



DEPARTMENT OF FINANCE AUDIT DIVISION

AP/AU-17, 3/20/92

STATEMENT OF AUDIT PROCEDURE

TAXPAYER CLAIM OF PRIOR RESOLUTION

I. Background

In the course of an audit the Audit Division may propose an adjustment on an issue which has been the subject of an adjustment in a recent audit and which has been resolved in favor of the same taxpayer in a post-audit procedure (i.e., Small Claims conference, Office of Legal Affairs case closing, or formal hearing).

In these circumstances, the Division will consider cancelling the proposed adjustment, provided the relevant facts are unchanged from the prior audit. For such consideration, the resolution of the prior case must have been made on the merits, not as a full or partial abatement which was granted as part of a compromise or settlement, and must meet the specific criteria outlined below. In all cases, however, notwithstanding a prior resolution in favor of the taxpayer, the Audit Division retains the right to assert any adjustment which in its sole judgment it determines is applicable under the law and regulations.

II. Scope

This Statement of Audit Procedure will apply to all audits conducted by the field and desk auditors of the Audit Division.

III. Procedure

A. The Division will consider cancelling an adjustment proposed by the auditor on an issue, provided:

(i) the same issue was previously resolved on the merits in the taxpayer's favor by the Office of Legal Affairs, Small Claims, Hearings, or other post-audit body of the Department of Finance;

(ii) the prior resolution related to any of the three tax years immediately preceding the year under audit; and

(iii) There has been no change in the applicable law.

B. In response to a taxpayer's request to cancel an adjustment, the auditor will request that the taxpayer provide written evidence of the full reversal of that adjustment on the issue in question. The taxpayer should provide a tax case number as part of such written evidence. If warranted, the auditor may provide reasonable assistance to the taxpayer in obtaining the necessary evidence. In addition to other criteria listed in paragraph D below, the evidence must establish that the prior resolution applied to the same taxpayer and that the facts and law in the prior case were the same as those in the current case.

C. If the taxpayer can demonstrate the prior full reversal on the merits for the same adjustment, the auditor will submit the case to his or her Unit Manager and Group Chief for approval to cancel the proposed adjustment.

D. The Unit Manager will verify the accuracy of the taxpayer's claim of a prior resolution on the issue under audit. In particular, the Unit Manager must find:

(i) that the taxpayer under audit is the same taxpayer which was involved in the prior resolution of the issue;

(ii) that the issue in question is the same issue which was previously resolved in the taxpayer's favor;

(iii) that the facts relevant to the current issue are the same facts which were relevant to the prior resolution;

(iv) that the full reversal of the adjustment was granted entirely on the basis of the merit of taxpayer's claim and was not part of any settlement or compromise agreement;

(v) that the tax year involved in the prior resolution immediately predates the year being audited by no more than three years; and

(vi) that no legislation has been enacted, court decisions rendered, or policy statements issued subsequent to the previous resolution which would affect the determination of the issue under audit.

E. The Unit Manager, after finding these requirements are satisfied, may determine nevertheless that the prior resolution should not be followed in the current audit. If a taxpayer disagrees with a deficiency on an issue asserted after a claim of prior resolution, the taxpayer's remedy is to pursue the protest rights provided in the Administrative Code.

F. In making a determination the Unit Manager may rely on any information available concerning the applicable law and regulations, departmental policy, taxpayer's prior resolution, and the current audit, including but not limited to the record of prior resolution reached by Legal Affairs or other post-audit body. The Unit Manager may request that the taxpayer furnish documentation confirming any of the conditions required for consideration of the taxpayer's claim.

G. Following applicable case-closing procedure, the auditor will forward the case upon its completion to the Quality Control Unit. The conclusions of the auditor and Unit Manager concerning the prior resolution of an issue are subject to review by the Quality Control Unit as part of that unit's normal review procedures for completed desk and field audits.