

1979 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-46, 1979 WL 29052

Office of the Attorney General

State of South Carolina

Opinion No. 79-46

March 12, 1979

***1 SUBJECT: Sales Tax—Audit of Records for Purpose of Verifying Refund Claim.**

The Tax Commission has the duty to examine a taxpayer's records to establish a tax payment before authorizing the refund thereof under § 83 of Act 644, Acts of 1978.

TO: Honorable John H. LaFitte, Jr.
Commissioner
South Carolina Tax Commission

QUESTION:

Does the Tax Commission, by reason of Act 644, Acts of 1978, have authority to examine records of taxpayers to determine the correctness of refunds claimed under § 83 of the Act?

APPLICABLE LAW:

Section 83 of Act 644, Acts of 1978. §§ 12-35-1270, 12-35-1350 and other Sections of Chapter 35 of Title 12 of the 1976 Code of Laws.

DISCUSSION:

The applicable provision of the 1978 Act states:

'Provided, Further, notwithstanding any other provision of law including the statute of limitations relating to the refund of taxes paid in error, or because of a rule declared invalid by the courts, the seller of any portable self-contained tobacco drying, curing or storage machine or portable barn containing such a machine which was sold after January 1, 1971 and on which sales or use taxes were paid may for a period of one year from the effective date of this act apply for and receive a refund of the sales or use taxes paid on such sales.'

The refund claim is to be granted provided the taxes were paid to the Commission. The tax is provided by § 12-35-510 for the sales tax and § 12-35-810 for the use tax. The sales tax is in an amount equal to four percent of the retailer's 'gross proceeds of sales of the business'. The Commission is, by the provision of § 12-35-1270, authorized to examine the books and records of a taxpayer to determine if the proper amount of tax was paid. Section 12-35-1320 authorizes a refund:

'If the Commission discovers from the examination of a return or otherwise that the tax paid is greater or less than the amount due, it shall give notice to the taxpayer of such underpayment or overpayment and such person shall thereupon have an opportunity within thirty days to confer with the Commission as to any proposed adjustment.'

The provision of the 1978 Act grants a refund and because of such is subject to strict construction and compliance.

'A refund of taxes is solely a matter of governmental grace, and any person seeking such relief must bring himself clearly within the terms of the statute authorizing same, and the weight of authority seems to be that such statutes are to be strictly construed against the taxpayer and should not be strictly construed, against the State.' [Asmer v. Livingston, 225 S. C. 341, 82 S.E. 2d 465 \(1954\)](#).

When a retailer returns the tax, the total gross proceeds of sales are listed upon the returns. Such would include the sales prices or gross proceeds of sales from all sales of tangible personal property including the items for which the refund is authorized by the 1978 Act. It would, therefore, be necessary to review the retailer's records to determine whether the tax on these items was in fact paid to the Tax Commission. If the examination reveals an underpayment of tax, it is extremely doubtful that it could be established from what sales the understatement results. Under such circumstances, the conclusion would necessarily be that the tax on the items for which the refund is claimed was not paid. Such falls squarely within the above-quoted language of [Asmer v. Livingston, supra](#).

*2 In the absence of proof that the tax was paid, the refund cannot be granted and the Tax Commission thus has the duty to examine the claimant's records for such purposes.

CONCLUSION:

The Tax Commission has the duty to examine a taxpayer's records to establish a tax payment before authorizing the refund thereof under § 83 of Act 644, Acts of 1978.

Joe L. Allen, Jr.
Deputy Attorney General

1979 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-46, 1979 WL 29052