

OHIO BOARD OF TAX APPEALS

COMPUTER SCIENCES CORPORATION, (et. al.),)	
)	
Appellant(s),)	CASE NO(S). 2017-65
)	
vs.)	
)	(USE TAX)
JEFFREY A. MCCLAIN, TAX COMMISSIONER OF OHIO, (et. al.),)	
)	DECISION AND ORDER
)	
Appellee(s).)	

APPEARANCES:

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Entered Monday, April 20, 2020

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered by this board upon a notice of appeal filed by appellant taxpayer Computer Sciences Corporation (“CSC”) from a final determination of the Tax Commissioner that denied CSC’s petition for reassessment of use tax liability. We proceed to decide the matter upon the notice of appeal, the statutory transcript (“S.T.”) certified by the Tax

Commissioner, the record of the hearing before this board (“H.R.”) and the exhibits presented, and the parties’ written arguments.

This matter emanates from an audit of CSC’s purchases for the period of April 1, 2006 through March 31, 2009. Two audits were conducted. In the initial audit, CSC provided the Department of Taxation with data attributed to its transactions everywhere, rather than just Ohio. As explained in an October 5, 2012 letter to CSC, the auditor identified transactions with a “ship to” address in Ohio and then identified the percentage of such transactions that were taxable. She then applied such percentage to those transactions with unknown destinations. S.T. at 91. In the absence of information allowing the auditor to tie transactions to invoices showing tax paid or tax accruals, a “last resort” bulk credit of \$377,232.41 was allowed against the assessment to account for use tax accrued and reported on CSC’s use tax returns during the audit period, to prevent double taxation. At the request of CSC based on its disagreement with the assessment, a re-audit was conducted. On re-audit, CSC provided additional documentation that allowed the auditor to tie transactions to tax accrued. As a result, the auditor found the use of a bulk credit unnecessary, and reduced the assessed amount by nearly 95%. The auditor explained in the re-audit remarks that the re-audit “excluded all transactions in which tax [was] properly paid and also excluded transactions that were proven to be non-taxable items.” S.T. at 6-9. Essentially, the assessment issued after re-audit only included transactions for which tax had not already been paid.

CSC objected to the lack of a bulk credit, and the Tax Commissioner affirmed the (re-audit) assessment. He explained in the final determination:

Since [CSC] was able to supply the missing documentation on re-audit, the more accurate line item audit methodology was able to be employed. Since the new

information supplied on re-audit allowed taxable transactions with tax accrued/paid to be identified, these line items were never picked up and listed in the re-audit in the first place. *** Because tax accrued/paid transactions were not included in the re-audit, there is no need for a mechanism to give offsetting credit for the tax accrued/paid (via bulk credit). In fact, utilizing a bulk credit would be incorrect since the line item methodology used on re-audit only looked at taxable transactions with outstanding tax due – not at those with tax already accrued on them. The line item methodology calculates only the outstanding tax liability due. Under these circumstances, a bulk credit would erroneously give the petitioner credit twice for tax paid on its returns – once when the returns were originally filed and a second time when offset against the

S.T. at 3. In addition, the Tax Commissioner rejected CSC’s interpretation of a “refund” in the audit file, explaining that such “refund” was an internal claim processed to account for the bulk credit offset in the original audit. Id.

On appeal to this board, CSC again argues that it is entitled to the bulk credit granted in the initial audit. It argues that the final assessment of \$166,849.82 fails to take into account the use tax paid on its returns - \$377,407.42, and results in double taxation. It also argues that the failure to fully process the internal refund claim during the initial audit is contrary to law, and that it justifiably relied on the grant of a refund to its detriment. At this board’s hearing, CSC presented the testimony of Nathan Perry, a tax advisor employed by CSC (now its parent company, DXC Technology), the deposition testimony of auditor Josephine Murphin, and documentary and electronic exhibits. The Tax Commissioner presented the testimony of Dale Petrie, Assistant Administrator of the Audit Division at the Ohio Department of Taxation and

CSC's chart of accounts. The commissioner continues to argue that the assessment issued after re-audit accounted for tax already paid on specific transactions, and, therefore, a bulk credit is unnecessary.

On appeal to this board, the burden is on CSC to demonstrate that the Tax Commissioner's final determination was in error. *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St.3d 213 (1983). In our review, we are mindful that "the tax commissioner's findings are presumed valid subject to rebuttal." *Accel, Inc. v. Testa*, 152 Ohio St.3d 262, 2017-Ohio-8798, ¶14.

At the outset, we address the Tax Commissioner's argument that this board lacks jurisdiction to consider CSC's arguments regarding the taxability of certain transactions because such issue was not previously specified as an error in the notice of appeal or in the petition for reassessment. CSC counters that such argument relates to it being given credit for the taxes is actually paid on certain transactions. We agree with the Tax Commissioner that CSC's notice of appeal specified errors focusing specifically on the credit – not the taxability of certain transactions. We will therefore restrict our review to the issue of the credit.

The parties differ in their views of the underlying facts. For its part, CSC argues that the assessment following re-audit did not account for use tax it remitted with its returns. The commissioner continues to disagree, arguing that, as a result of further information and review provided during the re-audit, specific transactions could be tied to accruals. If tax was accrued and paid on a transaction, it was removed from the assessment. Therefore, allowing a bulk credit against the re-audit assessment would possibly allow CSC to get double credit for what had already been remitted to the state, rather than double taxation, or would give credit for tax paid for transactions outside the scope of the assessment. H.R. at 150; H.R., Ex. 2 at 110. While

CSC relies on a summary spreadsheet prepared by Mr. Matsushita showing CSC's tax payments by cost segment, CSC fails to demonstrate how those tax payments break down such that this board can determine whether tax was actually paid on transactions assessed in the re-audit.

Our review of the record confirms the Tax Commissioner's recitation of the facts. The result of the re-audit was a more comprehensive review of specific transactions and any accruals on such transactions. Despite CSC's argument that no new information was provided in the re-audit, its own witness, Mr. Perry, testified that CSC originally provided data for *all* its transactions, not just those tied to Ohio. By providing more tailored information in the re-audit, the auditor was able to determine what transactions were taxable and whether tax had already been paid on those transactions. If tax was paid, the transaction was not assessed. The assessment was for tax due on transactions for which use tax was not paid, i.e., *in addition to* the amount already remitted. We agree with the Tax Commissioner that granting a bulk credit in *this* analysis, i.e., the re-audit, would be grossly inaccurate and would potentially allow the taxpayer to be credited twice with tax already paid. See S.T. at 3. CSC's argument that a bulk credit was necessary is not well taken.

We also reject CSC's argument that the processing of a "refund" by the auditor during the initial audit entitles it to a bulk credit. As Ms. Murphin explained in her deposition, the refund was processed to keep track of it and prevent a duplication application by filed by the taxpayer. H.R., Ex. 2 at 47. The application serves as a "tracking document." H.R., Ex. 21. Regardless, a refund is only appropriate for taxes illegally or erroneously paid. The results of the re-audit assessment indicate that the "bulk credit" amount provided in the initial audit did

not reflect the amount of taxes illegally or erroneously paid. The assessment included only those transactions for which tax was not already remitted, i.e., in addition to that tax already paid and attributed to the “bulk credit” in the prior assessment.

Based upon the foregoing, we find the appellant failed to meet its burden on appeal. It is therefore the order of this board that the final determination of the Tax Commissioner is hereby affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary