

## **Rule 006 – Refunds & Credits**

Refunds or credits are granted according to R.S. 47:337.77 through 47:337.81 and 47:337.86. When requesting a refund or credit, the taxpayer must first submit a formal written request by certified mail which includes all evidence necessary to completely support the validity and accuracy of such claim to the taxing authority. A request for refund or credit will not be considered as being validly filed until this and any other procedural steps listed below have been correctly followed. Furthermore, such requests must be physically received before their associated deadlines.

Generally, if an overpayment has been documented, a credit memo will be issued for use against future liability. If there remains an unused credit amount after one year, the taxpayer may request a refund check.

### **R.S. 47:337.77 . Refunds of overpayments authorized**

A. For the purpose of this Section, "overpayment" means a payment of tax, penalty or interest when none was due; the excess of the amount of tax, penalty or interest paid over the amount due; or the payment of a penalty that is later waived or remitted by the collector, provided that the power of the collector to refund overpayments shall be as prescribed and limited in this Section.

B. The collector shall make a refund of each overpayment where it is determined that:

(1) The tax was overpaid because of an error on the part of the taxpayer in mathematical computation on the face of the return or on any of the supporting documents.

(2) The tax was overpaid because of a construction of the law on the part of the taxpayer contrary to the collector's construction of the law at the time of payment.

(3) The overpayment was the result of an error, omission, or a mistake of fact of consequence to the determination of the tax liability, whether on the part of the taxpayer or the collector.

(4) The overpayment resulted from a change made by the collector in an assessment, notice, or billing issued under the provisions of this Chapter.

(5) The overpayment resulted from a subsequent determination that the taxpayer was entitled to pay a tax at a reduced tax rate.

(6) The overpayment was the result of a payment that exceeded either the amount shown on the face of the return or voucher, or which would have been shown on the face of the return or voucher if a return or voucher were required.

C. Notwithstanding the provisions of Subsection B of this Section, where it is determined that there is clear and convincing evidence that an overpayment has been made, the collector shall make a refund, subject to conditions or limitations provided by this Chapter.

D.(1) Such refunds shall be made out of any current collections of the particular tax which was overpaid.

(2) If a taxpayer has overpaid a particular tax for more than one taxable year and seeks a refund of the total amount, the collector may issue the refund incrementally. The number of increments shall not exceed the total number of years the tax was overpaid.

E. The collector may recover any refunded amount determined not to be an overpayment through any collection remedy authorized by R.S. 47: 337.45 within two years from December thirty-first of the year in which the refund was paid. Any refunded amount determined not to be an overpayment shall bear interest at the rate provided for in this Chapter, which shall be computed from the date the refund was issued to the date payment is received by the collector.

F. This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the collector of the provisions of any law or of any rules and regulations. In the event a taxpayer believes that the collector has misinterpreted the law or rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover.

#### **R.S. 47:337.78 . Crediting or offset of overpayments against other obligations**

Before refunding any overpayment, the collector may first determine whether the taxpayer who made the overpayment owes any other liability under any ordinance administered by him. If such be the case, the collector may credit the overpayment against such liability and notify the taxpayer of the action taken.

#### **R.S. 47:337.79 . Prescription of refunds or credits**

A. After three years from the 31st day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been received by the collector from the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period. The maximum amount, which shall be refunded or credited, shall be the amount paid within said three-year or one-year period. The collector shall prescribe the manner of filing claims for refund or credit.

B. Provided that in any case where a taxpayer and the collector have consented in writing to an extension of the period during which an assessment of tax may be made, the period of prescription for refunding or crediting overpayments as provided in this Section shall be extended in accordance with the terms of the agreement between the taxpayer and the collector.

#### **R.S. 47:337.80 . Interest on refunds or credits**

A. Each collector shall compute on all refunds or credits and allow interest as part of the refund or credit as follows:

(1) From date of payment of the taxes, but prior to submission by the taxpayer of a claim for refund, interest shall be computed at a rate of not less than two per cent per annum.

(2) From date of submission by the taxpayer of a claim for refund, or from payment under protest, or from the date that the taxpayer gave the political subdivision notice of the taxpayer's intention to file suit for the recovery of any taxes paid, interest shall be at the average prime or reference rate as computed by the commissioner of financial institutions pursuant to R.S. 13:4202(B), per year, but without the addition of one percentage point to the average prime or reference rate and without regard to the limitations contained in R.S. 13:4202(B).

(3) The interest rate provided for in Paragraph (2) of this Subsection shall not be applicable for a sixty-day period from the date the taxpayer makes a claim for refund, if a refund is the result of the

taxpayer's administrative error; however, the interest for this sixty-day period shall be computed under the provisions of Paragraph (1) of this Section.

B. No interest on refunds or credits shall be allowed if it is determined that a person has deliberately overpaid a tax in order to derive the benefit of the interest allowed by this Section. Payments of interest authorized by this Section shall be made from funds derived from current collections of the tax to be refunded or credited.

C. As of the date a person files a petition for relief under the uniform bankruptcy laws of the United States as provided in Title 11 USC 101 et seq., no interest shall be allowed to accrue as a part of any refund or credit which relates to a pre-petition tax period.

