



SC REVENUE PROCEDURE #89-1

SUBJECT: Refunds and Credits
(Sales, Use and Income Taxes)

EFFECTIVE DATE: Applies to all open periods.

SUPERSEDES: All previous documents and any oral directives
in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-54-30 (Supp. 1987)
S.C. code Ann. Section 12-47-440 (1976)
S.C. Revenue Ruling #89-9

AUTHORITY: S.C. Code Ann. Section 12-3-130 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Procedure is a statement describing agency
procedures and is applicable only to employees of the South
Carolina Tax Commission.

PURPOSE: To establish audit procedures for allowing refunds and credits
with respect to sales, use and income taxes, in accordance with
SC Revenue Ruling #89-9

Facts (Sales and Use Tax):

A company, which rents tangible personal property, has failed to acquire a retail license and file monthly sales tax returns. The business was established six years ago. Due to the taxpayer's failure to file, an audit is being conducted for the last six years.

The taxpayer purchased the property being rented from in-state retailers and out-of-state sellers (suppliers), who charged the taxpayer the sales or use tax. The tax paid in error to the supplier has been documented by the auditor.

Revenue Ruling #89-9 establishes that, with respect to the "FACTS" out-lined in the ruling, periods with underpayments must be offset by periods with overpayments. However, overpayments generated during the periods beyond the normal three year statute of limitation may not exceed underpayments for the entire audit period, as such would constitute a refund.

The following examples, where a taxpayer has failed to file tax returns, should provide assistance in determining a taxpayer's total liability, with respect to the above facts.

Example 1:

For Periods Within the Three Year Statute

Tax Due	\$10,000
Tax Paid in Error to Suppliers	< <u>\$ 2,000</u> >
Underpayment	\$8,000

For Periods Beyond the Three Year Statute

Tax Due	\$ 4,000
Tax Paid in Error to Suppliers	< <u>\$ 8,000</u> >
Overpayment	< <u>\$4,000</u> >

Additional Tax to be Assessed	<u>\$4,000</u>
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The credit generated in periods beyond the three year statute will offset any assessed liability for the entire audit period.

Example 2:

For Periods Within the Three Year Statute

Tax Due	\$1,000
Tax Paid in Error to Suppliers	< <u>\$2,000</u> >
Overpayment	<\$1,000>

For Periods Beyond the Three Year Statute

Tax Due	\$4,500
Tax Paid in Error to Suppliers	< <u>\$4,000</u> >
Underpayment	<u>\$ 500</u>

Refund Due	<u><\$ 500></u>
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The overpayment was generated by periods within the normal three year statute of limitations; therefore, a refund is authorized pursuant to Code Section 12-47-440

Example 3:

For Periods Within the Three Year Statute

Tax Due	\$10,000
Tax Paid in Error to Suppliers	< <u>\$ 8,000</u> >
Underpayment	\$2,000

For Periods Beyond the Three Year Statute

Tax Due	\$ 4,000
Tax Paid in Error to Suppliers	< <u>\$ 8,000</u> >
Overpayment	< <u>\$4,000</u> >
No Change Audit	<u>0-</u>

The overpayment for periods beyond the normal three year statute of limitations may not exceed the underpayment for periods within the three year statute of limitation, as such would constitute a refund for period beyond the three year time limit established by Code Section 12-47-440.

Example 4:

For Periods Within the Three Year Statute

Tax Due	\$1,000
Tax Paid in Error to Suppliers	< <u>\$2,000</u> >
Overpayment	<\$1,000>

For Periods Beyond the Three Year Statute

Tax Due	\$1,000
Tax Paid in Error to Suppliers	< <u>\$2,000</u> >
Overpayment	< <u>\$1,000</u> >
Refund Due	<u><\$1,000></u>

The overpayment for periods beyond the normal three year statute of limitations cannot be refunded, as such would be beyond the three year limit for refunds established by Code Section 12-47-440.

It is important to note that the right to taxes paid in error to an in- state retailer (sales tax) must be assigned, in writing, by the in-state retailer to the lessor. Otherwise, a refund and/or credit cannot be allowed the lessor. Also, it must be verified that such taxes were paid to the suppliers.

Facts (Income Tax):

A taxpayer's income tax returns for the past six years are being audited. Upon audit, it is discovered that the taxpayer has overpaid taxes for some years and underpaid taxes for other years.

The following is to provide assistance in determining the taxpayer's total income tax liability, with respect to the facts outlined above.

Example 1:

For Periods Within the Three Year Statute

Year 1	\$3,000
Year 2:	\$9,000
Year 3:	< <u>\$2,000</u> >
Underpayment	\$10,000

For Periods Beyond the Three Year Statute

Year 4	\$2,000
Year 5	<\$3,000>
Year 6	< <u>\$2,000</u> >
Overpayment	< <u>\$ 3,000</u> >
Additional Tax to be Assessed	<u><u>\$ 7,000</u></u>

The credit generated in periods beyond the three year statute will offset any assessed liability for the entire audit period.

Example 2:

For Periods Within the Three Year Statute

Year 1:	\$1,000
Year 2:	\$1,000
Year 3:	< <u>\$4,000</u> >
Net Refund	<\$2,000>

For Periods Beyond the Three Year Statute

Year 4:	\$2,000
Year 5:	<\$1,000>
Year 6:	<u>\$6,000</u>
Net Amount Due	<u>\$7,000</u>
Additional Tax to be Assessed	<u><u>\$5,000</u></u>

The credit generated in periods within the three year statute will offset the assessed liability for the entire audit period. If the credit for periods within the three year statute had exceeded the \$7,000, then a refund would have authorized pursuant to Code Section 12-47-440.

Example 3:

For Periods Within the Three Year Statute

Year 1:	<\$1,000>
Year 2:	<\$1,000>
Year 3:	< <u>\$1,000</u> >
Overpayment	<\$3,000>

For Periods Beyond the Three Year Statute

Year 4:	\$1,000
Year 5:	<\$1,000>
Year 6:	< <u>\$1,000</u> >
Overpayment	< <u>\$1,000</u> >
Refund Due	< <u>\$3,000</u> >

The overpayment for periods beyond the normal three year statute of limitations cannot be refunded, as such would be beyond the three year limit for refunds established by Code Section 12-47-440.

NOTE: REVENUE RULING #89-9 AND THIS REVENUE PROCEDURE ARE ONLY APPLICABLE WHEN AN AUDIT, WHICH INCLUDES PERIODS BEYOND THE THREE YEAR STATUTE, HAS BEEN INITIATED BY THE COMMISSION AND ARE NOT APPLICABLE TO AUDITS INITIATED PURSUANT TO CODE SECTION 12-54-80(2) - SIX YEAR STATUTE/25% OMISSION OF GROSS PROCEEDS, SALES PRICE OR GROSS INCOME.