COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Emco Limited v. British Columbia (Minister of Provincial Revenue),*** 2004 BCCA 252

Date: 20040507

Docket: CA031036

Between:

Emco Limited

Appellant
(Petitioner)

And

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Provincial Revenue

Respondent
(Respondent)

Before: The Honourable Madam Justice Southin
The Honourable Madam Justice Newbury
The Honourable Madam Justice Saunders

S.G. Cordell	Counsel for the Appellant
H.W. Gordon	Counsel for the Respondent
Place and Date of Hearing:	Vancouver, British Columbia February 24, 2004
Place and Date of Judgment:	Vancouver, British Columbia May 7, 2004

Written Reasons by:
The Honourable Madam Justice Newbury

Concurring Reasons by:
The Honourable Madam Justice Saunders (Page 19, para. 23)

Dissenting Reasons by:
The Honourable Madam Justice Southin (Page 22, para. 30)

Reasons for Judgment of the Honourable Madam Justice Newbury:

[1] The discrete question raised by this appeal is whether a two per cent discount made available by the appellant to its customers on goods sold to them, was a discount only on the purchase price or whether it was a "blended amount" of purchase price and tax under the ***Social Service Tax Act***, R.S.B.C. 1996, c. 431 (the "Act"). The Chambers judge in the court below held that it was the former, and therefore dismissed the appellant's claim under s. 82(1) of the Act for a refund of alleged overpayments of tax remitted to the Minister over a six-year period. For the reasons that follow, I am of the opinion that the Chambers judge erred and that the refund application must be referred back to the Minister for reconsideration in light of these Reasons.

Factual Background

[2] Most of the facts are not in dispute and indeed are the subject of an Agreed Statement of Facts. The appellant Emco Limited ("Emco") is a supplier of heating, air conditioning and fire protection products and at all relevant times was a registered vendor for purposes of the Act. Since most of its customers in British Columbia were "end-users" and thus required to pay Social Service Tax on goods purchased, Emco maintained a "Social Service Tax payable account" to which it credited the amount of tax it collected (as agent for the Minister) on its taxable sales of tangible personal property. As required, it remitted the amount it collected monthly to the Minister with its Social Service Tax return.

[3] The parties agree that during the period in question, Emco offered many of its customers a discount "equivalent to 2% of the price of the goods sold before discount" if the customer paid its invoice by the 20th day of the month following the month in which the invoice was issued. The discount offer was normally contained in the customer's invoice. A typical invoice appeared as follows:

<table>
<tr><td colspan="2">INVOICE DATE
02/12/96</td><td colspan="2">TERMS
2% 20TH
MF</td><td>TOTAL DUE
165.88</td><td colspan="4">IF PAID ON OR BEFORE 03/20/96
AMOUNT DUE IS 162.97</td></tr>
<tr><td>ORDERED</td><td>SHIPPED</td><td>B/O</td><td>SKU
CODE</td><td>DESCRIPTION</td><td>PRICE</td><td>PER</td><td>DISC.</td><td>EXTENSION</td></tr>
<tr><td>2</td><td>2</td><td></td><td>6532230</td><td>4X100
BEACON
FENCE</td><td>62.00</td><td>EA</td><td>NET</td><td>124.00</td></tr>
<tr><td>1</td><td>1</td><td></td><td>6533147</td><td>3 BARICADE
TAPE
CONSTRTN
AREA</td><td>21.50</td><td>EA</td><td>NET</td><td>21.50</td></tr>
<tr><td colspan="5"></td><td colspan="3">SUB
TOTAL</td><td>145.50</td></tr>
<tr><td colspan="5"></td><td colspan="3">P.S.T.</td><td>10.19</td></tr>
<tr><td colspan="5"></td><td colspan="3">G.S.T.</td><td>10.19</td></tr>
<tr><td colspan="5"></td><td colspan="3">TOTAL</td><td>165.88</td></tr>
</table>

The term "2% 20th MF" refers to a 2% discount offered if the invoice is paid before the 20th of the following month. In this example, the discount is $2.91, or 2% of $145.50. The figures in the invoice are all correct, although the amount of tax payable if the offer is accepted is not shown. If the discount was not "blended" but reduced only the purchase price, the discounted "amount due" would have been $162.76, rather than $162.97 as shown in the invoice. To use the calculation provided by the appellant in its factum, the correct figures on this scenario would have been as follows:

Purchase price of goods $145.50
Less discount 2.91

Sub-total	142.59
Plus SST (7% of sub-total)	9.98
Plus GST*(7% of undiscounted price)	10.19
	$162.76

(*GST is not reduced if a prompt payment discount is taken.)

