

M e m o r a n d u m**330.3060**

To: San Jose - Auditing (PMS)

Date: April 15, 1968

From: Tax Counsel (GAT)

Subject:

The Claim for Refund which was filed on behalf of "G" has been referred to the undersigned for comment.

It is our understanding that in 1965 "G" purchased 64 mobile dormitory units ex tax from "M". "G" purchased these units for the purpose of leasing to "U" and actually placed the units in rental service. "G" reported use tax measured by the purchase price of \$3,418.50 of each unit.

Apparently, the units did not meet specifications of the State Division of Housing. Accordingly, "G" returned 50 of the units to "M", and after extended negotiations, "M" paid "G" \$2,500 for each unit returned, retaining \$918.50 of the original sales price. "G" now seeks refund of use tax, measured by the \$2,500 which "M" paid to "G" for each returned unit.

Inasmuch as "G" purchased the trailers for the purpose of leasing to "U", it was authorized to elect to report and pay its use tax liability measured by its purchase price.

Since the units were actually placed in rental service, "G" incurred use tax liability measured by its cost, inasmuch as it elected to report tax on that basis. Accordingly, there is no basis for refunding use tax measured by the amount returned by "M".

GAT:smk [lb]