Sales Tax Information Bulletin relating to Audit Examinations

Sales Tax Bulletin 2004-02

The Pennsylvania Supreme Court's holding in McNeil-PPC v. Commonwealth, No. 99 MAP 2002, (October 22, 2003) states that "an audit requires the Department of Revenue (Department) to correct both underpayments and overpayments of tax for the audit period." This informational bulletin was developed by the Department to clarify the effect of this decision and the application of the amendments to Sections 253(a) and 3003.1 of the Tax Reform Code on the Department's sales and use tax audit and refund procedures. These amendments were not effective for the audit period in McNeill. This informational bulletin applies to assessments issued on or after November 19, 2003.

If an auditor discovers an overpayment of either sales or use tax in the normal course of the examination of a taxpayer's returns and supporting records, the auditor may grant a credit for the tax overpayment. If a taxpayer discovers that during the audit period under examination, taxpayer overpaid tax to a vendor and taxpayer provides sufficient evidence to the auditor that the tax is not rightfully due the Commonwealth, the auditor will be permitted to grant a credit for the sales tax overpaid on that transaction.

In order for the auditor to make a determination that the taxpayer overpaid tax to a vendor, the taxpayer must provide the following: (i) a copy of the source document for the transaction, (ii) proof of tax payment, (iii) a valid reason for exemption with adequate documentation if the exemption reason requires additional documentation, e.g. predominate use or direct use in manufacturing, and (iv) taxpayer's attestation that no credit memo, tax refund, or any similar reimbursement for tax overpayment was provided to taxpayer. If insufficient evidence is submitted to the auditor, the auditor may deny the credit.

The tax payment made to a vendor for a transaction, which is determined by the auditor to be nontaxable, will be either subtracted from the final deficiency or added to any overpayment determined for taxpayer's returns whether a complete audit or a test audit was performed to determine the accuracy of taxpayer's returns. This credit will not enter into the calculations used in the test audit procedure, which is employed to verify the accuracy and completeness of taxpayer's returns.

If, for any reason, the auditor does not grant credit for a sales or use tax overpayment made by the taxpayer for tax not rightfully due the Commonwealth for any time period covered by the audit, **the taxpayer must file a petition for refund within six months of the mailing date of the notice of assessment for the audit period or the taxpayer forfeits the right to claim a refund or credit for any overpayment made during the audit period.** 72 P.S. § 10003.1(b). The notice of assessment will notify the taxpayer of the Department's finding of overpayment, underpayment, or no discrepancy for taxes due in the audit period.

Q: If the auditor denies taxpayer's requested credit, is the taxpayer's recourse to file a petition for refund or can the taxpayer contest the denial when it challenges the assessment?

If the auditor denies a credit, the taxpayer's only recourse is to file a petition for refund. Section 3003.1(b) specifically states that if a credit is not granted in the audit report the taxpayer must file a petition for refund.

Q: Does it make a difference if the credit arose during the test period?

No.