Thus the $162.97 figure shown in the invoice above would be incorrect if the discount were applied to reduce only the purchase price.

[4] Notwithstanding its position that the 2% was referable both to Social Service Tax and the price of the goods, Emco did not attribute any portion of the discount to its Social Service Tax payable account, nor did it apply to the Minister for a refund until several years had passed. It was not until May 1998 that Emco sought to recover what it characterizes as the "excess" Social Service Tax remitted on the discounted invoices between April 1, 1992 and March 31, 1998, in the aggregate amount of $533,564.65. Emco applied for the refund under s. 82(1) of the Act, which states:

> 82 (1) If the commissioner is satisfied that taxes or a portion of taxes have been paid in error, other than an error that is a mistake of law, the commissioner must refund from the consolidated revenue fund the amount of the overpayment to the person entitled. [Emphasis added.]

Evidently, Emco was prohibited from going back further in time because of the six-year limitation in s. 80(2) of the Act, which states:

> (2) Despite the *Limitation Act*, no action for a refund of tax paid in error, other than an error that is a mistake of law, may be brought more than 6 years after the date on which the tax was paid.

(There was no argument that this case concerned any "error of law", in which event Emco's claim would have been barred by the six-month limitation in s. 82(3).

[5] In December 1998, Emco re-filed its application in order to reflect certain adjustments, reducing the amount of its claim to $523,143.68.

[6] Since the refund claim covered "millions" of transactions, Emco and the Ministry had extensive discussions as to how it could be analyzed and "verified" using "sample" records. At one point the Ministry offered to refund some $342,000 to Emco as an alternative to requiring further examination of a larger sample of Emco's records. These discussions, however, did not result in any settlement of the claim, and in early 2001, the Commissioner formally denied the Emco's application. Emco appealed the Commissioner's decision to the Minister, who affirmed the assessment in July 2002. Emco petitioned to the Supreme Court in the fall of 2002 pursuant to s. 119(1) of the Act, seeking the following:

> 1. An order setting aside the decision of the Minister of Revenue dated July 10, 2002, disallowing the Petitioner's Application for a Refund submitted December 15, 1998 under section 82(1) of the Social [Service] Tax Act, RSBC 1996, c. 431;
>
> 2. A declaration that the Petitioner is entitled to a refund under section 82(1) of the Social [Service] Tax Act, RSBC 1996, c. 431 in respect of the sum claimed in its Application for Refund dated December 15, 1998;
>
> 3. In the alternative to 2, above, an order that the Petitioner's Application for Refund dated December 15, 1998, be referred back to the Minister of Revenue for reassessment on such terms as the Court shall direct;

as well as costs. It is common ground that the appeal to the Supreme Court properly took the form of a trial *de novo*, as provided by s. 119(4.1) of the Act.

The Chambers Judgment

[7] After briefly reciting the facts and the parties' respective arguments, the Chambers judge began his analysis by noting that some assistance could be derived from a "Tax Interpretation Manual" or "bulletin" used internally by the Ministry in the administering the Act. In this regard, he quoted the following passage from ***Vaillancourt v. Deputy Minister of National Revenue*** [1991] 3 F.C. 663 (C.A.):

> It is well settled that Interpretation Bulletins only represent the opinion of the Department of National Revenue, do not bind either the Minister, the taxpayer or the courts and are only an important factor in interpreting the Act in the event of doubt as to the meaning of the legislation. [at 674]

The parties adduced into evidence an excerpt from a ruling described in the Manual which was in force at the time Emco applied for its refund. I have attached this excerpt as Schedule A to these Reasons. It contemplated that where a customer takes advantage of a cash discount offered on the purchase price of tangible personal property, "the purchase price of the property has been reduced." Accordingly, it stated, the amount of tax payable would be reduced. In this situation, although the ruling did not say so, the purchaser could presumably apply for a refund of the overpayment. On the other hand, where the discount was applied to the "tax—included price before the discount", the discount was considered to include "a proportionate reduction in both the purchase price and the tax payable". The ruling stated that no refund was "available to the purchaser" in this situation but that if the seller had remitted tax calculated on the purchase price before the discount, it could apply for a refund of the difference "between the tax remitted and the tax collected from the purchaser on the discounted price. . . . The seller cannot claim the refund by an adjustment to the next tax return."

[8] This excerpt from the Manual was evidently amended in mid-1998 and replaced with another ruling I have attached to these Reasons as Schedule B. In that document, the Ministry stated that where discounts are "uncertain" or are taken after invoicing, "they will generally be considered tax-included." The Manual continued:

> Where the vendor has remitted the tax calculated on the pre-discount price, the vendor may debit its tax account to adjust the actual amount of tax collected (i.e. in case A, the vendor would adjust its tax account by $0.35). The adjustment must be made in the reporting period in which the discount is recognized. Where a discount has been made in prior reporting periods, the vendor must apply to the branch for a refund rather than making an adjustment to its tax account. [Emphasis added.]

This version of the Manual also contemplated situations in which the purchaser would be entitled to apply for a refund resulting from a discount of the purchase price (only).

[9] In 2001, the Manual was revised yet again. From this point, the portion dealing with cash discounts was as set forth in Schedule C to these Reasons. It was this version that was quoted by the Chambers judge at para. 13 of his Reasons. Emco emphasizes the statement that where discounts are uncertain and taken after invoicing, "the discount should be applied to both the gross purchase price and tax amount" as shown in "Case A". In these circumstances, the vendor was again required to apply to the Minister for a refund rather than permitted to make an adjustment to its tax account.

[10] The Chambers judge held, however, that the case at bar more closely resembled "Case C" of the last ruling — i.e., where "purchasers only take the discount on the gross purchase price and not the tax amount." He reasoned as follows:

> Despite the able and determined efforts of counsel for Emco to persuade this court otherwise, I am of the view that what has occurred in this case matches "Case C" in the examples set out in the Interpretation Bulletin. The petitioner's submission posits a formula that could be applied to any amount collected that was short of the full purchase price, since any discounted figure could be calculated as a blended amount. I reject the petitioner's submission that the 2% discount was

> only used as a basis for calculation. It seems quite obvious that the petitioner offered a 2% discount but failed to apply a corresponding discount to the S.S.T. I recognize that there are timing issues related to the reporting period that may make dealing with the matter as set out in "Case A" in the Interpretation Bulletin awkward for vendors who wish to offer a discount for prompt payment. That may militate against the practicability of such incentives, but it does not justify the over-collection of tax from purchasers and the re-characterization of the amount collected as a "blended" payment to the benefit of the petitioner. [para. 14; emphasis added.]

[11] The Chambers judge acknowledged that the situation before him was unusual in that neither of the parties was "actually entitled to the money that is the subject of the dispute, while no one with a potential claim is before the Court". (Para. 16.) Thus although he dismissed the appeal, he expressed concern that some form of notice of potential claims to refunds should be given to Emco's customers by the Province. For this purpose, he asked for an opportunity to hear counsel's submissions on the point. I assume that nothing has been done in this regard pending the outcome of this appeal.

On Appeal

[12] On appeal, Emco's argument is quite simple: it says that since the allocation of discounts is a matter not regulated by the Act, but left to the parties to a taxable transaction, the matter is one of contractual interpretation. (I did not understand counsel for the Minister to disagree with this proposition, or to raise any other issue of interpretation of the Act, and I do not propose to do so.) Emco offered a discount of 2% to its customers. The question is what was to be discounted — the purchase price alone, or both the purchase price and Social Service Tax. Emco says the answer to this question is obvious from its invoices and other trade documents which formed the contractual terms between it and its customers. They show that the amount of discount was calculated as a percentage of the purchase price, but that it was applied against, and therefore intended to reduce, both price and tax. Referring again to the invoice reproduced above at para. 3, if it had been intended by the parties to the contract that the 2% discount was not blended, the amount due would have been $162.76, rather than $162.97 as shown on the invoice. A similar misstatement would appear on all of Emco's invoices in which the discount was offered. Conversely, as Mr. Cordell notes, if the discount was blended, Emco's invoices are correct, as is every other invoice and statement issued by Emco during the relevant period.

