



STATE BOARD OF EQUALIZATION

December 29, 1959

[X]

Attention: [X]

Gentlemen:

This is in reply to your inquiry of December 21 regarding the legality of one of your clients taking a bad debt deduction under the following sets of circumstances:

1. A customer buys \$10 worth of groceries and pays with a \$10 check which later proves to be uncollectible.
2. A customer buys \$10 worth of groceries and pays with a check for \$100, receiving cash back of \$90. The check later proves to be uncollectible.
3. A market maintains a check cashing window. A customer cashes a check for \$10 at this window and then buys \$10 worth of groceries, payment being made in cash. The check later proves to be uncollectible.
4. A market maintains a check cashing window. A customer cashes a check for \$100 at this window and then buys \$10 worth of groceries, payment being made in cash. The check later proves to be uncollectible.

It is our opinion that the deduction would not be proper in examples three and four above nor as regards the \$90 given the customer in example two. We do not believe that any sale has occurred nor has a sale-connected debt been established in these situations. The person presenting the check has merely misrepresented that he has funds sufficient to cover the check presented and has by his action converted the retailer's monies.

We do not believe that the purchasing of \$10 worth of groceries with a \$10 check which later proves to be uncollectible nor the purchasing of \$10 worth of groceries with a \$100 check which later proves to be uncollectible enables a retailer to take a bad debt deduction. It appears to us that it would be virtually impossible for the retailer to meet the requirements of the law as expressed in Sales and Use Tax Ruling 61(b), copy enclosed.

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You will notice that the ruling specifically provides that the deduction can only be taken against amounts upon which tax has been paid. It does not seem probable that any retailer would keep track of the taxable and nontaxable items so that he would later be able to determine exactly what type of merchandise was given in return for the worthless check. If, however, the retailer could support his bad debt deduction claims by presenting the information required in part (b)(3) of the above-mentioned ruling, we believe that said deduction would be allowable.

Very truly yours,

J. J. Delaney
Associate Tax Counsel

JJD:otb
Enc.

cc: Los Angeles -Administrator