpayment. 8/17/79.

465.0065 **Refund of Tax Incorrectly Collected on Rental Receipts When Transaction is a Sale at Inception.** A taxpayer requested a refund of taxes incorrectly collected and reported on rental receipts on a contract designated as a lease which was actually a sale at inception. The taxpayer is entitled to a refund only if the payments he has made exceed the amount he should have paid as provided in Regulation 1641 with respect to the sale at inception, taking into account any interest due for late payment of such amount. 8/22/97. (M98–3).

465.0066 **Refund of Tax Paid to a Section 6015 Retailer.** If an agent of a section 6015 retailer, after prepayment of tax to the retailer, uses the property instead of selling it, a refund is due on the difference between the retail sales price on which tax was computed and the cost of the property to the agent. Also, if the property is destroyed, a refund would be allowed for the total amount paid by the agent to the section 6015 retailer. 8/9/71.

465.0074 **Reliance on Written Advice—Identifying Taxpayer.** A taxpayer's representative wrote a letter to the Board's legal staff regarding the application of tax to its client's operations without identifying the client's name. The Board's response to the representative's letter did not come within the provisions of section 6596 since the client's name was not identified to the Board.

The representative subsequently wrote another letter which identified the client in the previous letter in order that the client may rely on the written advice the representative received from the Board.

Letters falling within the parameters of section 6596 are never ''retroactive'' to the date of any other correspondence. Thus, the taxpayer may not rely on previous correspondence from the Board to an unidentified taxpayer even if the factual situation in the letter to the unidentified taxpayer is identical to the situation of the identified taxpayer. This is true even though the representative now states that the taxpayer was the unidentified person in the previous correspondence. If the taxpayer had wanted an opinion coming within section 6596 in response to its first letter, the client had to have been identified in that request. 2/16/96.

465.0076 **Section 6483—Offsets.** Section 6483, ''Offsets,'' provides that the Board may offset overpayments, for a period or periods, against underpayments for another period, or periods. Section 6902 contains refund and credit limitation provisions specifically applicable to determinations. In effect, section 6902 states that no refund or credit may be approved after six months from the date the determination becomes final unless a claim is filed. This has been interpreted to mean that, within the stated six month period, the entire determination period is open to credit adjustments. Accordingly, the administrative procedure is to allow for offsets to the amount of a paid determination as long as the credit (offset) does not result in a net refund for the period covered by the determination regardless of whether the credit is related to an issue in the determination, as long as a claim was filed within six months of the date of the determination. In other words, the filing of claim within six month period allows any credit subsequently developed to be applied to periods which would ordinarily be beyond the three year statutory period. Offsets will be allowed regardless of whether the credit was in the same quarter within the deficiency and regardless of whether the credit item was related to the matter in the deficiency determination.

In applying any credit, the offset should be first applied to the periods in the determination which are beyond the three year statute of limitations. This procedure will provide the taxpayer with the greatest benefit. 7/27/96. (Am. M99–1).

465.0077 **Section 6902.2 Refund.** Shareholders of an S-Corporation may not claim a section 6902.2 refund where the S-Corporation claims the Manufacturer's Investment Credit (MIC) and then ''passes through'' the MIC to its shareholders. Section 6902.2 only authorizes a refund to a person that has paid sales tax reimbursement to a retailer or use tax on a purchase of property for which MIC credit may be allowed. Where an S-Corporation (and not the shareholders) purchases and pays tax on tangible personal property, the section 6902.2 refund is only available to the S-Corporation and not the shareholders since the shareholders would not have paid tax on the S-Corporation's purchases. 1/18/96.

465.0078 **Section 6902.2 Refund.** Section 6902.2 authorizes a refund for an amount that would otherwise be allowed pursuant to the Manufacturer's Investment Credit (MIC). When an S-Corporation claims the MIC, it gets the benefit of only 33 percent of the MIC while the shareholders also receive a benefit from the MIC. Only the 33 percent of the MIC available to the S-Corporation is subject to the section 6902.2 refund; no portion of the MIC that would benefit the shareholders is subject to refund under section 6902.2.

In addition, where an S-Corporation purchases tangible personal property, the section 6902.2 refund for tax paid by the S-Corporation is only available to the S-Corporation and not the shareholders since the shareholders would not have paid tax on the S-Corporation's purchases. 7/15/99. (2000–1).

465.0079 **Statute of Limitation.** If a taxpayer self-assesses and pays an amount of tax more than three years from the date the tax was actually due, then at the moment of payment the taxpayer would already be barred from filing a claim for refund under the three-year statute of limitation in section 6902. However, section 6902 provides an alternate statute of limitation of six months from the date of payment. Thus, a claim would still be timely if it is filed within six months from the date of payment, even though it was paid more than three years after the due date. 6/14/99. (2000–1).

465.0080 **Suspended Corporation.** A corporation suspended under Revenue and Taxation Code §23301 for nonpayment of franchise tax is incapable of maintaining a claim for refund for sales taxes before the State Board of Equalization. Its corporate powers, rights and privileges are suspended by this section. 6/25/65.