[13] To use a simpler example, suppose a purchase price of $100 at a time when both the Social Service Tax and GST were calculated at 7%. The invoice would have shown the undiscounted purchase price of $100, Social Service Tax of $7 and GST of $7, for a total of $114. If the customer accepted the offered discount (2% of $100, or $2) by making prompt payment, he or she would be required to remit only $112 to Emco. If the $2 discount was applied only to the sale price, the tax (7% of $98) thereon would be $6.86. In that event, the discounted amount due would not be $112, but $111.86. The customer would have overpaid and would be entitled to apply for a refund of its $ .14 — obviously an entitlement more theoretical than real.

[14] On the other hand, if the $2 discount was intended as a "blended" amount, the invoice would have stated, consistent with the invoice reproduced above at para. 3:

INVOICE DATE 04/04/96		TERMS 2% 20TH MF		TOTAL DUE 114.00	IF PAID ON OR BEFORE 04/25/04 AMOUNT DUE IS 112.00			
ORDERED	SHIPPED	B/O	SKU CODE	DESCRIPTION	PRICE	PER	DISC.	EXTENSION
1	1			WIDGET	100.00	EA	NET	100.00
					SUB TOTAL			100.00
					P.S.T.			7.00
					G.S.T.			7.00
					TOTAL			114.00

The invoice is correct whether or not the discount is accepted, and in particular, the discounted "amount due" is correct. The customer, moreover, is not left with a negligible refund claim of which he or she is not aware (and could not be expected to be aware if he or she carefully perused the invoice); and (since Emco has applied for a refund as contemplated by the Ministry's rulings) the tax authority does not retain amounts to which it is not entitled in principle.

[15] Emco submits that the court should give the contractual documents their plain and ordinary meaning unless the result would be absurd, subject to the proviso that, as stated by the Supreme Court of Canada in ***Toronto (City of) v. W.H. Hotel Ltd.*** [1966] S.C.R. 434, the canon of interpretation should be "sensible with reference to the extrinsic circumstances." (At 440.) (See also ***Kentucky Fried Chicken Canada v. Scott's Food Services Inc.*** (1998) 41 B.L.R. (2d) 42 (Ont. C.A.), at 50-51; G. Fridman, ***Law of Contract in Canada*** (4th ed., 1999) at 492-93; S. Waddams, ***The Law of Contracts*** (4th ed., 1999) at para. 331.) As Mr. Cordell notes, this argument based on Emco's statements and invoices was not dealt with specifically by the Chambers judge and it is unclear why he concluded that "Case C" of the Manual published in 2001 most closely fits this case. That example assumes that the discount has been taken only from the "gross purchase price" and not from tax as well, and would have the consequence that the discounted amount was incorrect.

[16] In response, counsel for the Minister argued that if any reasonable purchaser who was offered a 2% discount were asked from what the 2% was intended to be taken, he or she would normally assume that it was to be taken off the purchase price. It was on that basis that Emco had evidently filed all its monthly Social Service Tax returns over the relevant period, without applying for a refund or adjusting each month's remittance by claiming a credit in the following month. One way or another, Mr. Gordon submitted, Emco had "made an error".

[17] With respect, it may well be that Emco made an "error" or that its accounting was (as it now contends) "improper" (or more accurately, incorrect) over the relevant period. But Emco has now applied for the refund and thus seeks to remedy any "error". The real question remains the nature or source of the discount given to Emco's customers. I agree that this is a question of the proper interpretation of the contractual terms as evidenced by the invoices and statements which were agreed upon as typical between Emco and its customers. In my opinion, the more reasonable interpretation, and the one that avoids an absurdity or error, is that Emco intended and calculated the 2% as a "blended" amount, and that in accepting the discounts offered, the customers accepted that term as well. It is also my view that the Chambers judge erred in failing to address this point. Unfortunately, he focussed on the most recent ruling and felt compelled to choose which of the four "Cases" he felt most resembled the case at bar. In fact, none of the four examples given by the Ministry was truly on point, although all the rulings did contemplate the concept of "blended" discounts entitling vendors to apply for the refund of overpayments of tax. In these circumstances, I would allow the appeal.

[18] This brings me to the question of the appropriate remedy. In addition to an order allowing the appeal and setting aside the order of the Minister disallowing the refund claim, Emco sought a declaration that it is entitled to a refund in the amount of $523,143.68 or in the alternative, the amount of "at least" $342,635.81 because of what it characterizes as admissions made by the Ministry to Emco in their discussions. The alternative least favoured by the appellant is a declaration that it is entitled to "a refund" together with interest, and an order that its refund

application be referred back to the Commissioner for re-assessment. The Minister contends that the latter order would be the most appropriate and indeed that any declaration of Emco's entitlement to a particular amount would be inappropriate.

