

170.0043**Memorandum**

To: Appeals Attorneys
Supervising Tax Auditors
Summary Auditors

Date: February 27, 1992

From: Donald J. Hennessy

Subject: Section 6483 – Offsets

I recently participated in a discussion with the Sales and Use Tax Department on the above-referenced section. Attached is a memo by Assistant Principal Tax Auditor William Dunn setting out what I believe to be a correct interpretation of the section. My initial reaction was to question the conclusion that "... overpayments that are not barred by the statute of limitations may be offset by underpayments which are barred by such statute." But, on further reflection, this appears to be nothing more than a variation on the old rule of law applied by the Court of Appeal in its October 1990 unpublished decision in Montgomery Elevator Co. v. SBE that the state will be permitted to offset sums against outstanding tax liabilities notwithstanding the expiration of an applicable statute of limitations. I often find this offsetting procedure rather baffling, and I would recommend you file the attached memo away for future guidance.

DJH:ba

170.0043**Memorandum**

To: Mr. Don Hennessy, Assistant Chief Counsel
Business Taxes Appeals Review Section

Date: February 21, 1992

Mr. Glenn Bystrom, Principal Tax Auditor
Sales and Use Tax Department

From: William D. Dunn
Assistant Principal Tax Auditor

Subject: Section 6483 – Offsets

The other day the three of us discussed Section 6483, Offsets, which I have restated for ease of reference:

6483. Offsets. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods against penalties, and against the interest on the underpayments. The interest on underpayment and overpayments shall be computed in the manner set forth in Sections 6591 and 6907.

My interpretation of this section has always been that overpayments that are not barred by the statute of limitations may be offset against underpayments which are barred by the statute. However, overpayments which are beyond the statute of limitations may not be offset against underpayments which are not barred by the statute. I understand that the two of you concurred with this interpretation. I had asked for clarification since a recent Decision and Recommendation indicated otherwise. However, the result of that Decision and Recommendation was not affected by the different interpretation; therefore, no request for reconsideration is to be filed.

WDD:maf