(2) CLAIMS FOR REFUND

465.0095 **Ability to File Claim.** A common carrier purchased bunker fuel for use in its common carrier operations and sometimes issued its vendor exemption certificates prior to the vendor's billings. These certificates were inexplicably ignored and the vendor billed the carrier for sales tax reimbursement which the carrier paid. The vendor paid the sales tax to the Board on the sales to the carrier. During an audit of the carrier, it sought a credit for ''taxes'' it paid to its vendor on transactions it alleged were exempt under Revenue and Taxation Code section 6385. The carrier relied on *Delta Airlines, Inc.* v. *State Board of Equalization* (1989) 214 Cal.App.3d 518 in arguing that since Delta in that case had standing to sue, the carrier also had standing to obtain the credit for the ''taxes'' it paid its vendor on exempt transactions. The Board disagreed.

The vendor did not rely on exemption certificates in order to report the sales as exempt, or partially exempt, from sales tax. Neither did the carrier since it paid sales tax reimbursement to the vendor with respect to these transactions. Since the vendor treated itself as a retailer making sales that were fully taxable, the carrier does not have standing to file a claim for refund on its own behalf by virtue of exemption certificates not relied upon by the retailer.

Unlike the situation in Delta Airlines, this carrier's vendor did not treat the sales as exempt pursuant to exemption certificates. When a retailer makes a retail sale of fuel in California to a purchaser, such as this carrier, who will use that fuel both inside and outside California, the applicable tax is a sales tax and not a use tax. With respect to the transactions involved here, there is no basis to treat the carrier as a ''retailer.'' The carrier did not issue exemption certificates to the vendor upon which the vendor relied; the vendor reported its own sales tax liability on these sales. The carrier paid sales tax reimbursement to the vendor, but this was not sales tax. The payment of sales tax reimbursement does not provide the carrier with

standing to file a claim for refund for sales tax paid by another person. The vendor has standing to file a claim for refund for any taxes it believes were overpaid. 8/21/90; 9/11/90.

465.0100 **Amendment of Claim After Limitation Period.** A timely claim for refund of tax based on exempt sales in foreign commerce may not be amended after the limitation period has run to make an additional claim based on exempt sales to the United States. Since no timely claim for refund was filed with respect to sales to the United States, and the subject matter of the timely claim for refund gave no notice of such grounds, the Board is barred from approving the claim on such grounds under section 6902, and the taxpayer has waived his right to a refund on such grounds under section 6904. 9/11/59.

465.0105 **Authorized Signatures.** Board Hearing Procedure Regulation 5057 says a claim for refund ''shall be signed by the taxpayer, his authorized representative or any person directly interested.'' In a sales tax transaction, the tax is imposed on, and paid by, the seller. Although the purchaser may reimburse the seller for the seller's sales tax liability (usually itemized as ''sales tax''), the purchaser is not the taxpayer, nor is the purchaser an interested party within the meaning of Regulation 5057. Thus, the purchaser has no standing to file a claim for refund of sales tax paid by the seller. 3/1/94.

465.0110 **Claim for Refund.** Taxpayer filed a timely claim for refund of taxes voluntarily paid in 1987 on rental receipts from an aircraft it had purchased ex-tax in 1985, leased back to the seller, and then resold two months later, subject to the existing lease. The taxpayer's 1987 payments were not timely for a purchase made in 1985, and thus did not constitute an election to report tax based on fair rental value even though the payments were measured by rental receipts. The amount of tax paid was clearly less than the amount due on the purchase of the aircraft, and tax was due on the purchase price.

Even though the Statute of Limitations prevented the Board from assessing the remainder of the tax on the 1985 purchase, no refund is due on tax paid erroneously measured by rental receipts. Any claim will be denied based on *Owens Corning Fiberglass Corp.* v. *State Board of Equalization* (1974) 39 Cal.App.3d 532. The court upheld the Board in that case because at the time of payment the Board had the right to issue a deficiency assessment, even though it did not do so, and the amount of tax owed was greater than the amount paid. Thus, there was no overpayment to be refunded. 12/26/90.

465.0115 **Consumer Claiming Refund.** A consumer who has paid sales tax reimbursement to a vendor cannot claim a refund. The refund claim can only be filed by the retailer. 4/7/95.

465.0117 **Date of Overpayment.** A taxpayer erroneously charged tax reimbursement on a nontaxable sale and reported the tax on its second quarter 1992 return. It subsequently determined that the sale was not taxable and timely filed a claim for refund. It issued a credit or refund of the tax reimbursement to its customer in the third quarter 1996. The date of overpayment for purposes of the refund is the second quarter 1992 not the third quarter 1996. The tax is on the retailer and the date of overpayment is the date on which it erroneously remitted the overpayment of the tax. 1/31/97.

465.0120 **Effect of Denial on Second Claim.** Once the Board has denied a claim for refund and 90 days has elapsed from the mailing of the notice of denial, the Board is without jurisdiction to entertain a second claim for the same tax upon a separate ground even though the three-year limitation period for filing claims has not yet run. 3/13/68.

