

May 10, 2004

Ms. Christie Comanita, Manager
Tax Research and Analysis
Arizona Department of Revenue
1600 West Monroe
Phoenix, AZ 85007

Dear Christie:

Outlined below are the comments of the Tax Practitioner's Committee of the Arizona Tax Research Association (ATRA) to the proposed general tax ruling (GTR) concerning claims for refund or reductions in tax liability during an appeal of a deficiency assessment.

ATRA has several concerns regarding the proposed GTR, as follows:

1. A.R.S. § 42-1106(A) provides that the period within which a claim for credit or refund may be allowed is the same as the period within which the department may make an assessment under § 42-1104. A.R.S. § 42-2059(A) and (B) prescribe both time and dollar limitations on the department's ability to issue additional assessments. Under rules of statutory construction, statutes must be construed together to give them all effect and to harmonize and reconcile them. *State v. Sweet (1985) 143 Ariz. 266, 693 P.2d 921; Lemons v. Superior Court of Gila County (1984) 141 Ariz. 502, 687 P.2d 1257; Lombardo v. Pollock (App. 1974) 21 Ariz. App. 537, 521 P.2d 636.*

In interpreting subsections (A) and (B) of A.R.S. § 42-2059, the Arizona Court of Appeals stated "In prohibiting additional audits for a particular period once a deficiency has been "completely determined," A.R.S. § 42-2059(A) implies that additional audit assessment adjustments may be issued at any time before that point. Further, the focused prohibition in A.R.S. § 42-2059(B) against increasing the "amount" of a proposed assessment strongly implies that such an assessment may otherwise be adjusted in any way that does not increase its total amount." *Arizona Joint Venture and North Scottsdale Joint Venture v. Arizona Department of Revenue, No. 1 CA-TX 02-0010, February 24, 2003 at ¶ 26.* (Footnotes omitted and emphasis added) Blending the statutory provisions together and with the Court of Appeals' interpretation above, ATRA believes that a refund claim may be filed at any time before the assessment is final and is payable in its entirety regardless of the statute of limitations. The court's use of the words "adjusted in any way"

would include downward adjustments and a refund would never increase the total amount of the assessment.

In addition, the court's recognition that the provisions of A.R.S. § 42-1108(A) espouse the ultimate goal of the audit and protest process as being "to determine the correct amount of tax" (*Arizona Joint Venture at ¶27*), requires a different interpretation than the department is proposing in the draft GTR. If the correct amount of the taxpayer's liability is an amount that should be refunded, then the department is obligated to do so by operation of statute and the court's interpretation thereof.

2. The proposed requirement that the refund claim only offset the same type of tax is problematical in situations where additional transaction privilege tax (TPT) and use tax liabilities are covered by a single deficiency assessment, which often happens. Similarly, county excise tax liabilities are included in the same assessment. In addition the department's position doesn't reconcile with the statutory language. A.R.S. § 42-1104 (A) discusses "the taxes to which this article applies" and § 42-1108(A) discusses "the amount of tax required to be paid under either title". Reading the plain language of these provisions, it would appear that, at the very least, title 42 taxes should offset other title 42 taxes.
3. The application of the "same taxable period" requirement on page 2 also needs more consideration. In a TPT environment, if a taxpayer overpays tax in one period, the taxpayer will often be given a credit voucher to use against subsequent periods. This process should not be eliminated for the months covered by the audit period. If a credit is generated in one month, it should be able to be credited against subsequent months' liabilities. This affects both the tax and interest calculation. Again, the goal is to determine the correct tax liability for the audit period.

If you have any questions or would like to have additional discussions on this draft ruling, please do not hesitate to contact me.

Sincerely,

Kevin J. McCarthy
President

Cc: Barb Dickerson