

TAXES--BANKS AND CREDIT INSTITUTIONS: Credit for overpayment of
REFUNDS--BANKS AND CREDIT INSTITUTIONS: taxes paid under Chapter
BANKS--OVERPAYMENT OF TAXES: 148 by banks and credit
CREDIT INSTITUTIONS--OVERPAYMENT OF institutions may be allowed
TAXES: only upon examination of
returns for the current
year. Refund of such overpayment may be claimed within two years
of payment.

OPINION NO. 107

May 26, 1965

Mr. Thomas A. David
Director of Revenue
Department of Revenue
Jefferson City, Missouri



Dear Mr. David:

Reference is made to your request for an official opinion from this office in regard to tax credits issued for taxes overpaid by banks and credit institutions. Your request is stated as follows:

"In reading Chapter 148 of the Revised Statutes of Missouri, 1959, with reference to Banking Institutions and Credit Institutions, we find in sections 148.060 and 148.180 that credit for overpayment can be allowed by the director. We fail to find however, the number of years on which credit can be given. Please advise relative to the application of the statute of Limitation for the period in which to apply for such refund or credit."

As related to banking institutions, the provision for a credit for overpayment of taxes under Chapter 148 is made in Section 148.060 RSMo 1959 as follows:

"2. Upon the filing of such return the full amount of any tax as computed by the taxpayer shall be paid to the director, who as soon as is practicable thereafter shall examine it and determine the correct amount of the tax. If the director determines that the taxpayer has paid a tax in excess of the amount lawfully due, the director shall permit a credit."

As related to credit institutions, an identical provision is included in Section 148.180.

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These statutes provide that the Director of Revenue shall examine the tax returns as soon as practicable after the returns have been filed. Upon such examination, the Director shall permit a credit to the taxpayer for the overpayment of taxes lawfully due. Thus, if it appears that a taxpayer has erroneously or inadvertently failed to claim a lawful deduction, the Director shall allow the deduction, determine the amount of overpayment and permit a credit. However, Sections 148.060 and 148.180 do not provide for the allowance of a credit for overpayment when such overpayment does not appear from the director's examination of the return. Therefore, the credit provided by these sections does not apply to overpayments for past years which come to the attention of the taxpayer through an examination of his own records in view of the applicable law.

Refunds for the overpayment of taxes generally is provided for in Section 136.035 RSMo 1959 as follows:

"1. The director of revenue from funds appropriated, shall refund any overpayment or erroneous payment of any tax which the state is authorized to collect. The general assembly shall appropriate and set aside funds sufficient for the use of the director of revenue to make refunds authorized by this section or by final judgment of court.

"2. The director of revenue shall refund any overpayment or erroneous payment of any tax on intangible personal property and the amount refunded shall be charged against the next apportionment to the political subdivision which was the residence or situs of the taxpayer at the time the tax was paid.

"3. No refund shall be made by the director of revenue unless a claim for refund has been filed with him within two years from the date of payment. Every claim must be in writing under oath and must state the specific grounds upon which the claim is founded."

Your letter recites the following situation to which a refund or credit may apply to a bank.

"Situation A. We have a request from a bank wanting to know how many years credit can be

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allowed on the amortization of their bond premiums. Beginning in 1956 on income earned in 1955, they failed to deduct their amortization which, under the Bank Tax Law they are entitled to do."

Section 148.040 RSMo 1959, provides that amortization of premiums on bonds by a bank shall be allowed as a deduction in computing net income subject to the tax. Therefore, the bank's failure to deduct amortization of premiums on bonds resulted in an overpayment or erroneous payment of tax as contemplated by Section 136.035. Said section provides that claims for refunds must be filed with the Director of Revenue within two years from the date of payment. Thus, although erroneous overpayments of taxes have been made continuously since 1956, claims for refunds are limited to two years from the date of payment.

Your letter recites the following situation in regard to credit institutions:

"Situation B. Our request for Credit Institution Tax credit is based on actual bad debts not deducted on the Institution Tax return filed in the year 1962, said return being based on the results of operations for the year 1961."

Section 148.150 allows credit institutions to deduct bad debts in computing net income subject to the tax. Therefore, failure of the credit institution to deduct bad debts results in an overpayment or erroneous payment of taxes subject to refund pursuant to Section 136.035. Claims for refunds must be filed with the Director within two years from the date of payment. Therefore, no refund may be allowed at this time for overpayment of taxes by a credit institution made pursuant to a return filed and taxes paid in the year 1962.

CONCLUSIONS

Credits for overpayment of taxes by banks permitted under Section 148.060 and for overpayment of taxes by credit institutions permitted under Section 148.180 can be made by the Director of Revenue upon the examination of returns for the current year as such returns are filed in his office. Credits for overpayment of taxes by banks and credit institutions may not be made by the Director of Revenue pursuant to claims made by banks or credit institutions for prior years. Refunds may be made to banks or credit institutions for overpayment or erroneous payment of taxes within two years from the date of such payment pursuant to Section 136.035.

Mr. Thomas A. David

The foregoing opinion which I hereby approve was prepared by my Assistant, Thomas J. Downey.

Very truly yours,

Norman H. Anderson
NORMAN H. ANDERSON
Attorney General