465.0136 **Lemon Law—Arbitration Not Required.** Under the provision of the ''Lemon Law,'' (section 1793.25 of the Civil Code), arbitration is not required before the Board is authorized to make a refund of the sales tax to the manufacturer or distributor of the vehicle as long as the specific requirements in the Civil Code are satisfied. 10/4/88.

465.0138 **Lemon Law—Limitation Period.** The limitation period under section 6902 with respect to reimbursement paid by manufacturers to the customer for sales tax pursuant to the Lemon Law begins on the date payment is made to the consumer.

Also, manufacturers are not entitled to reimbursement of sales tax from the Board when restitution from the vehicle was originally made prior to January 1, 1988, the effective date of the ‘‘Lemon Law.’’ 10/4/88.

465.0142 **Limitation Period.** When the last day for waiving the statute of limitations (Revenue and Taxation Code section 6488), filing a petition for redetermination (Revenue and Taxation Code section 6561), filing a claim for refund (Revenue and Taxation Code section 6902), filing a suit for refund (Revenue and Taxation Code sections 6933 and 6934), or issuing a determination of sales and use taxes due (Revenue and Taxation Code section 6487), is computed by excluding the first day and including the last of the specified number of days and when the last day of that number is a Saturday, Sunday, or holiday, the action will still be timely if performed on the first day following which is not a Saturday, Sunday, or holiday. 2/17/77.

465.0143 **Limitation Period.** As a result of the decision in *Holland Furnace Co.* v. *State Board of Equalization* (1960) 177 Cal.App.2d 672, 675–76, the Board interprets section 6902 to provide that a claim is timely if filed within six months of the payment of the tax which is the subject of the claim, without regard to whether the tax was paid pursuant to a determination or was self assessed. 1/18/96.

465.0150 **Limitation Period.** The three year limitation period under section 6902 also applies to payments made as a result of determination. Accordingly, a claim filed August 9, 1989, for a determination which covers a period from April 1, 1984 to March 31, 1987, is timely for payments made for periods beginning July 1, 1986. 6/06/91.

465.0160 **Limitation Period.** A claim for refund filed within six months from the date that a determination becomes final or within six months of the date the determination was paid, is timely only for those amounts included in the determination. However, it is not a timely claim for refund for tax amounts overpaid with returns filed more than three years before the date the claim was filed. This is true even though the tax overpaid on the returns occurred during the same periods that were included in the determination. 7/29/93. (Am. M98–3; Am. 2003–2).

(Note: Refer to section 6483, ‘‘Offsets’’ and Annotation 465.0076 for a possible offset allowance.)

465.0180 **Limitation Period.** The taxpayer may file a refund claim within six months from the date of the overpayment regardless of the fact that the statute of limitations would have barred collection of the tax by the state had the person not made the payment voluntarily. 6/21/57.

465.0200 **Limitation Period.** Overpayment based on Federal Excise Tax. The overpayment of sales tax with respect to amounts of Federal retailers’ excise tax which it is anticipated will be paid to the Federal Government at a later date occurs in the quarterly period in which the payment is made to the Federal Government. Until that time there is no overpayment of sales tax. Therefore, the limitations period for filing a refund claim for such sales tax overpayments commences to run one month after the close of the quarterly period. 6/8/59.

465.0210.150 **Limitation Period—Denied Claim for Refund.** A claim for refund was denied by the Board on September 10, 1990. The taxpayer had 90 days after the mailing of the notice of denial to file suit for refund under section 6933. Since taxpayer did not file a suit for refund the Board lost jurisdiction on or about December 10, 1990.

The purpose of the limitation provision is to prevent stale claims and to require taxpayers to support claims of overpayment in a timely manner. Whether or not the claim may have been valid is irrelevant after the limitation period has run. 9/27/91.

465.0210.175 **Limitation Period—Section 6902.4.** Section 6902.4 suspends the statute of limitations for filing a claim for refund during the period of a qualified financial disability, but cannot revive a claim that would have been barred under section 6902 if filed on January 1, 2000 (the effective date of section 6902.4).

For example, on March 31, 1999 the Board issues a determination for the period January 1, 1996 through December 31, 1998 to a taxpayer on a quarterly reporting basis. The taxpayer pays the amount of the determination on May 1, 1999 without filing a petition. On June 1, 2000, the taxpayer files a claim for refund of this payment along with documentation establishing that he/she was financially disabled within the meaning of section 6902.4 for the period May 15, 1999 through May 15, 2000.

The claim would have been timely under section 6902 had it been filed within 6 months of the date the determination became final or within 6 months of the date of the claimed overpayment. The claim here was not filed within either of these two alternative six-month periods, nor would it have been filed within either of them had it been filed on January 1, 2000. Thus, for the two alternative six-month periods specified in section 6902, the claim is barred and cannot be revived by section 6902.4.

A claim is also timely under section 6902 if it is filed within three years from the last day of the month following the close of the quarterly period for which the overpayment was made. The claim here was filed within this three-year period for the second quarter of 1997 and later periods. The claim for these periods is timely without regard to section 6902.4.

