

File: 100863C
Section: 702.0000

Offset Portion. Section 7204.1(a)(4) defines "offset portion" as the greater of \$50,000 or "20 percent of the local agency's quarterly taxes." No method of determining the "quarterly taxes" is specified. Since a city presumably bases its request for offset treatment on the most recent revenue stream, it is reasonable to calculate the offset portion using the average of the last four quarterly collections. 8/12/97.

1/7/98 *ca*
Q7 4-15-98
ZHR 4/20/98

State of California

Memorandum

Date: August 12, 1997

To: Mr. Dan Cady, STA
Loc. Rev. Alloc. Sect. (MIC:27)

From: John L. Waid
Senior Tax Counsel

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Code 291? /

Subject: SR OHC REDACTED TEXT
REDACTED TEXT
Section 7204.1 Refund

I am answering your memorandum to me dated April 22, 1997, regarding the portion of a refund of taxes to this taxpayer which will be charged to the City of Los Alamitos. You indicate that the city's share of the refund obligation is \$XXX,XXX.XX. You calculate the offset portion to be \$XX,XXX.XX. You ask three questions regarding the mechanics of the offset.

1. Must the refund be charged against Los Alamitos in full before the city can request transmittal of the offset share?

The offset mechanism for spreading out a portion of the city's obligation to refund local tax is provided by section 7204.1. The process specified in the statute is as follows:

"(b) Except as provided in subdivision (c), if the board has deducted a refund from a local agency's quarterly taxes which includes an offset portion, then the following provisions apply;

"(1) Within three months after the board has deducted an offset portion, the local agency may request the board to transmit the offset portion to the local agency.

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"(2) As promptly as feasible after the board receives the local agency's request, the board shall transmit to the local agency the offset portion as part of the board's periodic transmittal of sales and use taxes.

"(3) The board shall thereafter deduct a pro rata share of the offset portion from future transmittals of sales and use taxes to the local agency over a period to be determined by the board, but not less than two calendar quarters and not more than eight calendar quarters, until the entire amount of the offset portion has been deducted.

"(c) The board shall not transmit the offset portion of the refund to the local agency if that transmittal would reduce or delay either the board's payment of the refund to the taxpayer or the board's periodic transmittals of sales and use taxes to other local agencies."

The statute certainly contemplates that a city would have to be charged its share of a refund before it could request offset. As we understand it, the statute was in fact enacted in order to ameliorate the effect of the decision in City of Gilroy v. S.B.E. (1989) 212 Cal.App.3d 589 on the city. Because of the procedural posture of the case, the refund was determined to be due after the transmission under section 7204 had already been made. We do not think, however, that the statutory language mandates that a city cannot request offset prior to its share of a refund being charged back to it. The language "has deducted a refund" is broad enough to encompass an intended deduction as well as an actual deduction. Therefore, we conclude that under section 7204.1(b)(1) a city can request transmission of the portion of the refund subject to offset within three months of being notified that a chargeback will take place.

2. Can the offset portion be taken from the General Fund?

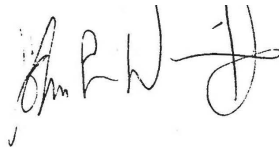
As you know, all sales taxes collected are deposited into the Retail Sales Tax Fund (RSTF), a subfund of the General Fund. The portions of the RSTF represented by local

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and district tax collections are state moneys until actually transmitted to the levying entity. The offset share must be taken from this account.

3. Is calculation of the offset portion by using the average of the last four quarterly collections appropriate?

Section 7204.1(a)(4) defines "offset portion" as the greater of \$50,000 or "20 percent of the local agency's quarterly taxes." No method of determining the "quarterly taxes" is specified. Since the city will presumably base its request for offset treatment on the most recent revenue stream, it is reasonable to calculate the offset portion as you have done, using the average of the 1st four quarterly collections.

A handwritten signature in black ink, appearing to be 'JRW' with a stylized flourish at the end.

JLW: sr