#### **R.S. 47:337.81 . Appeals from the collector's disallowance of refund claim**

A. If the collector fails to act on a properly filed claim for refund or credit within one year from the date received by him or if the collector denies the claim in whole or in part, the taxpayer claiming such refund or credit may within thirty days of the notice of disallowance of the claim request a hearing with the collector for redetermination. The collector shall render a decision within thirty days of the request by the taxpayer. The taxpayer may appeal to a court of competent jurisdiction. No appeal may be filed before the expiration of one year from the date of filing such claim unless the collector renders a decision thereon within that time, nor after the expiration of ninety days from the date of mailing by certified or registered mail by the collector to the taxpayer of a notice of the disallowance of the part of the claim to which such appeal relates.

B. Any consideration, reconsideration, or action by the collector with respect to such claim following the mailing of a notice by certified or registered mail of disallowance shall not operate to extend the period within which an appeal may be taken.

C. In answering any such appeal, the collector is authorized to assert a demand for any tax and additions thereto that he may deem is due for the period involved in the claim for refund or credit.

#### **R.S. 47:337.86 . Credit for taxes paid**

A.(1) A credit against the sales and use tax imposed by any taxing authority of the state shall be granted to a taxpayer who paid monies, whether or not paid in error, absent bad faith, based upon a similar tax, levy, or assessment upon the same tangible personal property in a taxing jurisdiction of this state or another state. The credit granted herein shall be applicable only when a similar taxing authority is seeking to impose and collect a similar tax, levy, or assessment from a taxpayer upon the same tangible personal property for which the taxpayer has paid a similar tax, levy, or assessment to a similar taxing authority.

(2) A taxing authority shall give credit against the use taxes due on the importation of a vehicle for taxes paid in another state where the vehicle was previously purchased and titled, regardless of the authority's similarity to jurisdictions in the other state to which the sales or use taxes were paid. With respect to vehicles, the credit shall be calculated by multiplying the rate of the sales or use tax paid in the other state by the cost price that is subject to the authority's use tax at the time of the importation of the vehicle. The credits provided by this Section and R.S. 47:303 shall be applied together against the state and local taxes due on the use of a motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semitrailer, motor bus, house trailer, or any other vehicle subject to the vehicle registration license

tax, so that the applicant for title or registration in Louisiana of a vehicle that the applicant previously purchased and titled in another state is allowed credit against the state and local use taxes imposed in Louisiana for the full rate of sales or use tax paid in the other state.

B.(1) The credit provided herein for monies paid to a taxing authority of another state shall be granted only in the case where such authority of another state to which monies have been paid grants a similar credit.

(2) The credits granted by this provision shall not exceed the amount of money paid to the taxing authority of this state or another state.

C.(1) The proof of payment to a taxing authority shall be made in accordance with the rules adopted by the secretary of the Department of Revenue under R.S. 47:303(A). Except as provided in Paragraph (2) of this Subsection, in no event shall the credit be greater than the tax imposed by the taxing authority upon the particular tangible personal property that is subject of the sales and use tax.

(2) The credit granted for taxes in any taxing jurisdiction of a parish in which no local sales and use tax is levied and imposed shall be the amount of taxes that would have been collected by the taxing authority at the tax rate imputed to that taxing authority. The imputed tax rate shall be the lowest tax levied and imposed by a similar taxing authority in this state as determined by the Department of Revenue.

D. For purposes of this Section, "taxpayer" shall mean the final consumer who has paid the applicable local tax directly to the collector or the vendor or seller who has collected the tax from the final consumer and remitted the tax to the taxing authority. In no instance shall a vendor or seller be denied a credit for taxes paid in error to a political subdivision.

E.(1) Notwithstanding any other law to the contrary, no person shall be taxed with respect to a particular event more than once, provided that the person collecting and remitting taxes can produce to the collector documentary evidence to show a good faith effort to recover taxes paid to the incorrect taxing authority. Such documentary evidence shall consist of the following:

(a) A formal request for refund by certified mail which includes all evidence supporting such claim to the taxing authority paid in error.

(b) A second request for refund by certified mail if no response was received within sixty days of the first refund request.

(c) Either the response approving or denying the first or second refund request, whichever may be applicable, or an affidavit from the person stating that no response was received within sixty days of the second refund request.

(2)(a) The collector shall not impose penalties or interest on taxes erroneously paid to another taxing authority unless the erroneous payment was the result of intentional conduct of gross negligence on the part of the persons collecting and remitting taxes. In instances where a legitimate disagreement exists as to which taxing authority is owed, the involved taxing authorities shall resolve the dispute among themselves through any legal means.

(b) For the purposes of this Section, a "similar taxing authority" means a political subdivision having and performing the same governmental functions as the political subdivision seeking to impose the sales or use tax.

**BAD FAITH - Dishonesty or fraud in a transaction, such as entering into an agreement with no intention of ever living up to its terms, or knowingly misrepresenting the quality of something that is being bought or sold.**

INTENT TO DECEIVE - A person who intentionally tries to deceive or mislead another in order to gain some advantage.