The claim for 1996 and the first quarter of 1997 was not filed within the three-year period provided by section 6902 and is thus barred unless section 6902.4 extends the claim period. A claim for the first three quarters of 1996 would not have been timely even if it had been filed on January 1, 2000. Section 6902.4 cannot revive the claim for these quarters and it is thus barred. However, had the claim for the fourth quarter of 1996 and the first quarter of 1997 been filed on January 1, 2000, it would have been timely under the three-year limitations period of section 6902. This means that section 6902.4 is relevant for these two quarters and extends the otherwise applicable limitations period for the entire period of taxpayer's qualified financial disability (even the portion before January 1, 2000). Taxpayer was financially disabled for one year. The limitations periods for filing a claim for the fourth quarter 1996 and the first quarter 1997 is thus extended to January 31, 2001 and April 30, 2001 respectively. Since the claim was filed before these dates, it is timely under section 6902.4 for these two quarters. 8/28/01.

465.0210.250 **Limitation Period—Suit for Refund.** The Board mailed a denial of a claim for refund to the taxpayer on August 14, 1995. The taxpayer failed to file a suit for refund by November 12, 1995, within the 90-day statutory period provided in section 6933. As a result, the taxpayer has no legal enforceable claim against the State for a refund of the taxes in question. This conclusion conforms with the opinion issued by the Attorney General on July 10, 1942, which specifically provides that, in the absence of statutory authority, the Board does not have jurisdiction to reconsider its denial of a refund claim after the expiration of the 90-day statutory period for filing a suit for refund. Accordingly, the Board may not reconsider its denial of the taxpayer's claim for refund. 2/5/97.

465.0211 **Payment Made to Stop the Running of Interest.** When a petition for redetermination is properly and timely filed, a payment made to stop the running of interest does not convert the petition to a claim for refund nor does the determination become final for purposes of section 6902 and thereby cause the start of the running of the statute of limitations. The petition process continues as though no payment had been made. A claim for refund must be in writing and must state the specific grounds upon which the claim is based. Thus, a claim may contain grounds not raised in a prior petition on the same dispute. 5/14/87.

465.0213 **Prepayment of Sales Tax.** When a person is required to prepay sales tax on its sales of fuel in California, it must prepay sales tax with respect to all such sales. Even if that person makes a retail sale of fuel that is exempt from sales tax, it nevertheless must prepay the sales tax with respect to that sale. However, a person who has made prepayments either directly or to the person from whom the fuel was purchased may obtain a refund or credit if the fuel is exempt from sales tax pursuant to section 6352, 6357, 6381, and 6396. (See section 6480.6 and 6480.21). 8/3/92.

465.0214 **Protective Claims for Refund.** The Board cannot act upon a claim for refund until a final determination has been paid (*State Board of Equalization* v. *Superior Court* (1985) 39 Cal.3d 633). Thus, when a taxpayer pays a liability through a payment plan with the intent of filing a claim for refund it should

do so y filing claims for refund within six months after each installment payment is made in order to protect the taxpayer's rights. These periodic claims are treated as protective claims for refund ''to protect against the expiration of the statute of limitations,'' pursuant to section 6902. 9/18/95.

465.0215 **Six-Month Limitation.** Assuming the three year statute of limitation provided for in section 6902 has passed, a claim for alleged over payment made in response to a Notice of Determination issued pursuant to the sales and use tax law must be filed within six months of the date the determination became final, or within six months of the date of overpayment, whichever is later, in order to be valid. If the amount alleged to be overpaid involves partial payments, a claim for refund of each partial payment must be made within six months of the date it was made. These limitations apply regardless of whether payments were made voluntarily or involuntarily. 2/1/91.

(Note: Changes in limitations for involuntary collection as a result of section 6902.3, in effect January 1, 1997.) (Am. 2000–2).

465.0216 **Statute of Limitations—Mobile Homes.** The statute of limitations begins to run for the purposes of making refunds with respect to sales tax or use tax on the sales of mobile homes as follows:

(1) When sold by a dealer registered with the Department of Motor Vehicles (DMV) the statute of limitations commences to run with the due date of the return of the dealer. For example, a mobile home is sold on September 29, 1976. Tax for the third quarter of 1976 is due and payable October 31, 1976. Accordingly, a claim for refund would have to be filed on or before October 31, 1979, in order to be timely. Since this is a sales tax transaction, the refund claim would have to be filed by the retailer and the amount refunded paid by him/her to the customer.

(2) An individual sells a mobile home on September 29, 1976, to another individual. The transaction is subject to use tax and payable by the purchaser to DMV at the time the application for change of registration is filed with DMV. The mobile home is required to be registered within twenty days after date of sale, but DMV automatically allows an additional ten days before applying penalties. Accordingly, when timely application for transfer of registration is filed with DMV, the liability incurred in September 1976, and, accordingly, the claim for refund should be filed not later than October 31, 1979.

If the purchaser made a late application for transfer of registration to DMV and paid the tax to DMV, then the claim for refund should be filed on or before October 31, 1979, unless extended beyond that date by reason of the six month extension for determination or payment.

