

M e m o r a n d u m**475.0193**

To: Headquarters – Petition Unit (RNZ)

Date: August 6, 1965

From: Tax Counsel (PRD) - Headquarters

Subject: J--- R. A---
S--- L--- M--- Company
XXXX --- --- Blvd.,
--- ---, CA XXXXX

SR -- XX XXXXXX

The subject taxpayer may be considered a dealer in stamps, i.e., will conduct business as a seller, only if he is engaged in the business of selling stamps in addition to any purchases for investment (consumption) he may otherwise make. If his only purchases of stamps are for an investment, he is not a dealer in stamps. Even if he qualifies as a dealer in stamps, he may not issue resale certificates for his purchases as an investment (as opposed to his purchases of stock in trade). The purchase of a long-term investment is a purchase at retail, and if the taxpayer has issued resale certificates for them, he must pay the tax measured by their sale price.

It is clear that a person who purchases stamps which he intends to resell in the ordinary course of his business of selling that kind of tangible personal property may, in addition, purchase stamps for his own consumption, but that does not mean that a purchase with the expectation of eventual resale to realize a gain excludes the determination that the purchase was also for storage, use or other consumption within the meaning of the Sales and Use Tax Law. This is true even in the instance in which a return on the investment may only be realized by its eventual sale.

Section 6094, which states the liability of a purchaser who issues a resale certificate, clearly acknowledges that the probability or certainty of an eventual resale does not prevent use tax liability for the use of the property before sale. That section states that if a purchaser makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use is taxable. We have never regarded the holding of tangible personal property purchased as an investment to be a holding for sale in the regular course of the purchaser's business.

Our conclusion is based on the meaning of resale in the ordinary course of business of one who is engaged in that business as a seller. The business of a seller means the business of one whose activity and concern is the distribution and sale of goods. This is in contrast to the business of an investor, one whose purpose is to hold goods from the market as a store of value.

A short search does not reveal any cases in which a taxpayer has maintained that the purchase of investment property is a purchase for resale in the regular course of a business.

PRD:mm

cc: --- --- – Subdistrict Administrator