

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CODATA CORP.	:	DECISION
	:	DTA NO. 802189
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1979	:	
through February 29, 1984.	:	

Petitioner, Codata Corp., 1 Penn Plaza, New York, New York 10119, filed an exception to the determination of the Administrative Law Judge issued on March 3, 1988 with respect to its petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1979 through February 29, 1984 (File No. 802189). Petitioner appeared by Joseph Lapatin, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

Both parties submitted briefs on exception. Oral argument, at the request of petitioner, was heard on September 6, 1988.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether a claim for a credit or refund of sales tax based on a bad debt may be made more than three years after the sales tax was payable.

FINDINGS OF FACT

We find the facts as stated in the Administrative Law Judge's determination and such facts are incorporated herein by this reference. Such facts may be summarized as follows:

On March 20, 1985, as the result of an audit, the Division of Taxation issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Codata Corp., covering the period March 1, 1979 through February 29, 1984 for taxes due of \$6,960.63, plus penalty and interest of \$4,184.26, for a total of \$11,144.89.

On audit, the Division disallowed bad debt credits totalling \$3,985.99 claimed by petitioner on an amended sales tax return filed on March 8, 1983 for the period March 1, 1979 through April 30, 1979. The bad debt credits claimed were on transactions that occurred in the periods ended November 30, 1976 and November 30, 1977. The balance found due on audit (\$2,974.64) represented a disallowance of the difference between taxable sales as reported on sales tax returns originally filed and those reported on amended returns.

Subsequent to the issuance of the assessment, petitioner substantiated the reduction in taxable sales reported on amended returns. Counsel for the Division conceded that the liability should be revised to \$3,985.99, leaving only the disallowance of the bad debt credits to be resolved. The Division also agreed that the bad debts claimed were charged off for Federal income tax purposes on petitioner's return filed for the fiscal year ended June 30, 1982.

OPINION

The Administrative Law Judge determined that Tax Law sections 1132(e) and 1139(e) require that a claim for a credit or refund must be filed within three years after the date the tax was payable and, therefore, that petitioner's claim for a bad debt credit was not timely.

On exception petitioner argues that former 20 NYCRR 525.5 (repealed effective November 19, 1984) did not apply a three year period of limitation to claims of credit based on bad debts, as it did claims based on cancelled sales and returned merchandise (compare 20 NYCRR 525.5[c] to 525.5[a] and [b]). Instead, petitioner argues that such regulations required that credits for bad debts could not be claimed until the debt was actually charged off for Federal income taxes (20 NYCRR 525.5[c][4]).

We affirm the determination of the Administrative Law Judge.

Section 1132(e) of the Tax Law states that the Division of Taxation "may provide, by regulation, for the exclusion from taxable receipts, amusement charges or rents of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt, charge or rent has been ascertained to be uncollectible"

Tax Law section 1139(a) provides for a refund or credit of any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor is filed within three years after the date when such amount was payable. Subdivision (e) of section 1139 provides that the provisions of subdivision (a) shall be applicable to applications for refund or credit made pursuant to Tax Law section 1132(e).

Given the explicit direction of section 1139(e), which subjects bad debt credits under section 1132(e) to the three year limitation of section 1139(a), we conclude that the Division of Taxation could not by regulation provide otherwise.

In any case, we do not read former 20 NYCRR 525.5 as indicating that the three year period of limitation was not applicable to bad debt credits or refunds. The requirement of the regulation that a credit or refund could not be claimed until the debt was charged off for Federal income taxes did not, as urged by petitioner, indicate that the period of limitation did not apply. Instead, this was an additional requirement which may result, as here, in some bad debt credits being time barred before the bad debts qualified for the credit (see, Matter of J. C. Penney Co., Inc., State Tax Commn., October 17, 1980, appeal dismissed J. C. Penney Co. v. State Tax Commn., 86 AD2d 705, appeal denied 56 NY2d 507).

The Division of Taxation has continued this charging off requirement in its current bad debt regulations (20 NYCRR 534.7[d][1]). In the current regulations the charging off requirement is directly combined with the three year statute of limitations (20 NYCRR 534.7[d][2]).

We have also considered and find unpersuasive petitioner's argument that the statute of limitations to claim a bad debt credit for sales tax purposes should conform to the seven year period allowed by section 6511(d)(1) of the Internal Revenue Code for Federal income tax purposes. First, we find nothing in the sales tax law comparable to section 6511(d)(1) which explicitly provides an exception to the general three year period of limitations for Federal income tax.

Furthermore, we find no rationale to conform the sales tax period to the income tax. Section 6511(d)(1) of the Internal Revenue Code allows a taxpayer seven years to claim a credit or refund based on a bad debt deduction under section 166 of the Internal Revenue Code. Section 166 requires the deduction for a wholly worthless debt to be taken in the year in which the debt becomes worthless. The period of limitations for income tax runs then from the time the debt became worthless, not from the time the debt was created. In contrast, the sales tax statute of limitations runs from the time the tax was payable by the vendor to the Division (Tax Law { 1139[a]}) and, thus, presumably from the time the debt between the vendor and the customer was created. Since the sales tax period of limitations runs from a different event (the time the tax was payable) than does the income tax (the time the debt became worthless) even if the two periods were the same, the sales tax period would, in almost all cases, run prior to the income tax period.

Finally, we note that the Division's requirement that a bad debt be charged off for Federal income tax purposes before it qualifies for a sales tax credit is an entirely appropriate restriction (see, Matter of People's Oil, Tax Appeals Tribunal, December 8, 1988). Since section 166 of the Internal Revenue Code requires that a wholly bad debt be deducted in the year it becomes worthless, the sales tax requirement simply ensures that a bad debt credit for sales tax not be claimed until the debt was actually worthless. Any hardship that is caused because a debt becomes worthless more than three years after the tax was payable requires a legislative change.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Codata Corp. is denied;

2. The determination of the Administrative Law Judge is affirmed; and

3. The petition of Codata Corp. is granted to the extent indicated in conclusion of law "D" of the Administrative Law Judge's determination and the Division of Taxation is directed to modify the Notice of Determination issued on March 20, 1985 accordingly, but except as so granted is in all other respects denied.

Dated: Albany, New York
February 16, 1989

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner