

NAME: RE: * * *

NUMBER: HEARING NO. 43,548

COURT: COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

CITE: 2006 Tex. Tax LEXIS 38

DATE: March 3, 2006

PANEL: [*1]

ROY G. SCUDDAY, Administrative Law Judge

COUNSEL: ROBIN S. HOUSTON, Representing Tax Division

* * *, Representing Petitioner

OPINIONBY: SCUDDAY

TAXPAYER NO.: * * *

AUDIT OFFICE: * * *

AUDIT PERIOD: MARCH 1, 1998 THROUGH OCTOBER 31, 2001

SALES AND USE TAX/RDT

COMPTROLLER'S DECISION UPON THIRD REHEARING

On September 26, 2005 Petitioner timely filed a Motion for Rehearing concerning the September 1, 2005 Comptroller's Decision issued in the above referenced matter. On October 4, 2005 the Tax Division filed its response agreeing with Petitioner's Motion.

Having considered the Petitioner's Motion and the Response of the Tax Division, it was determined that the Motion for Rehearing should be, and the same was thereby GRANTED on October 6, 2005.

Rehearing was granted in order for the final figures to be amended in accordance with the Motion for Rehearing dated September 26, 2005.

Except as modified by this Decision, the Comptroller's Decision on Rehearing in this case, issued March 24, 2005 is incorporated herein and reaffirmed.

Signed March 3, 2006.

ORDER OF THE COMPTROLLER

The above order of the Administrative Law Judge is approved and adopted in all respects.

RENDERED and ISSUED March [*2] 3, 2006.

CAROLE KEETON STRAYHORN, Texas Comptroller

ATTACHMENT

HEARING NO. 43,548

RE: * * *

TAXPAYER NO.: * * *

AUDIT OFFICE: * * *

AUDIT PERIOD: MARCH 1, 1998 THROUGH OCTOBER 31, 2001

SALES AND USE TAX/RDT

BEFORE THE COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

ROY G. SCUDDAY
Administrative Law Judge

ROBIN S. HOUSTON
Representing Tax Division

* * *

Representing Petitioner

COMPTROLLER'S DECISION UPON SECOND REHEARING

On April 18, 2005, Petitioner timely filed a Motion for Rehearing concerning the March 24, 2005, Comptroller's Decision issued in the above referenced matter. On April 28, 2005, the Tax Division filed its response agreeing with Petitioner's Motion.

Having considered the Petitioner's Motion and the Response of the Tax Division, it was determined that the Motion for Rehearing should be, and the same was thereby GRANTED on May 2, 2005.

Rehearing was granted in order for the final figures to be amended in accordance with the Motion for Rehearing dated April 18, 2005.

Except as modified by this Decision, the Comptroller's Decision in this case, issued March 24, 2005, is incorporated herein and reaffirmed.

Signed September 1, 2005.

ROY [*3] G. SCUDDAY
Administrative Law Judge

HEARING NO. 43,548

ORDER OF THE COMPTROLLER

The above decision of the Administrative Law Judge, resulting in Taxpayer's liability as set out in Attachment "A" which is incorporated by reference, is approved and adopted in all respects. This decision becomes final twenty-three(23) days from the date of this Order, and the total sum of the tax, penalty, and interest amounts is due and payable within twenty (20) days thereafter. If such sum is not paid within such time, an additional penalty of ten percent of the taxes due will accrue, and interest will continue to accrue.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED September 1, 2005.

CAROLE KEETON STRAYHORN, Texas Comptroller

HEARING NO. 43,548

RE: * * *

TAXPAYER NO.: * * *

AUDIT OFFICE: * * *

AUDIT PERIOD: MARCH 1, 1998 THROUGH OCTOBER 31, 2001

SALES AND USE TAX/RDT

BEFORE THE COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

ROY G. SCUDDAY
Administrative Law Judge

ELIAS Z. [*4] LORENZANA, JR.
Representing Tax Division

* * *

Representing Petitioner

COMPTROLLER'S DECISION ON REHEARING

PRELIMINARY DISCUSSION:

At the request of Petitioner, this matter is considered and decided based upon the written submissions of the parties.

Unless otherwise indicated, Section references are to Title 2 of the Texas Tax Code, and Rule references are to sections of Title 34, Texas Administrative Code. Notice has been taken of all Comptroller's records pertinent to Petitioner and the issues raised in this case.

On May 4, 2004, a Comptroller's Decision was issued based on the Agreed Motion to Dismiss filed by the Parties. On May 27, 2004, Petitioner filed a Motion for Rehearing, to which the Tax Division agreed in its Response dated June 15, 2004. The Order Granting Rehearing was issued June 21, 2004.

