

M e m o r a n d u m**465.0117**

To: Mr. J. W. Cornelius, Supervisor
Audit Evaluation and Planning Section

Date: January 31, 1997

From: Sharon Jarvis
Senior Tax Counsel

Subject: U---, Inc.
Account No. S- -- XX-XXXXXXX-010

This responds to your memorandum dated December 20, 1996 to Assistant Chief Counsel Gary J. Jugum concerning the above taxpayer.

You state that in May 1992 U--- made a sale to a customer on which it erroneously charged, and the customer paid to U---, sales tax reimbursement. In fact, the transaction was a sale for resale and sales tax reimbursement should neither have been charged nor paid. However, at the time of the transaction neither of the parties was aware of the error.

U--- was later audited for the period January 1, 1992 through June 30, 1995. The error was not discovered by the auditor. A Notice of Determination was issued on June 27, 1996. U--- filed a timely Petition for Redetermination for various audit items, including the transaction in question. That petition is still active and being held in abeyance pending this response.

As to the transaction in question, U--- now has submitted documentation to support that the transaction was a sale for resale. U--- has also established that it returned the excess tax reimbursement to its customer in August 1996. To date, U--- has not filed a Claim for Refund. You ask whether the overpayment of tax should be recognized as occurring in the second quarter of 1992, when U--- made the sale, or in the third quarter of 1996, when U--- issued a credit or refund to its customer.

The sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. (Rev. & Tax. Code § 6051.) It is a tax imposed on the retailer, not on the retailer's customer. Thus, in the situation which you describe, when the retailer erroneously remitted overpayment of sales tax to the State and reported that tax on the sales tax return for the period in which the sale was made, it is that period which should be recognized as the period when the overpayment was made, and not (as the district staff suggests) the period when the retailer refunded or credited the excess tax reimbursement to its customer. In other words, the overpayment by U--- is attributable to the second quarter 1992, not the third quarter 1996.

I hope this answers your question. Please let us know if we may be of further assistance.

SJ:rz

cc: Mr. Dennis Fox - MIC: 92
Mr. Vic Anderson - MIC: 38
Mr. Robert L. Buntjer - MIC: 39