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ARIZONA GENERAL TAX RULING
GTR 04-

ISSUES:

Can an appeal or an amended appeal, which raises new issues not addressed in the deficiency assessment, and which is received after the statute of limitations has expired but prior to the issuance of the final order by the department, be used to claim a refund or reduce the tax liability for that period.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1104 provides for a general four year statute of limitations for Arizona tax returns.

A.R.S. § 42-1106 provides that the period within which a claim for refund may be filed is the period within which the department may make an assessment under A.R.S. § 42-1104.

A.R.S. § 42-1118 provides for the refund of overpayments and also provides that if an amount has been erroneously determined to be due but not yet collected, the department shall cancel the liability.

A.R.S. § 42-1118(E) provides the requirements for filing a claim for refund.

A.R.S. § 42-1251 provides that a taxpayer may appeal to the department for a hearing, correction or redetermination of a deficiency assessment issued by the department.

Arizona Administrative Code (A.A.C.) R15-10-105 describes the requirements of the petition for correction or redetermination of a deficiency assessment or refund denial.

Lewis v. Reynolds, 284 U.S. 281 (1932), provided that although the expiration of the statute of limitations precluded the issuing of a deficiency assessment it did not preclude a taxing agency from considering all available information to determine whether there is an actual overpayment of tax.

DISCUSSION:

A.R.S. § 42-1104 provides that every notice of additional tax due must be mailed within four years after the return is required to be filed or four years after the return is filed, whichever period expires later. The period in which a taxpayer may file an amended return or claim a refund is the same as the period in which the department may issue a deficiency assessment.

A.R.S. §§ 42-1104 and 42-1106 provide that every notice of additional tax due or claim for refund must be within the statute of limitations period. A.R.S. § 42-1251(A) provides that the appeal of a deficiency assessment or a refund denial shall be made within forty-five days of the date notice is received (ninety days from the date notice is mailed in the case of individual income tax). Therefore, an appeal may be filed after the statute of limitations for issuing assessments or claiming refunds has expired, but still be within the period for filing a timely appeal that is provided by A.R.S. § 42-1251(A).

<u>Lewis v. Reynolds</u>, 284 U.S. 281 (1932), established the principle that, although the expiration of the statute of limitations precludes the issuing of a deficiency assessment or filing of a refund claim, it does not preclude a taxing agency from considering any available information to determine whether there is an actual overpayment or underpayment of tax.

A taxpayer that does not agree with a deficiency assessment issued by the department may file an appeal with the department stating the errors alleged to have been committed by the department in the determination of the corrected tax liability. If the taxpayer subsequently discovers other errors in the return which have not been addressed in the original appeal, the taxpayer may file an amended appeal or a refund claim to address those issues and claim a refund within the statutory period provided in A.R.S. § 42-1106. In order to claim a refund from the department, the amended appeal or refund claim must meet the requirements of A.R.S. § 42-1118(E), including the amount of refund requested, the tax period involved, and the specific grounds on which the claim is founded. Pursuant to A.R.S. § 42-1118 if the department determines that an amount of tax has been paid in excess of the amount actually due, the department shall issue a refund. However, if the statute of limitations has expired prior to the filing of the appeal or amended appeal, the department may consider the information to reduce or eliminate the assessment, but it may not issue a refund.

Although an appeal or claim received after expiration of the statute of limitations can be used to reduce an assessment, it can only reduce an assessment for the same taxable period and the same type of tax for which the claim is submitted. An out of statute refund claim for use tax could not be used to reduce a transaction privilege tax or income tax assessment.

Example 1:

A taxpayer files an appeal of a deficiency assessment requesting correction of adjustments made by the department. Subsequent to the filing of the appeal but prior to expiration of the statute of limitations, the taxpayer files an amended appeal requesting adjustment of items not protested on the original appeal or addressed on the audit. The adjustment of these items would result in an overpayment. If the amended appeal meets the statutory requirements of a refund claim, it will be considered a timely claim for refund. If it is determined that the taxpayer's claim is correct and there is an overpayment, the taxpayer will receive a refund.

Example 2:

A deficiency assessment of $10,000 for a single taxable period consists of two adjustments. One adjustment reduces the taxpayer's liability by $20,000, the other adjustment increases the liability by $30,000. After expiration of the statute of limitations, but within the period provided by A.R.S. § 42-1251(A), a taxpayer files an appeal of the deficiency assessment requesting correction of the adjustment made by the department which resulted in $30,000 in additional tax. Even though the statute of limitations has expired, the taxpayer may receive a refund of $20,000 if the taxpayer's appeal of the adjustment increasing the liability by $30,000 is upheld.

Example 3:

A deficiency assessment of $10,000 for a single taxable period consists of three adjustments. One adjustment reduces the taxpayer's liability by $20,000, the other adjustments increase the liability by $25,000 and $5,000. A taxpayer files an appeal of the deficiency assessment requesting correction of the adjustment of $5,000 additional tax made by the department. Subsequent to the filing of the appeal and after expiration of the statute of limitations, the taxpayer files an amended appeal requesting correction of the additional adjustment for $25,000 not protested on the original appeal. The amended appeal is not considered a timely claim for refund. If the department determines the taxpayer's position on both adjustments is correct, the information in the amended appeal may be used to reduce or eliminate the assessment for that taxable period. However, a refund may not be issued because the amended appeal requesting correction of the $25,000 adjustment that would result in an overpayment was filed after the statute of limitations expired.

Example 4:

A taxpayer receives a deficiency assessment of $50,000 for a single taxable period consisting of two separate adjustments resulting in additional tax of $20,000 and $30,000. After expiration of the statute of limitations, but within the period provided by A.R.S. § 42-1251(A), a taxpayer files an appeal of the deficiency assessment requesting correction of the adjustment made by the department which resulted in $20,000 in additional tax, and also requesting a change in an item not adjusted on the audit which would result in a decrease in the tax liability of $70,000. The department determines that the taxpayer's position is correct on both items. The appeal is not considered a timely claim for refund with respect to the item not adjusted on the audit. Although the information regarding the item not adjusted on the audit which would result in a decrease in the tax liability of $70,000 may be used to reduce or eliminate the remaining assessment of $30,000, a refund of the $40,000 overpayment resulting from correction of the item not adjusted on the audit may not be issued.

Example 5:

A taxpayer receives deficiency assessments for taxable years 1993, 1994 and 1995 which disallow charitable contributions claimed for the care of a relative. The disallowance resulted in deficiency assessments of $600, $700 and $500 respectively. Taxable years 1993 and 1994 were open under waivers that expired after the deficiency assessments were issued. Taxable year 1995 is still open under the statute of limitations. The taxpayer appeals the deficiency assessments for all years, accepting the adjustments in the assessment but claiming additional deductions for property taxes that would reduce the tax liability by $400, $800 and $650 respectively. The new issue raised in the appeal may reduce or eliminate the deficiency in years not open under the statute of limitations. The 1993 assessment would be reduced to $200 and the 1994 assessment would be eliminated but a refund of $100 would not be issued. The taxpayer would receive a refund of $150 for taxable year 1995 which is open under the statute of limitations.

RULING:

An appeal or an amended appeal, which raises new issues not addressed in the deficiency assessment, and which is received after the statute of limitations has expired but prior to the issuance of the final order by the department, may be used to reduce or eliminate the tax liability for that period. However, a refund of an overpayment may not be issued when the statute of limitations for that period has expired prior to the filing of the appeal or amended appeal.

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