

M e m o r a n d u m**175.0145.800**

To: J. E. Speed
San Francisco – District Principal Auditor

Date: December 17, 1987

From: Glenn A. Bystrom
Principal Tax Auditor

Subject: [B]

Your memorandum of September 25, 1987, asked if it is administratively possible to issue a refund to [B] for use tax erroneously collected from their customers and remitted to the Board. The tax would be redistributed by [B] to their customers. This procedure is commonly used where sales tax is involved, but is questionable with respect to use tax transactions.

I believe that the tax originally collected was intended to be a use tax, based on the intent of the parties involved and the written evidence on the invoices. Consequently, the Board is liable to [B]'S customers for any overpayment of tax in accordance with Section 6901. Any credit interest allowed is also owed to [B]'s customers.

As I understand the situation, [B] was leasing various equipment and charging use tax on the rental receipts. The district investigation determined these transactions to be sales at inception and assessed sales tax against [B]. [B] was given a credit for the use tax paid on these transactions, however, the use taxes paid exceeded the sales tax liability, and therefore, a refund is appropriate. The question is, should the tax and credit interest be refunded to [B] or directly to the lessees?

If the use tax, plus credit interest, is refunded to [B], the Board cannot require [B] to remit the credit interest to their lessees. Therefore, if any lessees who do not receive credit interest from [B] files a claim for credit interest with the Board, we would be obligated to refund this amount to the lessees, and I suppose, attempt to recover the same amount from [B].

It is my understanding that [B] is reluctant to refund the credit interest, and the significance of the amount involved will almost certainly generate claims for refund from lessees for payment of the credit interest. Therefore, I believe that the excess tax, plus credit interest, should be refunded directly to [B]'s lessees, notwithstanding the bookkeeping problems this may cause us, or [B].

If you need any further information, please let me know.

GAB/smt

Cc: R. Nunes
Gary Jugum
Don Hennessey
W. D. Dunn
Audit Review and Refunds

Memorandum

175.0145.800

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of December 17, 1987 to J. E. Speed.

We are in agreement with his conclusion, as follows:

Refunds. Where a retailer engaged in business in this state collects more use tax from its customers than is due and remits the tax to the state, refunds of the excess plus interest will be paid to the customers rather than to the retailer. 12/17/87.

Gary Jugum
By MB