



SC TECHNICAL ADVICE MEMORANDUM #87-9

TO: Mr. Marvin Davant, Director
Field Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: September 16, 1987

SUBJECT: Estimated Assessments

REFERENCE: S.C. Code Section 12-7-1670, 12-7-2300 & 12-47-440

AUTHORITY: S.C. Code Section 12-3-170

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

1. Would the estimated assessments issued for delinquent returns constitute a return being prepared based on best information as outlined in Code Section 12-7-1670?
2. Is there a statute of limitations on issuing a refund for estimated assessment of tax, penalty and interest?
3. Would estimated assessments fall under the provision of Code Section 12-7-2300?

Facts:

The taxpayer did not file tax returns for years 1980-1984. An estimated assessment of tax was assessed for each of these years in the amount of \$910.50. This amount consisted of the following:

Income tax	\$200.00
Penalty	200.00
License fee	10.00
Penalty	500.00
Interest	<u>.50</u>
Total	<u>\$910.50</u>

The dates on which the estimated assessments were paid are as follows:

9/30/80	paid	10/08/81
9/30/81	paid	05/11/82
9/30/82	paid	05/09/83
9/30/83	paid	05/02/84
9/30/84	paid	04/26/85

The actual amounts due in years 1980-1984 are as follows:

	Income Tax	License Fee
9/30/80	\$147.66	10.80
9/30/81	172.68	10.80
9/30/82	-0-	10.80
9/30/83	-0-	10.80
9/30/84	-0-	10.80

The returns for each year were submitted on the following dates:

9/30/80	Submitted	10/25/85
9/30/81	Submitted	12/11/85
9/30/82	Submitted	02/06/86
9/30/83	Sent to Columbia	4/86
9/30/84	Submitted	10/27/86

The taxpayer has requested a refund of all funds erroneously paid.

Discussion:

1. The definition of a tax return as quoted in Dorzan v. Kouba, 274 N.W.2d 167, is "a tax form containing sufficient information from which the Commissioner can determine tax liability." An estimated assessment is made based on the best information available to the auditor at the time an estimated assessment is made because there is insufficient information from which to determine the actual tax due. By definition, a tax return is not deemed to be filed when an estimated assessment is issued.

2. The statute of limitations on issuing a refund for an estimated assessment of tax, penalty, and interest is stated in 12-47-440. The taxpayer may utilize this provision for any license fee or tax which has been imposed erroneously, improperly, or illegally.

"The provisions of this section shall apply whether or not the license fee or tax in question was paid under protest, but shall only be available where the application provided for here is made in writing to the Commission within a period of three years from the date the license fee or tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional license fee or tax is assessed and paid."

3. Section 12-7-2300 provides a one year statute of limitations where the taxpayer has filed a return and subsequently has been assessed additional tax. This provision allows the taxpayer to apply to the Commission for a revision of that tax. This remedy is only available to taxpayers who have filed a tax return and therefore does not apply to the taxpayer's estimated assessments.

Conclusion:

The plain wording of Section 12-7-2300 indicates that a tax return must be filed before this statute can be invoked. An estimated assessment does not constitute a return being filed for purposes of this statute. Therefore, the three year statute of limitations contained in 12-47-440 should be applied in this circumstance. The filing of the return subsequent to payment of the estimated assessment will satisfy the requirement that a request for refund be made pursuant to this section. Therefore, the taxpayer would be eligible for a refund of income and license taxes paid on the estimated assessments for fiscal years 9/30/83 and 9/30/84.