If the purchaser made the application to DMV and the Board billed the purchaser for use tax, the Board would send the taxpayer a return showing the due date of the return as the last day of the month following the month in which the return is mailed, if that is within one year from the date of purchase. If the return is not filed, then a determination may be issued. Under these circumstances, the Board has set a period for the taxpayer which begins on the last day of the month following the mailing of the return and the claim for refund should be filed on or before three years from that date.

(3) If the Board learns of a person who buys a mobile home and does not pay use tax to DMV or the Board and more than one year has elapsed from the date of purchase, the Board treats the purchaser as being on an annual basis and bills him/her for tax, interest, and penalty as though the return was due on or before the last day of the month following the close of the year (counting the month of purchase as the first twelve months) in which the purchase was made. Accordingly, the taxpayer would have until and including October 31, 1980, to file a claim for refund on the mobile home purchased on September 29, 1976. 1/7/80.

465.0217 **Timeliness.** A taxpayer filed a claim for refund on May 1, 1992, for the period January 1, 1987, through June 30, 1989, with respect to purchases it made from a supplier. In August 1992, the Board's staff acknowledged having received the taxpayer's claim. In September 1994, the Board's staff advised the taxpayer that the Board was not accepting the claim as valid since the taxpayer was not the proper party to file the claim. The supplier or seller was the proper party since it paid the sales tax to the state.

Although it is unfortunate that there was a delay of over two years in notifying the taxpayer that the claim was not being accepted, it does not appear that any rights were impaired due to that delay. Even if the taxpayer had been advised immediately that it was not the proper party to file the claim, it would have already been too late for the seller to file a claim for refund. The statute of limitation period under section 6902 had passed for all periods except the second quarter 1989. Also, the alleged overpayments were all made for periods prior to the second quarter of 1989. Under the facts, it was already too late for the seller to file a claim for refund for any of the taxes at issue. Therefore, the taxpayer cannot be regarded as being harmed by the Board's delay and no ''equitable'' concerns need be considered. 3/23/95.

465.0218 **Claim for Refund—Timeliness.** Where an audit liability beyond the three year statute of limitation is paid in four installments made over a period of five months, and the taxpayer subsequently obtains information which makes him/her believe some of the liability was not due, he/she must file a claim for refund for each payment made and the claims must be filed within six months of the date of the payment to which it pertains. 10/29/90.

465.0219 **Unclaimed Refund Checks.** The legislature declared that Senate Bill 263 (Stats. 1993, Ch. 1060, section 4(d)) constitutes the sole remedies for refund or reimbursement of district taxes which were declared unconstitutional. Thus, when a refund check is returned unclaimed, the Unclaimed Funds statutes must be followed regarding safeguarding the check and any requirements regarding further attempts to contact the claimant. However, when the refunds and reimbursement period ends, they must be redeposited into the Senate Bill 263 impound account and transferred to the county.

Because the Senate Bill 263 directs what must be done with any money remaining in the impound account, this provision operates as a statute of limitation in lieu of the provision of the Unclaimed Fund Laws. All of the money not refunded or reimbursed belongs to the county as of that date. Unclaimed refunds do not need to be separately accounted for because the claimant's rights are extinguished. 6/9/95.

465.0350 **Refund of Security.** Security posted to insure payment of taxes was applied to pay taxes. Some of the taxes to which the security was applied were over three years past due at the time the business closed. The security was applied on March 4, 1985, but was effective May 31, 1983, the date the taxpayer's permit was closed out. On March 25, 1985, the taxpayer filed a claim for refund for the taxes which were paid by application of the security. For purposes of determining the statute of limitation, the date of the actual application of the security governs rather that the effective date of the payment. Since the claim was filed within six months from the date of application, the claim is timely. 6/25/85.

(c) NOTICE OF DETERMINATION

465.0470 **Authority to Sign Waiver of Limitation.** If a taxpayer's employee who has apparent authority to sign a waiver of limitations signs the waiver, but does not have actual authority to sign the waiver, the waiver is nevertheless valid if the Board in good faith relied on the employee's ostensible authority to its detriment. 8/4/94.

465.0530 **Board Asserted Increases.** There is no formal requirement for the Board to assert an increase to a notice of determination. The Board may first assert an increase at a hearing in any manner which will notify the taxpayer, including an oral announcement. 1/7/93.

465.0545 **Claim for Increase in Determination.** As the result of a preliminary hearing following the filing of a timely petition protesting the findings of an audit, the staff counsel ordered that a reaudit be made to give effect to certain additional evidence presented by the taxpayer. During the reaudit, the auditor found grounds for asserting additional tax. The reaudit report was dated July 13, and pursuant to section 6563, the Board asserted a claim for increase in a letter dated July 23. However, on July 17 the Board received from petitioner payment in full of the amount of the original determination, together with a notice the petition was withdrawn. By letter dated August 3, petitioner contested the Board's authority to seek the additional amount disclosed by the reaudit because the petition had been withdrawn before a claim for increase had been issued and this action closed the matter.

