
Opinion of the Tax Commissioner

Date Issued: April 20, 2006

Opinion No.: 06-0001

Tax: Corporate Franchise

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Subject: Statute of Limitations

This request for an Opinion of the Tax Commissioner was received on March 20, 2006. The request concerns the statute of limitations on applications for refunds when a certain type of change is made to the federal tax return filed by XXXX (Taxpayer).

TAXPAYER'S STATEMENT OF FACTS

Taxpayer is a corporation doing business in Ohio. Taxpayer has a March 31 fiscal year for both financial reporting and federal income tax purposes. Consequently, the Taxpayer also uses a March 31 fiscal year end for Ohio income tax purposes. Taxpayer purchases substantially all of its goods from its parent corporation, a NON-US Corporation with no US activity.

Taxpayer has determined that its related party transactions are most appropriately tested under the Comparative Profits Method of the Treasury Regulation under Internal Revenue Code (IRC) section 482. Based on its study, Taxpayer has identified a group of comparable transactions and, thus, has constructed an operating margin range based on these comparables. Taxpayer's study indicates that its actual reported operating income amounts were above the acceptable upper quartile. Accordingly, an adjustment to previously reported taxable income has been computed in the amount of \$XXXX for the year ended March 31, 2002. Consequently, Taxpayer's purchases and cost of goods sold have been increased (and its taxable income reduced) by this amount, thus making its operating margin consistent with the comparables.

Based on this study, Taxpayer has filed with the Internal Revenue Service (IRS), in conjunction with the NON-US taxing authority, a Request for an Advance Pricing Agreement (APA). A review such as this one review involving two national taxing authorities is also referred to as a Competent Authority Review. The APA requested for the years March 31, 2005 through March 31, 2009. It is anticipated that the proceedings for this review will continue beyond the normal federal statute of limitations for the year ended March 31, 2002 (i.e., December 14, 2005). However, Taxpayer has requested that once the agreement is approved by both of the taxing authorities (i.e., it is a bi-lateral agreement), the principles or findings or the agreement will be rolled back to (used in determining taxable income for) the years March 31, 2002 through March 31, 2004. The Office of the Associate Chief Counsel (International) for the IRS has generally agreed that the federal statute of limitations is extended in cases in which rollback has been requested. Nonetheless, Section 9.01 of Internal Revenue Procedure 2002-52 advises taxpayers to file a protective claim for refund for the earlier years. Accordingly, Taxpayer is filing a federal protective claim for refund for the year ended March 31, 2002 pursuant to that Internal

Revenue Procedure. As such, once the bi-lateral agreement is reached, it will be applied to Taxpayer's federal income tax return for the year ended March 31, 2002, either as a result of the protective claim or pursuant to the Competent Authority/IRS proceedings.

Taxpayer is not currently involved in litigation or informal hearing proceedings at this Department or any other tribunal or court in Ohio on the issue that is the subject of the request for this Opinion of the Tax Commissioner.

QUESTIONS FOR WHICH OPINION IS REQUESTED

If Taxpayer has a federal change made to its taxable income as a result of a transfer pricing adjustment, will an application for refund pursuant to R.C. 5733.12 be considered timely filed and in accordance with the statute of limitations set forth in R.C. 5733.12(B) and R.C. 5733.031(C) even though the general three-year statute of limitations prescribed by R.C. 5733.12(B) for filing a corporate franchise tax refund claim has expired?

ANALYSIS

In considering this question, R.C. 5733.031(C) must be reviewed. That provision states the following:

(C) If any of the facts, figures, computations, or attachments required in a corporation's annual report to determine the tax imposed by section 5733.06 of the Revised Code must be altered as the result of an adjustment to the corporation's federal income tax return, whether the adjustment is initiated by the corporation or the internal revenue service, and such alteration affects the corporation's liability for the tax imposed by section 5733.06 of the Revised Code, the corporation shall file an amended report with the tax commissioner in such form as the commissioner requires. The amended report shall be filed not later than one year after the adjustment has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first.

(1) In the case of an underpayment, the amended report shall be accompanied by payment of an additional tax and interest due and is a report subject to assessment under section 5733.11 of the Revised Code for the purpose of assessing any additional tax due under this division, together with any applicable penalty and interest. It shall not reopen those facts, figures, computations, or attachments from a previously filed report no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the corporation's federal income tax return.

(2) In the case of an overpayment, an application for refund may be filed under this division within the one-year period prescribed for filing the amended report even if it is filed beyond the period prescribed in division (B) of section 5733.12 of the Revised Code if it otherwise conforms to the requirements of such section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the corporation's annual report that are affected, either directly or indirectly, by the adjustment to the corporation's federal income tax return unless it is also filed within the time prescribed in division (B) of section 5733.12 of the Revised Code. It shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the corporation's federal income tax return.

ANSWER

Accordingly, it is the opinion of the Tax Commissioner that:

Taxpayer may file an application for refund (and must file an amended return) with this Department not later than one year after the adjustment to Taxpayer's federal income tax return has been agreed to or finally determined for federal income tax purposes or any federal income tax refund, or the abatement or credit resulting therefrom, has been paid, whichever occurs first, even if such time frame is beyond the general three-year statute of limitations prescribed in R.C. 5733.12(B). The adjustment to Taxpayer's federal income tax return can be initiated by the IRS or Taxpayer as long as it is allowed for federal income tax purposes. However, similar to the Internal Revenue Procedure 2002-52, Taxpayer is advised to also file a protective claim with this Department.

This Opinion applies to only to Taxpayer. It may not be transferred or assigned.

In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of Taxpayer to be aware of such changes. See R.C. 5703.53(E).

William W. Wilkins
Tax Commissioner

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