[19] In submitting that this court should declare that Emco is entitled to refund of $523,143.68, the appellant relies on evidence showing that this amount was calculated on a "pro ration analysis" of its sales information made in accordance with GAAP and is based on the reasonable assumption that "discounts are taken on taxable sales (as opposed to tax-exempt sales) at the same ratio as taxable sales to gross sales in each of Emco's branches within British Columbia, within each year." Mr. Cordell also notes the professional qualifications of the accountant who prepared Emco's second refund claim. More importantly, he contends that there is no evidence that the claim is in error and that the methodology used in calculating it has in fact not been directly challenged by the Minister. The respondent has stated, however, that when it reviewed the sample of documents provided by Emco in support of its application, it concluded that "Emco's assumption was not correct and that to accept it would over-estimate the tax Emco claims it had collected in error from its customers who took the discount." Accordingly, the Ministry requested further records to substantiate Emco's claim — a request that was later put "on hold" when Emco's claim was formally disallowed.

[20] Although one might understand Emco's concern that proving the exact amount of its claim may turn out to be expensive and time-consuming, I conclude that it would not be appropriate for us to attempt to fix on any particular amount of refund that should be repaid to Emco. For obvious reasons, the court below did not deal with the question of the quantum of the refund, and ultimately another appeal might be necessary on that question. We should not foreclose or complicate such an appeal at this stage. As Mr. Cordell is aware, if the Ministry fails to proceed with a re-assessment of Emco on the basis described in these Reasons, Emco will not be without legal remedies.

[21] In the meantime, I would allow the appeal, set aside the order of the Chambers judge as well as the decision of the Minister dated July 10, 2002, and remit Emco's application for a refund back to the Commissioner for re-assessment in accordance with these Reasons.

[22] We are indebted to both counsel for their able arguments.

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The Honourable Madam Justice Newbury

Reasons for Judgment of the Honourable Madam Justice Saunders:

[23] I have had the benefit of reading in draft the reasons for judgment of my colleagues Madam Justice Newbury and Madam Justice Southin. They set out with clarity the consequences of the two positions. While I find both results to some degree unsatisfactory, I agree on balance with the reasons for judgment of Madam Justice Newbury and would allow the appeal as she proposes, with these additional comments.

[24] There are in issue two aspects of the invoices. Utilizing the invoice that they have chosen, those aspects are the words "2% 20th MF" and the words "if paid on or before 03/20/96 amount due is $162.97".

[25] The issue, as I see it, is: What does '2% 20th MF' mean in the context of the term 'if paid on or before . . . amount due is $162.97'? The second term is unambiguous. The first term is, in my view, capable of bearing three meanings. First, it could mean that the total bill presented, in the example given $165.88, will be reduced by 2%. However, we are told this is not possible because G.S.T. does not reduce. Further, the amount paid, $162.97, is greater than 98% of $165.88.

[26] Second, it could mean that the price of $145.50 is reduced by 2%. However, as pointed out by Madam Justice Southin, this means that the amount of $162.97 quoted as payable by the customer, is incorrect.

[27] Third, it could mean that there is a discount that is 2% of some figure, with the sum of $162.97 being the entire price if paid before the 20th of the month. On this interpretation the price paid Emco is something more than 98% of $145.50, but less than $145.50, and the P.S.T. actually payable is less than the amount for P.S.T. set out on the invoice.

[28] This case is then, as I see it, a contest between the ambiguous term "2% 20th MF" and the specific sum of $162.97 quoted as payable. In my view the specific should trump the ambiguous. In other words, it is, as concluded by Madam Justice Newbury, a blended payment. The result is, I must add, less than satisfactory. Although the Act as I read it does not overtly exclude a blended payment, the conclusion here of a blended payment suffers from the disadvantage of an invoice that quotes an amount as payable for P.S.T. when in fact something less is owing. This seems contrary to the scheme of the tax in which the amount of tax payable is usually demonstrated to a purchaser. The other result, however, leads to a conclusion that the specific amount said by the vendor to be payable is incorrect. That result strikes at the heart of the bargain and is not consonant with principles of contractual interpretation, in my respectful view.

[29] I would, therefore, allow the appeal as proposed by Madam Justice Newbury.

