

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

320.0050

6/2/78

In the Matter of the Petition)
for Redetermination Under the)
Sales and Use Tax Law)
)
)
Petitioners)

DECISION AND RECOMMENDATION
OF HEARING OFFICER

This matter came on regularly for hearing in Sacramento, California, on November 10, 1977, before William E. Burkett, Hearing Officer.

Appearances

For Petitioner: Name ---

For the Board: Mr. Charles Warner, District Principal Auditor
Mr. Robert L. Buntjer, Field Auditor

Protested Item

The petitioner has filed a petition for redetermination of a tax deficiency determination issued against it for the period October 1, 1974 to February 19, 1977, inclusive. The taxpayer's protest is limited to the denial of credit interest on overpayments determined to have been made for separate reporting periods. The files do not contain a separate computation of the amount of the credit interest disallowed and reference must be made to the audit report to obtain this figure.

Contentions of Taxpayer

- 1) The denial of credit interest is improper because the overpayments were made in an attempt to correct underpayments occurring for prior periods.
- 2) In any event it was error to deny an offset for the overpayments in computing the interest due on the underpayments.

Summary of Petition

The taxpayer is a corporation that engaged in the business of operating a number of retail food markets. It is one of several related corporations that operated some --- separately permitted stores, all of which were audited at one time and all of which have a common representative. A common issue exists with respect to each petition and it has been agreed that the decision issued for this permitted operation will also be applicable to the deficiency determinations issued for the other --- permitted operations. A listing of the related corporations and their permit numbers is appended to this decision as Exhibit A.

The grounds for the petition and the staff's position thereon is summarized on Audit Schedule 414-2 as follows:

--- accountant for the taxpayer, agrees with the audit findings. However, she disagrees with the auditor's allowance of credit interest and the period for which credit interest was computed.

(1) The item being protested is the disallowance of credit interest for those periods where an overpayment of taxes was disclosed by audit. Also, the length of time for which debit interest was computed.

(2) (a) --- is of the opinion that credit interest should be allowed. She contends that the sales tax returns are prepared using the best information that is available at the time the returns are due. The more accurate grocer's formula cannot be used as all of the information required to compute the formula is not available at the time the return is prepared. She feels the disallowance of credit interest is unjust.

(b) After the sales tax return has been filed, the more accurate grocer's formula is used to compute taxable sales for the period. The computed taxable sales are compared to reported taxable sales. Sales tax is computed on the difference, either plus or minus, and the tax is then added to or subtracted from the tax accrued in the next quarter.

--- believes that if additional tax should have been paid as a result of the above comparison, the tax was paid in the subsequent period. Interest should, therefore, only be computed for a three (3) month period as the taxes were only delinquent for three (3) months.

(3) (a) The auditor is of the opinion that the sales tax returns are prepared using an incorrect method. The method results in both overstatement and understatement of taxable sales. The sales tax returns are prepared by reporting the sales tax accrued for the quarter and adjusting for the actual tax which was computed for the prior quarter. The reported amounts for any one quarter are not the actual amounts computed for that quarter.

Credit interest was disallowed as taxable sales were intentionally mistated.

(b) Auditor computed debit interest from the due date of the quarterly period for which a deficiency was determined to 5/31/77. Taxpayer's method of reporting could result in an underpayment of tax for several consecutive periods. Debit interest was, therefore, computed in the above manner as it was not possible to determine which tax applied to which periods.

The taxpayer's representative further submits that the taxpayer is entitled to offset overpayments made for subsequent periods so that debit interest would only be computed on the net underpayment, if any. For example, if the taxes were underpaid by the sum of \$1,000, and overpaid by \$900, in the following quarterly period the taxpayer would compute interest on \$1,000 for one quarterly period and on \$100 (\$1,000 less \$900) for the balance of the determined period. Further, it is submitted that the adjustments should be cumulative for each and every subsequent period.

The staff's disallowance of credit interest for the entire audit period is based upon a finding that the taxpayer made intentional overpayments on its returns. A similar problem was presented in the prior audit period. A determination made for this prior period is now the subject of suit for refund _____.

Analysis & Conclusions

The initial question relates to the staff's denial of credit interest on overpayments made for some quarterly periods. Revenue and Taxation Code Section 6908 authorizes the disallowance of credit interest if the Board determines that an overpayment has been made intentionally or by reason of carelessness.

In the instant petition the taxpayer made a number of additions to its returns in an attempt to correct underpayments resulting from incorrect returns filed for prior periods. It earnestly contends that the failure to report the correct tax for the prior periods was due to the lack of adequate time to assemble and prepare the information required to compute the tax correctly.

We do recognize that a business of the type operated by this taxpayer presents accounting problems not present with many other businesses. However, the law does not provide any recognition of this. Food store retailers are required to adhere to the same standard of care as other retailers. We officially note that many food retailers, including a number with business volumes greatly in excess of this taxpayer, regularly prepare their returns and report their tax on a current basis.

We conclude that the overpayments were not inadvertent; but were made voluntarily as a regular business practice and were therefore intentional within the meaning of Revenue and Taxation Code Section 6908. In essence, the amounts were added in an attempt to correct negligent underpayments resulting from a failure to observe a proper standard of care in reporting for prior periods.

The remaining question revolves to the issue of whether a taxpayer is entitled to offset an overpayment against an underpayment for a prior period in computing the amount of interest due on the underpayment.

Revenue and Taxation Code Section 6482 provides that a deficiency determination shall bear interest at the rate of 1% per month "from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment." Section 6483 in turn authorizes the Board to offset overpayments, for one or more periods, together with interest on the overpayments, against underpayments and against interest on the underpayments and further provides that interest on the underpayments and overpayments shall be computed in the manner set forth in Sections 6591 and 6907. These latter provisions read as follows:

6591. Interest and penalties. Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State, except amounts of determinations made by the board under Articles 2 or 3 of this chapter, within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of 1 percent per month, or fraction thereof, from the date on which the tax or the amount of tax

required -to be collected became due and payable to the State until the date of payment.

6907. Interest. Interest shall be paid upon any overpayment of any amount of tax at the rate of 1 percent per month from the last day of the calendar month following the quarterly period for Which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

It is thus apparent that the statutory scheme requires that debit interest for each quarterly period be computed from the period in which it should have been returned until the date of payment (Section 6482) and in the case of a credit, to this same date (Section 6907[b]). While the statute authorizes the Board to offset overpayments against underpayments, including interest thereon in making a deficiency determination for more than one period, nowhere does it appear that the Board is required to make offsets in determining the amount of the tax upon which the interest is to be computed for any single period. Indeed, the express language of Section 6482 seems to preclude such a procedure.

Sales and use tax returns are prescribed by statute to be for the purpose of reporting liability for that quarterly period (see Section 6453) and not for the purpose of making a payment of additional amounts due on a return for some prior period. Such an addition would be improperly returned and would amount to an overpayment for that period. The statute does not authorize a "self-help" payment of an existing tax deficiency by adding this amount to a current return. Nor does the law authorize the taxpayer to claim a credit in this fashion (Revenue and Taxation Code Section 6901, et seq.).

It follows that the taxpayer is not entitled to an offset for overpayments in computing the interest on underpayments made for any prior periods.

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W. E. Burkett, Hearing Officer

Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

Date