

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. U. 88-123

INTERGRAPH CORPORATION
One Madison Industrial Park
Huntsville, AL 35807-4201,

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Taxpayer.

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ORDER

The Revenue Department partially denied four petitions for refund of State and Madison County sales and use tax filed by Intergraph Corporation concerning the period November 1, 1984 through September 30, 1987. Intergraph appealed to the Administrative Law Division and a hearing was conducted on April 18, 1989. Ms. Gail Peters and Mr. Larry Moxley represented Intergraph. Assistant counsel Ron Bowden appeared for the Department. Based on the evidence and arguments presented at the hearing, the Administrative Law Judge entered a recommended order on June 12, 1989, which, along with the Administrative Law Division record in the case, was forwarded to the Commissioner of Revenue for entry of a final order. After review of the record and the recommended order, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

Department examiner Ed Riddlehoover audited Intergraph for sales and use tax in May and June, 1987. Examiner Riddlehoover

discovered during the audit that tax had not been paid on a number of invoices involving Service Steel, Inc. Service Steel had performed various "furnish and install" contracts for Intergraph and was liable for tax on the cost of the materials used to complete the contracts.

After finding the untaxed invoices, Department examiner Carolyn Mulcahy audited Service Steel for sales and use tax for the period June 1, 1984 through June 30, 1987. The audit revealed a number of invoices relating to "furnish and install" contracts with Intergraph on which Service Steel should have paid tax. The audit resulted in a deficiency of over \$35,000.00 against Service Steel.

Service Steel subsequently requested that Intergraph review its records to determine if Intergraph had paid tax on any of the invoices assessed against Service Steel. Intergraph reviewed its records in mid-December, 1987 and discovered that tax had in fact been erroneously paid on a number of the invoices.

Neither the Department nor Intergraph was aware of the erroneous overpayments by Intergraph until mid-December, 1987. Examiner Riddlehoover informed Intergraph as soon as the overpayments were discovered that petitions for refund should be filed immediately to stop the three-year statute of limitations applicable to refunds.

Examiner Riddlehoover also assisted Intergraph in computing the petitions.

Intergraph attempted to correct the situation by paying Service Steel that amount which Service Steel should have originally

charged Intergraph in tax on the "furnish and install" contracts. Service Steel in turn paid that amount to the Department in satisfaction of the audit deficiency.

Intergraph then filed petitions for refund with the Department on December 16, 1987. The petitions were for all or parts of the period November 1, 1984 through October 31, 1987, but in fact also included tax that had been paid by Intergraph in August, 1984.

The petitions were granted in full except for the August, 1984 tax. That portion was denied because the petitions were filed more than three years after payment of the tax.

Intergraph complains that examiner Mulcahy knew or should have known that Intergraph was barred by the statute of limitations from obtaining a refund on the August invoices, and thus should have deleted those invoices from the audit on Service Steel. Intergraph further asserts that the refunds should be granted based on the doctrine of equitable recoupment.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-1-34 requires that a petition for refund of erroneously paid tax must be filed within three years from payment of the tax. The petitions in question were filed in December 1987, more than three years after payment of the subject tax in August, 1984. Consequently, a refund of the August, 1984 tax was properly denied by the Department.

The Department cannot allow a credit to one taxpayer (Service

Steel) for an overpayment made by another taxpayer (Intergraph).

Rather, the Department can only assess and collect the amount due from the proper taxpayer, and in turn refund any tax improperly paid upon the timely filing of a petition for refund.

A formal petition for refund must be filed for any overpayment of taxes. Code of Ala. 1975, §40-1-34 provides that "[B]efore any refund under this section can be made, the taxpayer . . . shall file in duplicate a petition directed to the department of revenue, setting up the fact(s) relied on to procure the refunding of the money erroneously paid". Department Reg. 810-6-4-.18 also requires that a formal petition for refund must be filed, and further provides that a credit for overpayment can only be allowed on the same account on which the overpayment was made.

The doctrine of equitable recoupment was established by federal case law and provides in substance that the tax consequences of a single transaction must be considered as a whole, and that if tax is incorrectly paid on a transaction but its recovery is barred by the statute of limitations, then that tax can be used to offset any additional tax correctly assessed against the same taxpayer on the transaction. See Bull v. United States, 295 U.S. 247, 55 S.Ct. 695.

That is, if a single transaction or taxable event has been subjected to two taxes on inconsistent legal theories, then what was mistakenly paid can be recouped against what was correctly due.

Likewise, the government can also invoke the doctrine to assert as an offset against a refund an otherwise time-barred claim against the same taxpayer, see Stone v. White, 301 U.S. 532, 57 S.Ct. 851.

However, the doctrine must be strictly construed and cannot be used to circumvent the statute of limitations. As stated in Rothensies v. Electric Storage Battery Company, 329 U.S. 296, 67 S.Ct. 271, quoting Wilmington Trust Company v. U.S., 610 F.2d 703:

As statutes of limitations are applied in the field of taxation, the taxpayer sometimes gets advantages and at other times the government gets them. Both hardships to the taxpayers and losses to the revenues may be pointed out. They tempt the equity-minded judge to seek for ways of relief in individual cases.

But if we should approve a doctrine of recoupment of the breath here applied, we would seriously undermine the statute of limitations in tax matter. In many, if not most, cases of asserted deficiency the items which occasion it relate to past years closed by statute, at least as closely as do the items involved here. Cf. Hall v. United States, 43 F.Supp. 130, 95 Ct. Cl. 539.

The same is true of items which form the basis of refund claims. Every assessment of deficiency in each claim for refund will invite a search of the taxpayer's entire tax history for items to recoup.

The doctrine cannot be used to gain a refund that is barred by the statute of limitations. Rather, it can only allow the statute-barred tax as an offset against any additional assessment against the same taxpayer arising out of the same transaction. Thus, only if the Department was attempting to assess additional tax against Intergraph based on the August, 1984 invoices would the doctrine be applicable in the present case, and even then the August, 1984 tax paid by Intergraph could not be refunded but would only be allowed

to offset or reduce the additional assessment.

The above considered, the Department properly denied that portion of the petitions relating to the tax erroneously paid by Intergraph in August, 1984. This order constitutes the final order in this action for purposes of review under Code of Alabama 1975, §41-22-20.

Entered this 30th day of June, 1989.