

M e m o r a n d u m**465.0035**

To: Mr. Robert Buntjer, Supervisor
Audit Review and Refund Unit

April 6, 1990

From: Gary Jugum

Subject: Assignment of Refunds

This is in reply to your memorandum of February 5, 1990 requesting our opinion as to whom the proper payee should be on a refund warrant which has purportedly been assigned by the taxpayer. You attached a copy of a power of attorney which contains an assignment provision by which the claimant purports to assign the total refund of sales or use tax to his tax consultant. You have no problem mailing the refund warrant to the claimant's assignee, but you question whose name should be shown as the payee on the warrant. If the warrant is to be deposited into a client's trust account, you question whether the warrant should be issued in the taxpayer's name, care of the assignee.

It is our opinion that all tax refund warrants must be issued with only the taxpayer as the payee. We should not honor an assignment such as the power of attorney you forwarded to us. Concomitantly, the board would have no liability to the assignee for the amount paid to the assignor, even if the board has actual notice of the purported assignment.

Section 6901 of the Revenue and Taxation Code specifically provides that refunds shall be credited by the Board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid, and the balance refunded to the person or his or her successors, administrators, or executors. There is absolutely no authority for the Board paying a refund to anyone other than the person from whom it was collected or by whom it was paid, other than a successor, administrator, or executor, none of which three terms include an assignee. The Legislature, by specifically including successors, administrators, and executors, shows an intention to exclude assignees.

Further, Section 6937 clearly states that a judgment shall not be rendered for a plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of the person paying the amount or by any person other than the person who paid the amount. We believe such restriction on the assignability of court actions for refund of tax is further evidence that Section 6901 should also be given a literal interpretation, i.e., only the person paying the tax should be the payee on a refund warrant.

We note that this is the position which the Franchise Tax Board has taken with respect to refunds of personal income tax and bank and corporation tax refunds – assignments of refunds are not honored.

We have no difficulty with you mailing the refund warrant to the taxpayer's assignee, if you have authorization for doing so from the taxpayer. But regardless of whether or not the refund is to be deposited into a claimant's trust account, the warrant should be issued only in the taxpayer/claimant's name, not in the name of the assignee.

DJH:jb

cc: Ms. Judy Agan
Mr. Charles Cordell
Mr. Robert Nunes
Mr. Glenn Bystrom
Mr. Donald J. Hennessy
Mr. E. L. Sorensen, Jr.
Business Taxes Attorneys