

M e m o r a n d u m**330.2110**

To: Ms. Mary C. Armstrong

May 14, 1987

From: Gary J. Jugum

Subject: Leases

Attached please find copy of your letter of June 5, 1978, to Mr. R--- E. C--- and Mr. Donald J. Hennessy's memorandum of September 30, 1981 to Mr. D. F. Brady.

As we are all aware, the advice which was given to Mr. C---, with my and Mr. Hennessy's approval, was erroneous. A lease which is a continuing sale remains a continuing sale for the life of the lease agreement once the lessee has given a resale certificate to the lessor. The lessee cannot revoke the resale certificate in midterm and convert the subsequent lease payments to a taxable status. (Lease payments would become taxable, however, if the lessee at any point used the property itself rather than subleasing it.) In other words, the giving of the resale certificate fixes the character of the transaction for the period of the lease term between the prime lessor and its direct lessee. The question should not be discussed in terms of the lease being one sale or a series of sales. It may be noted that the lease of one piece of equipment for one lease term is sufficient to make the lessor a seller required to hold a seller's permit (if the lessor is the manufacturer or if the property is not taxpaid).

Please write to Mr. C--- advising him of our position on this question.

GJJ

J:alicetilton
Attachments

cc: Mr. Donald J. Hennessy