

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(21)S
Sales Tax
May 6, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100120A

On January 20, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it may amend sales tax refund claims after the refund statute of limitations has expired without affecting its right to a refund if the amounts sought by the amended claims arise from the same transactions covered by the original claims. Petitioner's refund claims will remain valid and timely after their amendment if the amounts sought by the amended claims arise from the same transactions covered by the original claims.

Facts

Petitioner has timely filed sales tax refund claims for certain periods. It would like to amend those claims to reduce the amounts of the refunds. The only difference between the original claims and the amended claims is the reduction in the amount of refund claimed. The original claims and amended claims arise from the same transactions but the amended claims would cover a reduced number of these transactions.

The original claims were timely filed; the amended claims may be filed beyond the statute of limitations for claiming a sales tax refund. The Tax Department has not taken any action on the original claims and is not expected to do so prior to the submission of the amended claims.

Analysis

Tax Law section 1139(a) authorizes the Tax Commissioner to refund sales tax if (1) in the case of tax paid by the applicant to a person required to collect tax, a refund claim is filed within three years after the tax was payable by such person to the Tax Commissioner or (2) in the case of tax paid by the applicant to the Tax Commissioner, a refund claim is filed within three years after the date the tax was payable. The sales tax refund provisions in section 1139 parallel in many respects the provisions in similar federal statutes (*see* I.R.C. §§ 6611 and 6512). It is appropriate to follow federal tax case law on the legal effect of an amended tax refund claim that seeks an amount less than the original claim. Under federal law, an amendment to a previously-filed timely refund claim that is submitted after the expiration of the statute of limitations for the refund year is valid and effective if (1) the amendment does not present any new issue (i.e., there is no new information to be investigated or new issue raised) and (2) no final action has been taken on the original claim. *U.S. v. Memphis Cotton Oil Co.*, 288 U.S. 62 (1933); *Bemis Brothers Bag Co. v. U.S.*, 289 U.S. 28 (1933); *Union Pacific R.R. Co. v. U.S.*, 389 F.2d 437 (Ct. Cl. 1968); *Crompton Corp. v. U.S.*, 2003-2 USTC ¶150,602 (Fed. Cl. 2003).

Under the facts presented by Petitioner, its sales tax refund claims would remain timely and valid if the amended claims were filed after the refund statute of limitations had expired. This

conclusion should not be construed as necessarily extending to an amended refund claim that is larger than the original refund claim.

DATED: May 6, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.