

**M e m o r a n d u m****130.0250**

To: San Mateo – Auditing (CFL)

Date: May 17, 1977

From: Headquarters – Legal (GLR)

Subject: Clarification of Sales and Use Tax Regulation 1642, “Bad Debts”

Since Mr. Burkett wrote the letter dated March 8, 1966, I asked Bill to review the question raised in your memo of April 19, concerning the timeliness of claiming a bad debt.

Initially, Bill and I were reluctant to conclude that the bad debt deduction would be allowed since it was taken in the fourth quarter of 1973. However, we find in reading Regulation 1642(a)(2) we evidently have been more liberal than required by statute. The particular section we are concerned with states as follows:

Deductions taken on a return filed after the limitation periods specified in Section 6902 for claiming refunds or credits will not be allowed, but failure to take the deduction on the proper return within the limitation period will not in itself prevent the allowance of a credit or refund measured by an amount for which a retailer could have taken a timely deduction.

Of note is the statement that the failure to take the deduction on the proper return within the limitation period would not in itself prevent the allowance of a claim or refund.

Accordingly, since the claimed bad debt deduction occurred in the fourth quarter of 1973, it is our opinion that the taxpayer would have until the fourth quarter of 1976 to claim the bad debt deduction.

If this period is still open, which I understand it is, we believe that the claimed deduction should be allowed.

GLR:po

cc: William E. Burkett

# Memorandum

**130.0250**

To: San Mateo – Auditing (BG)

Date: August 1, 1977

From: Tax Counsel (GLR) - Headquarters

Subject: Clarification of Sales and Use Tax Regulation 1642, “Bad Debts”

As you requested, I have reviewed my memo of May 17 with Mr. Putnam.

Although an argument can be made for concluding that the Statute of Limitations ran from the time for which the bad debt deduction is found to be worthless and not the time in which the book entry is made, we feel that the better application is to consider the Statute of Limitations running from the latter time.

In other words, in the case at hand, since the bad debts were found to be worthless in the first quarter of 1974, and therefore the taxpayer could have legally claimed the bad debt deduction for sales tax purposes in the first quarter of 1974, and this quarter is not now outlawed, i.e., because it is under audit, it is our opinion that the taxpayer does have a right to claim the bad debt deduction in the first quarter of 1974.

This thinking is in line with what I understand to be our policy regarding bad debt deductions claimed under Regulation 1331.6.

If you have any other questions, please let me know.

GLR:rl

cc: Mr. W. E. Burkett