

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner seeks clarification on the statute of limitations on refund claims of sales tax filers that participate in the PrompTax program. We conclude that Petitioner’s refund claim filed within 3 years of the date it filed Form ST-810, *New York State and Local Quarterly Sales and Use Tax Return for Part-Quarterly (Monthly) Filers*, for an overpayment of sales tax is barred by the statute of limitations with respect to PrompTax payments made prior to the filing of that return.

Facts

Petitioner is a participant in the PrompTax program. Under this program, sales tax must be paid no later than 3 business days after the 22nd day of each month. The payment is accompanied by a two-part electronic submission; one part reports the amount due for days 1-22 of the current month, and the other part reports the amount due for day 23 through the end of the previous month. Participants may choose to calculate their sales tax due for days 1-22 of the current month using the “actual” method by remitting at least 90% of the actual sales tax due, or the “estimated” method by remitting at least 75% of 1/3 of their liability for the comparable sales tax quarter of the preceding year. The payment amount must equal the total of the two reported amounts. This electronic submission for PrompTax filers replaces the requirement to submit Form ST-809, *New York State and Local Sales and Use Tax Return for Part-Quarterly (Monthly) Filers*. See TR-682-N, *Program Overview – Electronic Filing and Payment Program (PrompTax)*. However, in addition to the monthly payments, PrompTax participants must file Form ST-810, *New York State and Local Quarterly Sales and Use Tax Return for Part-Quarterly (Monthly) Filers*, using their online services account, no later than 20 days after the end of the sales tax quarterly period. When filing that return, taxpayers are required to pay the balance of tax due for that quarter/period.

Petitioner made electronic PrompTax payments using the estimated method on June 24, 2013, July 26, 2013 and August 24, 2013. In addition, it timely filed Form ST-810 for the period of June 1, 2013 through August 31, 2013 on September 20, 2013. Petitioner asks whether a refund claim filed on September 20, 2016, for an overpayment of tax that occurred in June, July or August of 2013, was beyond the statute of limitations.

Analysis

Tax Law § 1139(c) states, in relevant part:

Claim for credit or refund for overpayment of sales tax shall be filed within three years from the time the return was filed or two years from the time the tax was paid,

whichever of such periods expires the later.... If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return.

Here, Petitioner made PromptTax payments on June 24, 2013, July 26, 2013 and August 24, 2013. In addition, it filed Form ST-810 for the period of June 1, 2013 through August 31, 2013 on September 20, 2013. Because Petitioner filed its refund claim on September 20, 2016, any refund cannot exceed the portion of the tax paid within the three-year period immediately preceding that date. Because Petitioner's PromptTax payments made in June, July and August of 2013 were made more than three years prior to the filing of its refund claim in September 2016, we conclude a refund of those payments is barred by the statute of limitations.

DATED: July 30, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.