

M e m o r a n d u m**170.0195****To :** Mr. Glenn A. Bystrom
Principal Tax Auditor**Date:** May 26, 1993**From :** Elizabeth Abreu
Tax Counsel**Subject:** Interpretation of Section 6487(c)
Statute of LimitationsC--- C---, Inc.
AR -- XX-XXXXXX
SY -- XX-XXXXXX

This is in response to your memorandum dated April 7, 1993, in which you expressed concern about my interpretation of section 6487(c). You attached to your memorandum a copy of Sales Tax Bulletin 43-47, dated November 18, 1943, and stated that it appears from reading this bulletin that section 6487 was enacted to ensure that the statute did not run on the same taxpayer when a sales tax billing had been made and had later been determined to be use tax and vice versa.

The Sales Tax Bulletin addresses the issue of whether, for purposes of the statute of limitations, a return has been filed for use tax when a retailer files a sales and use tax return and makes entries on the lines relating to sales tax liability but not to use tax liability. On October 20, 1943, the Attorney General's Office issued an opinion (later discredited and rejected by People v. Universal Film Exchanges 34 Cal. 2d 649 (1950)) which concluded that since such returns did not disclose sufficient facts for the Board to determine use tax liability, these returns did not start the running of the statute of limitations against a determination of liability for use tax.

This Bulletin addresses the problem of whether a return has been filed at all to trigger the three-year statute of limitations. It does not address the problem of mischaracterizing a transaction as a sales tax transaction instead of a use tax transaction or vice versa.

There are several reasons why I believe section 6487(c) allows the issuance of a notice to a different person for the same transaction. First, the language of the statute itself does not limit its application to the same person for the same transaction. It is directed towards transactions which are mischaracterized.

Second, determinations are not required by statute to designate a deficiency as a sales tax liability or a use tax liability. As a matter of practice, the Board's notices lump together into one amount sales tax and use tax liabilities for several taxable periods. Since the Board's determinations are not required to make a separate designation for sales and use tax liabilities, it is not necessary to issue a second notice if the underlying basis of the first notice is for sales (use) tax and during the administrative proceedings the Board determines that it should be a use (sales) tax. Since the Board does not need to issue two notices, there is no need for section 6487(c) if it is interpreted to apply only to the same person and same transaction.

I looked at the history of section 6487(c) to see if it would shed any light on the proper interpretation of this section. The first version of section 6487(c) was enacted in 1941 as part of the Sales and Use Tax Law which consolidated the Retail Sales Tax Act of 1933 and Use Tax Act of 1935. It contained the first sentence of this subsection as it currently reads, with a few minor differences in its reference to other code sections. The second sentence was added in 1943.

The Retail Sales Tax Act and Use Tax Act each had their own statutes concerning filing returns, deficiency determinations, and statutes of limitations. I do not know^{1/} whether, prior to 1941, the Board issued separate or combined notices for sales tax deficiencies (referred to as written notices of additional assessment) and use tax deficiencies (referred to as written notices of determination). If separate notices were issued, it would seem that section 6487(c), if interpreted to apply to the same person and same transaction, should have been enacted with the Use Tax Act. In other words, the Board would have needed such a section before the consolidation of the sales and use tax laws if the Board was issuing separate notices for sales and use taxes. Instead, it was enacted with the Sales and Use Tax Law which does not require separate notices.

There are, however, two concerns I have about my interpretation. First, I am not aware of any court cases interpreting section 6487(c) which we can rely upon. Second, you state that this interpretation is not consistent in how we have been administering the law. If the Board fails to make a dual determination for a transaction in which the law or facts are not clear as to which party is liable and the Board discovers at a later time that it issued the determination to the wrong party, the Board risks losing the tax altogether if a court, relying upon how the Board has been administering the law, holds that section 6487(c) applies only to the same person and transaction. Under such circumstances, I would advise you to issue dual determinations and to rely upon section 6487(c) only in those cases where the Board picks the wrong tax and wrong party and inadvertently fails to issue a dual determination.

EA:cl

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^{1/} I was born more than 87 years after Bob began working for the Board.

M e m o r a n d u m**170.0195**

To: Mr. Glenn A. Bystrom
Deputy Director, Sales and Use Tax Department
MIC:43

Date: May 31, 1994

From: Gary J. Jugum
Assistant Chief Counsel

Subject: Regulation 1705 – Interpretation of Section 6487
Statute of Limitations

In accordance with our discussion of May 20, 1994, we have reconsidered our interpretation of Revenue and Taxation code section 6487(c).

That section is subject to two interpretations. First, it may be viewed as authorizing the Board to proceed against a seller (or buyer) if a timely Notice of determination has been issued to a buyer (or seller). See memorandum dated May 26, 1993, re C--- C---, Inc. Second, it may be viewed as authorizing the Board to proceed against an individual taxpayer for sales tax (or use tax) if a timely notice of determination has been issued to that individual taxpayer for use tax (or sales tax).

It has been our consistent interpretation in practice, since the inception of the combined Sales and Use Tax Law, to interpret section 6487(c) as applicable against a single taxpayer and not against multiple taxpayers party to a single transaction. This interpretation remains the better view at this late date.

GJJ:sr

Attachment

cc: Mr. William D. Dunn – MIC:49
Mr. James Speed – MIC:47
Ms. Sue Coty – MIC:46
Mr. Dennis Fox – MIC:40
Ms. Patricia Parker – MIC:40
Mr. E. L. Sorensen, Jr. – MIC:83
Mr. Donald J. Hennessy – MIC:85

Mr. John Abbott – MIC:85
Ms. Susan Wengel – MIC:85
Mr. William J. Faiola – MIC:85
Mr. Gordon P. Adelman – MIC:82
Mr. David H. Levine – MIC:82
Mr. John L. Waid – MIC:82
Ms. Elizabeth Abreu – MIC:82
GJJ Regulation File 1705
(all with attachment)