The only constraint on the assertion of an increase in a determination is that it be issued before the determination becomes final and that it be asserted at or before a Board hearing and before the limitation period of section 6563 expires. These requirements were met. The petitioner's unilateral action does not close the matter. Once a petition for redetermination has been filed, the determination is held in abeyance pending some further action by the Board. That action is a redetermination. The withdrawal of the petition merely permits the Board to redetermine without further review. It does not itself cause a redetermination or require the Board to redetermine immediately. 2/14/85.

465.0560 **Determination Mailed to Incorrect Address.** The application for seller's permit in the taxpayer's file dated May 6, 1985 shows that the taxpayer's home address as XXX Curtis, which was the correct address. However, an audit report dated September 12, 1986 identifies the taxpayer's new mailing address as XXX Citrus, and on February 5, 1987, the Board mailed the Notice of Determination to the Citrus address.

On October 1997, the taxpayer claimed that it only recently discovered that a determination had been issued. Since there was no evidence that the taxpayer was responsible for the incorrect address on the determination, and there is no evidence that the mailed determination was actually received by the taxpayer, the Board cannot establish that it gave written notice of its determination to the taxpayer as required by section 6486. As such, the audit liability was cancelled. 12/1/97. (M99–1).

465.0575 **Exemption Certificates—After Expiration of Statute.** The sale of property to a watercraft operator who had not submitted an exemption certificate was disallowed in the audit of the vendor. At the time of sale the purchaser held a permit and filed sales and use tax returns, but closed out the next year. The vendor filed a timely petition and succeeded in obtaining an exemption certificate from the buyer, resulting in the elimination of the transaction from the amount determined. The original sale occurred in 1968, and the certificate was accepted in March, 1972, after the statute of limitations had run on the period in which the sale and use of the property had been made. A subsequent audit of the buyer disclosed that the purchase was in fact taxable and the certificate should not have been issued. The Board has no recourse against the buyer for tax on this transaction since the late acceptance of an exemption certificate does not extend the statute of limitations, and the period of taxability had expired before it became known that the sale was taxable. 12/26/72.

465.0592 **Innocent Spouse.** A liability established as the result of filing nonremittance returns is not subject to the relief provisions of section 6456. section 6456 is applicable only when a spouse established ''that he or she did not know of, and had no reason to know of, that understatement . . . ''Since there was no ''understatement'' of tax as defined in section 6456(a)(2), the spouse is not eligible for relief. 2/26/96.

465.0600 **Joint Venture Returns.** Several construction contractors formed a joint venture for the purpose of performing a construction project. The joint venture applied for and received a seller's permit. Returns were filed. The contractors later formed other joint ventures for performing other construction projects. The later joint ventures continued to file returns under the permit number of the first joint venture. The Board audited the later joint ventures and found deficiencies. The later joint ventures were regarded as having failed to file returns, thus the eight-year statute of limitations applied. The returns filed under the permit were not returns filed by the later joint ventures. 11/5/93.

465.0825 **Limitation for Issuing Determination—Bankruptcy.** A taxpayer filed Chapter 11 bankruptcy on January 31, 1992. The Board initiated an audit which resulted in a Notice of Determination issued to the taxpayer on April 30, 1992, for pre-petition periods. With each of the tax returns filed by the taxpayer for the first quarter of 1992 through the third quarter 1993, the taxpayer attached a letter requesting that, ''pursuant to section 505(b) of the Bankruptcy Code, a determination as to any unpaid liability that the estate may have pertaining to this return be made as soon as possible.''

Although section 505(b) states that a ''request'' is to be made by a ''trustee,'' *In re Goldblatt* (1989) Bankruptcy Reporter 522, has held that either the debtor-in-possession or the trustee may invoke the section 505(b) procedure. Therefore, the time limitations specified in the code section are applicable for the Board's ''notification'' to the taxpayer of any additional tax due for those periods for which the taxpayer

submitted its ‘‘request’’ pursuant to section 505(b), unless such return is fraudulent or contains a material misrepresentation (e.g., if the Board, within 60 days, notifies the estate that an audit is pending, it has 180 days to complete the examination or such additional time as the court may allow).

The general time limitation stated in section 505(b) has passed. While the Board may audit the taxpayer for those periods, it may issue a determination only if the Board finds that a return is fraudulent, or contains a material misrepresentation. 7/31/95.

465.0827 **Limitation Period.** A determination was issued on December 28, 1978 for the period of October 1, 1975 to March 31, 1977. The determination was not petitioned and became final. As a result of further examination, it was found that the taxpayer owed additional tax for the fourth quarter in 1975, which was beyond the statute of limitations. Also, the taxpayer was entitled to credits in the first and second quarters in 1976 which were within the statutes of limitations. The net result was an increase in tax due.

Section 6902(a) contains limitation provisions specifically applicable to determinations which allow debit and credit adjustments within the entire period covered by a determination as long as such a claim is filed within six months of the date the determination becomes final. However, such adjustments are subject to section 6563 which states that the Board may decrease or increase the determination before it becomes final. Since the determination was final, no net increase was possible. However, the tax increase (debit) in the fourth quarter of 1975 may be offset against the tax decrease (credits) in the first and second quarters of 1976, up to the amount of credits, thereby resulting in an unchanged determination. 6/26/79.

