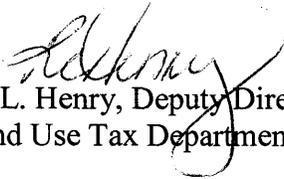


M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director (MIC 73)

Date: October 6, 2009

From : 
Randie L. Henry, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Proposed Revisions to Compliance Policy and Procedures Manual Chapter 5, Returns.**

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the following proposed revisions to Compliance Policy and Procedures Manual Chapter 5, *Returns*, for your approval to forward to the Board Proceedings Division. These changes have been reviewed and approved by SUTD management, provided to Board Members, and posted at http://www.boe.ca.gov/sutax/pdf/CPPM570_095rev.pdf on the Board's website for two months to solicit comments from interested parties. We received no comments from the public.

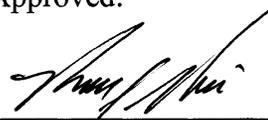
CPPM Chapter 5 revisions are proposed to incorporate into the CPPM new procedures for processing unapplied remittances.

A summary and copies of the proposed revisions are attached for your reference. We request your approval to forward these proposed changes to the Board Proceedings Division for placement as a consent item on the Administrative Agenda for November 18, 2009.

If you have any questions, please let me know or contact Mr. Jeff McGuire at 324-1825.

RLH:dr
Attachment

Approved:



Ramon J. Hirsig
Executive Director

cc: (all without attachments)
Mr. Stephen Rudd (MIC 46)
Ms. Freda Orendt (MIC 47)
Mr. Jeff McGuire (MIC 92)
Mr. Kevin Hanks (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

Overpaid Returns**540.070**

A return which has definitely been found to be overpaid will be identified with the total amount of remittance, a check mark and the letters "OP" entered just below the space provided for "Total Amount Due and Payable." See Exhibit 2.

No Remittance Return**540.080**

Any "no remittance" return will be identified with the letters "NR" printed just below the space provided for "Total Amount Due and Payable." See Exhibit 2.

Partial Remittance Return**540.090**

A partially paid return will be identified with the amount of remittance, a check mark and the letters "PR" entered just below the space provided for "Total Amount Due and Payable." See Exhibit 2.

Unapplied Remittances**540.095**

An "unapplied remittance" is a payment that cannot be matched to a taxpayer's liability. Receipt of funds by the BOE due to accident or mistake creates an involuntary constructive trust, and the BOE, as constructive trustee, is obligated to restore the funds to the rightful owner.

Therefore, when the BOE is in possession of an unapplied remittance, two possibilities exist:

1. The taxpayer or feepayer intended the remittance to be a payment for a liability owed to the BOE.
2. The taxpayer or feepayer sent the remittance to the BOE by accident or mistake.

Staff can properly conclude that such a remittance, made payable to the BOE, represents funds that are rightfully due to the BOE and were not remitted to BOE by accident or mistake, if the taxpayer or feepayer is both:

1. Notified of a possible overpayment.
2. Given the opportunity to clarify its intent with respect to the remittance and it fails to do so.

If the taxpayer or feepayer directs BOE to apply the remittance to a liability or does not respond to the inquiry letter and the remittance is applied, the taxpayer or feepayer will have six months from the date the remittance is applied in which to file a claim for refund. A notice of determination will not be created under either of these scenarios. However, the Return Analysis Section will notify the taxpayer or feepayer of the application of the remittance when it is made.

The remittance does not become a "payment" until the remittance is applied to a tax liability. The application converts the remittance to a tax payment. Therefore, credit interest cannot be allowed for the period prior to the application of the remittance because an overpayment of tax does not yet exist. Once the remittance is applied and the taxpayer or feepayer subsequently files a claim for refund that BOE grants, under RTC section 6907 (sales and use tax) and various special taxes program statutes, credit interest may be allowed for the period after the application of the remittance because an overpayment of tax has occurred.