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The Honourable Madam Justice Saunders

Reasons for Judgment of the Honourable Madam Justice Southin:

[30] I have had the privilege of reading in draft the reasons for judgment of my colleague, Newbury J.A., who has set out a typical invoice and the appellant's argument thereon, at paragraph 3.

[31] What is in issue is the proper construction of the invoice as between buyer and seller.

[32] What would the buyer, who is assumed for this purpose to be the mythical reasonable man, if he paid $162.97, infer he was paying both for the goods and the taxes? In my opinion, he would infer he was paying $142.59 ($145.50 - 2%) + $10.19 + $10.19, albeit he was paying $0.21 sales tax too much.

[33] If the construction put forward by the appellant is correct, then if the buyer asked the appellant for a breakdown of the early payment amount, the appellant would have provided this:

Price:	$142.80
PST:	9.98
GST:	10.19
Total:	$162.97

[34] While, on such a small transaction as that which has been illustrated in this case, the buyer might well have shrugged off the price so shown, on a larger transaction he would have considered that he was not getting, as offered, a 2% discount on the purchase price for early payment.

[35] If he were getting a 2% discount, he should have been paying:

Price:	$142.59 ($145.50-2%)
PST:	9.98
GST:	10.19
Total:	$162.76

[36] Thus, it is the buyer who has paid too much tax and is entitled, subject to ss. 80 and 81 of the Act, to a refund.

[37] Having so concluded, I need not and do not address the question of whether the remedy sought by the appellant, described by my colleague, is open as a matter of law.

[38] I would dismiss the appeal.

The Honourable Madam Justice Southin

Schedule A

Tax Interpretation Manual (B.C. Ministry of Finance)/Tax Interpretation Manual (TIM)/Social Service Tax Act — (SSTA)/Sections/Part 4 — Refunds [s. 80 to 90]/82(1) — General/R.18 Refund: Cash Discounts

R.18 Refund: Cash Discounts

Where a customer takes advantage of a cash discount offered by the seller on the purchase of tangible personal property, the purchase price of the property has been reduced. Accordingly, there is a reduction in the amount of tax payable on the transaction (see SST/SEC 1/Purchase Price (Gen)/R.6 for more information on cash discounts).

Example:	Price before discount	$100.00
	Tax	7.00
	Tax-included price before discount	107.00
	Discount (5% X 100)	5.00
	Amount Paid	$102.00

Where the discount is applied to the tax-included price before the discount, the discount is considered to include a proportionate reduction in both the purchase price and the tax payable. In the above example, the $5 discount represents a reduction in the purchase price of $4.67 (100/107 X $5) and a reduction in the tax payable of 33¢ (7/107 X $5). The purchaser thus pays tax of $6.67 based on a discounted price of $95.33, for a total payment to the seller of $102.

Because the discount includes the tax reduction, there is no refund available to the purchaser in this situation. The purchaser has paid the appropriate tax payable on the purchase price. However, if the seller remitted tax calculated on the purchase price before the discount ($7 in the example), the seller may apply to the branch for a refund of the difference between the tax remitted and the tax collected from the purchaser on the discounted price (for a refund of 33¢ in the example). The seller cannot claim the refund by an adjustment to the next tax return.

Schedule B

British Columbia/Social Service Tax/Official Materials/Tax Interpretation Manual (TIM)/Tax Interpretation Manual (TIM)/Social Service Tax Act — (SSTA)/Sections/Part 1 — General [s. 1 to s. 4]/1 — Definitions/ — purchase price (general)/R.6 Cash Discounts (Revised: 98/06)

R.6 Cash Discounts (Revised: 98/06)

Cash discounts may be taken off the gross amount and then the tax applied, or, if it is not certain at the time of sale if the discount will be allowed (e.g., terms of 2%, 10, net 30, where the discount will only be given if paid within 10 days), then the invoice should be made out for the gross amount plus tax and the discount allowed on this total, if payment is made by the discount date. The following illustrates:

Case A (Discount Uncertain)		Case B (Discount Certain)	
Price	$100.00	Price	$100.00
Tax @ 7%	7.00	Discount @ 5%	(5.00)
	$107.00		$ 95.00
Discount @ 5%	(5.35)	Tax @ 7%	6.65
Net Cost to Purchaser	$101.65	Net Cost to Purchaser	$101.65

Where discounts are uncertain and are taken after the invoicing, they will generally be considered tax-included. This is outlined in Case A. Where the vendor has remitted the tax calculated on the pre-discount price, the vendor may debit its tax account to adjust the actual amount of tax collected (i.e., in case A, the vendor would adjust its tax account by $0.35). The adjustment must be made in the reporting period in which the discount is recognized. Where a discount has been made in prior reporting periods, the vendor must apply to the branch for a refund rather than making an adjustment to its tax account. Vendors and purchasers should be advised that this is the appropriate method of accounting for tax where discounts are offered.