465.0830 **Limitation Period—Withdrawn Partner.** When the Board conducts an audit of a partnership and discovers that a general partner has previously withdrawn, the audit of the partnership is controlled by the limitation period specified in section 6487 (three years). If a determination is issued against the partnership, the withdrawn partner is secondarily liable for the partnership liability accruing after his or her departure only for the audit periods controlled by section 6487.2 (four years). The withdrawing partner will be liable for any taxes due from the partnership while he or she was a partner plus the partnership liability for periods specified in section 6487.2. 2/3/95.

465.0831 **Limitation Period—Withdrawn Partner.** Section 6487.2 may not be utilized to issue a determination against a partner who has withdrawn from a partnership for audit periods for which the partnership itself cannot be held liable unless, of course, the withdrawn partner (and not the partnership) was the ‘‘seller’’ for those audit periods. If the withdrawing partner is the ‘‘seller,’’ section 6487 is applicable. 2/3/95.

465.1000 **Person Authorized to Sign Waiver of Limitation.** If a corporation wishes to avoid the necessity for an officer to sign a waiver of limitation, it may issue a power of attorney authorizing another person or persons to sign a waiver. The auditor can then copy the power of attorney and accept the signature of an authorized person on the waiver. 11/28/94.

465.1500 **Shortened Statute of Limitation—Section 6487.05.** A retailer located out of state ships all property from its out-of-state location directly to customers by common carrier. The retailer has maintained a sales office in California for several years. The retailer was not familiar with the California Sales and Use Tax Law and included an indemnification clause in its contracts that the buyer is responsible for any sales or use tax. For this reason, it has not obtained a California seller’s permit.

The taxpayer’s inquiry relates only to the first requirement of section 6487.05, that the retailer be located outside this state. The provisions of section 6487.05 are intended to apply to retailers whose only liability was for failing to collect and remit use tax to the Board. Under these circumstances, if the retailer’s only liability is incurred under sections 6203 (collection of use tax) and 6204 (use tax required to be collected is a debt of the retailer), the retailer is regarded as located outside the state even though it has a sales office in California. Therefore, if all sales made by the out-of-state retailer to California customers occur outside California, and the retailer does not owe any sales tax, the retailer is regarded as located outside this state for purposes of section 6487.05. However, if the retailer incurs any sales tax liability, the Board will not

regard it as located outside this state for purposes of section 6487.05, and the retailer will not qualify for the shortened statute of limitations period provided by that provision. 3/21/95.

465.1542 **Statute of Limitation.** When a person has conducted business using the seller's permit of a predecessor in the business, the returns should be regarded as returns filed by the actual seller. Therefore, any audit of the actual seller should be limited to the three-year statute of limitations of section 6487 and the penalty for failure to file returns does not apply. 3/10/82.

465.1543 **Statute of Limitations.** A taxpayer underpays the taxes due for one or more periods. Subsequently, the taxpayer discovers the error and corrects it by overpaying the tax due in following periods. An audit is performed, but the statutory limitation periods include the period of overpayment, but not the period of under payment. The taxpayer wishes to offset the overpayments against deficiencies noted in the periods under audit.

No offset is permissible. When a limitation period prevents collection activities by a creditor, it does not prevent a debtor from making payments against an overdue but acknowledged debt. Where an overpayment in one period is clearly payment for an amount due in an earlier period which has become barred by the statute of limitations, the overpayment may be properly applied to the underpayment for such periods. There is no requirement that such payments be applied to underpayments for subsequent periods under audit. 8/5/94.

465.1544 **Statute of Limitations.** The Board issued a Notice of Determination against a taxpayer as a partnership. The taxpayer filed a timely petition and the case proceeded to an Appeals Conference. The Appeals Section recommended denial of the petition, the taxpayer requested a Board hearing, and the Board's staff then discovered that the partnership had, in fact, incorporated on September 2, 1988, which was prior to the period covered by the Notice of Determination. The question now arises whether the three-year or eight-year statute of limitations applies to issuing a determination against the corporation.

When an entity operates a business using the seller's permit of a predecessor, the returns should be regarded as filed by the actual seller. Thus, a three-year statute of limitations applies for the period of operation of the corporation. The Notice of Determination issued in the names of the partnership is not notice of liability owed by the corporation. 12/19/96.

465.1547 **Statute of Limitation—Section 6487.05.** Section 6487.05 limits the statute of limitation to three years with respect to certain out-of-state retailers who would otherwise be subject to the eight year statute-of-limitations. Under subsection (a) of section 6487.05, a ''qualifying retailer'' is a retailer that meets all of the five conditions set forth in the statute. In order to meet the requirements of conditions (3) and (4) of section 6487.05, a retailer must voluntarily register with the Board without having been contacted by the Board or its agents regarding the provisions of section 6203 and the out-of-state retailer must register with the Board after January 1, 1995, the effective date of section 6487.05.

Thus, retailers that registered before January 1, 1995 do not come within the protection of section 6487.05 and the eight year limitation period specified in section 6487 applies to such out-of-state retailers who had not filed returns. 3/16/96.