On October 5, 2004, the Tax Division filed Exceptions to the Proposed Decision on Rehearing issued September 20, 2004. Petitioner filed its Response on October 18, 2004. The Administrative Law Judge has reviewed the Exceptions and Response, and this Amended Proposed Comptroller's Decision on Rehearing is the result thereof.

PETITIONER'S CONTENTION:

Petitioner contends [*5] that interest should be offset by interest on overpayments for the same audit period.

FINDINGS OF FACT:

1. * * * (Petitioner) was audited for sales and use tax compliance for the period March 1, 1998, through October 31, 2001. On June 26, 2002, the Comptroller sent Petitioner a Texas Notification of Audit Results that included tax, penalty, and interest through the date of the Notice. Petitioner timely filed a request for redetermination resulting in this proceeding.
2. During the redetermination process, Petitioner worked with the auditor to identify assessment error and tax overpaid and tax accrued items. As part of the refund verification process, the auditor generated two separate refund assignments in order to process refunds for tax paid to vendor items and tax accrued items separately. The tax paid to vendor items was processed as a separate refund claim and a refund was paid to Petitioner on March 30, 2004. The tax accrued items were processed as part of the audit amendment in this proceeding, and served as the basis for the final audit liability figures, actually a credit, that were part of the Comptroller's Decision issued May 4, 2004.

3. Effective January 1, 2000, [*6] Section 111.064 provided for payment of interest on a refund or credit. The refund amount paid on March 30, 2004, represented \$ * * * tax, and \$ * * * interest.

DISCUSSION AND CONCLUSIONS OF LAW:

Petitioner's contention should be granted in part.

In support of its contention for interest offset, Petitioner cites Section 151.508, which provides that "the comptroller may offset an overpayment for one or more periods against an underpayment, penalty, and interest accrued on the underpayment for the same period or one or more other periods." The Tax Division responds that because Petitioner received the refund prior to the determination of the final audit liability, it cannot offset the refund against the audit liability.

This case appears to be controlled by Comptroller Decision No. 39,992 (2002) which held that Section 151.508 specifically allowed offsets of overpayments against an audit liability, for the same entity, albeit after merger, and for the same audit period even when the overpayments had been refunded. Likewise, Petitioner is entitled to have its assessed underpayment in the audit period offset for the calculation of interest by those overpayments that were the subject [*7] of the refund for the periods prior to January 1, 2000. Because interest was paid on the overpayments for periods after January 1, 2000, those overpayments cannot be offset for calculation of interest against assessed underpayments for periods after January 1, 2000.

RECOMMENDATION:

The interest amount should be recalculated based on the amount of overpayments for the periods prior to January 1, 2000.

SIGNED March 24, 2005.

ROY G. SCUDDAY
Administrative Law Judge

HEARING NO. 43,548

ORDER OF THE COMPTROLLER

The above decision of the Administrative Law Judge is approved and adopted in all respects. This decision becomes final twenty-three (23) days from the date of this Order.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED March 24, 2005.

CAROLE KEETON STRAYHORN, Texas Comptroller

HEARING NO. 43,548

RE: * * *
TAXPAYER NO.: * * *
AUDIT OFFICE: * * *
AUDIT PERIOD: MARCH 1, 1998 THROUGH OCTOBER 31, 2001

SALES AND USE TAX/RDT

BEFORE THE COMPTROLLER OF PUBLIC ACCOUNTS [*8] OF THE STATE OF TEXAS

ROY G. SCUDDAY
Administrative Law Judge

ELIAS V. LORENZANA, JR.
Representing Tax Division

* * *

Representing Petitioner

COMPTROLLER'S DECISION

On February 12, 2004, the Tax Division and Petitioner moved to dismiss this case on the basis of agreement in accordance with the Joint Motion to Dismiss In Lieu of Position Letter dated February 12, 2004.

It is ORDERED that the petition be dismissed. It is FURTHER ORDERED that the deficiency be made final, as agreed between the parties

Signed May 4, 2004.

ROY G. SCUDDAY
Administrative Law Judge

HEARING NO. 43,548

ORDER OF THE COMPTROLLER

The above decision of the Administrative Law Judge is approved and adopted in all respects. This decision becomes final twenty-three (23) days from the date of this Order.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED May 4, 2004.

CAROLE KEETON STRAYHORN, Texas Comptroller

Legal Topics:

For related research and practice materials, see the following legal topics:
Administrative Law Agency Adjudication Decisions General Overview Civil Procedure Judicial Officers Judges General
Overview Civil Procedure Dismissals General Overview

08/04/2006