Occasionally, purchasers may claim a refund resulting from a discounted purchase price. Generally, the discount will be tax-included and the sellers should therefore be advised to make an adjustment for the tax. However, where there is clear evidence that the discount was not tax-included and where the discount has not been treated as tax-included by the vendor, the branch must consider a refund. For example, a purchaser may provide a vendor with a breakdown of the components of its payment, demonstrating that the discount applied only to the purchase price of the tangible personal property and not to the tax. The following illustrates an example of a situation where the branch may consider a refund to a purchaser and where no refund would be payable.

Case C - Refund to Purchaser			Case D - No refund	
Price		$100.00	Price	$100.00
Tax @ 7%		7.00	Tax @ 7%	7.00
Total		$107.00	Total	$107.00
Purchaser Pays: $100 - 10% discount		90.00	Post Discount (Tax-Included) Total Purchase Price:	$97.00
Tax	7.00		Vendor Remits	6.35
Total		97.00	Or unknown if vendor made adjustment	
Vendor Remits (no adjustment taken)	7.00			
Actual tax due		6.30	No refund. Correct tax paid and remitted or no evidence that the discount was not tax-included	
Refund to Purchaser		.70		

Schedule C

R.6 Cash Discounts (Revised: 2001/05)

When a cash discount is given at the time of sale, the discount should be taken off the gross selling price and then the tax applied to the net selling price. However, when a discount is not certain at the time of sale (eg., terms of 2% 10, net 30, where the discount will only be given if paid in 10 days), then the invoice should be made out for the gross amount plus tax and the discount allowed on this total, if payment is made by the discount date. The following Case A and Case B illustrate:

Case A (Discount Uncertain)		Case B (Discount Certain)	
Price	$100.00	Price	$100.00
Tax @ 7%	7.00	Discount @ 5%	(5.00)
	107.00		95.00
Discount @ 5%	(5.35)	Tax @ 7%	6.65
Net cost to Purchaser	$101.65	Net Cost to Purchaser	$101.65

Where discounts are uncertain and are taken after the invoicing, the discount should be applied to both the gross purchase price and tax amount. This is outlined in Case A. Where the vendor has remitted the tax calculated on the pre-discount price, and the purchase has included the tax amount in the discount calculation, the vendor may debit its tax account for the tax included in the discount taken (i.e., in Case A, the vendor having remitted $7.00, would adjust its tax account by $0.35). The adjustment must be made in the reporting period in which the discount is recognized. Where a discount has been made in prior reporting periods, the vendor must apply to the branch for a refund rather than making an adjustment to its tax account. Vendors and purchasers are to be advised that this is the appropriate method of accounting for tax where discounts are offered.

Frequently, purchasers only take the discount on the gross purchase price and not the tax amount. In this case, the purchaser may claim a refund of tax based on the amount of the discount claimed, providing the vendor has not remitted a reduced amount of tax. The following Case C illustrates this scenario:

Case C - Refund to Purchaser		Case D - No Refund	
Price	$100.00	Price	$100.00
Tax @ 7%	7.00	Tax @ 7%	7.00
Total	$107.00	Total	$107.00
Purchaser Pays: $100-5%		5% Discount	
Discount	95.00		
Tax	7.00		
Total	$102.00	Purchaser Pays:	$102.00
Vendor Remits:	7.00	Vendor Remits:	6.67
		102 X 7/107	
Actual Tax Due:	6.65		
Refund to Purchaser:			
	.35		

If the vendor has remitted a reduced amount of tax, as in Case D, we cannot refund to the purchaser as the vendor is treating the discount as tax included. Please note that as the vendor is the provider of the discount, they are the determining factor given concrete evidence to the contrary, on how the discount is to be applied. In cases similar to D, the purchaser should be instructed to discuss the discount issue with the vendor to determine if they are eligible for any further discount.

Therefore, where either a Case C or Case D apply, the vendor must be contacted to determine if a refund is applicable or not.