465.1548 **Statute of Limitations.** Section 6563 does not bar the issuance of a new determination for a period otherwise open under the statute of limitations. The purpose of section 6563 is to permit an increase in a determination, notwithstanding the fact that the statute of limitations may otherwise have run. It is not a limitation on the limitations period. Effectively, it expands the limitation period to the extent that the Board has otherwise acted within the limitations period. 10/25/91.

465.1549 **Statute of Limitations.** An opinion was requested as to the proper application of the statute of limitations where a taxpayer with no permit files a return covering specific periods.

The language in the first sentence of section 6487 supports the position that, at any time within a three year period following the filing of a return, additional tax may be asserted for the period covered by the return.

Applied literally, this could mean that if a return is filed covering a ten year period during which no returns were filed, the Board could wait three years and then issue a determination covering thirteen years. In the same situation, if the taxpayer did not file a return, the determination could only go back eight years. It is noted that section 6487 was amended in 1951 to add the eight-year limitation period in cases of failure to file a return. It is not believed that the thrust of the amendment to limit the period to eight years can be avoided by a taxpayer filing a return which is then used as the basis for keeping the early periods open for an additional three years. 11/21/73.

465.1550 **Statutory Period—Unpermitized Division.** The definition of ''person'' in section 6005 includes a corporation, but does not include unincorporated divisions, which are nothing more than internal sub-units not having a separate legal life. A corporation having some divisions holding permits and filing returns, and one division which is neither, is considered to be a ''person'' that has filed a return for those periods for which returns were filed, since each person is only required to file one timely return per period. The statute of limitations for the issuance of a deficiency determination for any liability of the unpermitized division is three years in the absence of conclusive evidence that the taxpayer's failure to report the liability of this unit was due to fraud or intent to evade the law. The eight year limitation period applies only if a ''person'' fails to file a return. 1/29/69.

465.1600 **Time for Payment of Use Tax.** Pursuant to a contract, a chemical company agrees to sell to an oil company all of its needs for a particular consumable chemical for a period of ten years at a fixed contract price. The parties agreed that, during the first four years, the buyer would be billed for only a portion of the product delivered. The remainder, which was for product delivered and not billed, would be billed on a deferred basis to be paid over the remaining contract period. They also agreed that upon the happening of a certain contingency the price may be adjusted downward.

The time for reporting the use tax is at the end of the quarterly period in which the sale and purchase occurred irrespective of the billing procedure agreed to in the contract. The measure of tax is the contracted price until such time as the contingency becomes a reality and the price is actually reduced. 11/10/71.

465.1900 **Validity of Waiver of Limitation.** An auditor who originally spoke to the taxpayer was referred to the taxpayer's accountant. Later, when the auditor presented the waiver of limitation document to the accountant, he asked the accountant whether or not the accountant had the authority (i.e., a power of attorney) to sign the waiver on the taxpayer's behalf. The accountant indicated that he did. The waiver of limitation document states, in part, that ''Signatory if not a corporate officer, partner, or owner certifies under penalty of perjury that he holds a power of attorney to execute this document.'' In addition to the above certification on the waiver form, the accountant signs the taxpayer's monthly sales and use tax returns as ''taxpayer's controller.'' Furthermore, in the taxpayer's correspondence with the Board concerning a problem on a sales and use tax return, the letter was signed by the accountant as ''C.P.A. Controller.''

Under the facts described, the taxpayer is now estopped from denying the authority of the accountant to sign the waiver of limitation form. If a third person reasonably believes an agent to possess the power to bind his principal and the agent has been held out to the third person by the principal as empowered to transact the principal's business, the principal cannot later claim the authority was not conferred against the third parties affected thereby. In this instance, the accountant as taxpayer's agent was held out as person who had authority to deal with the Board regarding the audit. Additionally, he has consistently been held out as a corporate officer (the controller). Finally, the waiver form was signed after the accountant indicated he had the authority to do so. 4/5/83.

465.2450 **Waiver Absence of Permit Number.** The absence of the taxpayer's permit number on a signed waiver of limitation does not invalidate the waiver if the taxpayer has only one permit. Also, the fact that the waiver form was filled out by a Board auditor is immaterial. 12/13/94.

465.2600 **Waiver of Limitations.** A Board auditor requested a taxpayer to sign a waiver for certain periods the auditor intended to review. On August 14, 1990, the taxpayer signed a waiver extending the period limitations for the last two quarters of 1987 and all quarters of 1988 through April 30, 1992. The

waiver was forwarded to the Board which received it on August 17, 1990. In August 1991, a different auditor signed the waiver and sent a copy to the taxpayer. The taxpayer contends that the waiver is not valid because it was not signed by a Board representative until after the expiration of the statute of limitations or, alternatively, because it was not signed within a reasonable amount of time after submission to the Board.

If a taxpayer executes and sends a waiver to the Board prior to the expiration of the period of limitations pursuant to the Board's request to do so, the taxpayer has ''consented'' within the meaning of section 6488. The waiver in this case is valid because it was executed by the taxpayer pursuant to the Board's request and received by the Board prior to the expiration of the period of limitation. 2/20/92.