

M e m o r a n d u m**150.0528**

To: San Diego Auditing (JHMcC)

Sacramento
January 24, 1962

From: Headquarters – Tax Counsel (EHS)

Subject: H. N. P---
P. O. Box XXX

Account None

This refers to your memo of January 17. In the third paragraph you state that Mr. P--- as lessee was granted permission to sell river sand for a price of not less than 15¢ per cubic yard. In your fourth paragraph you state that you do not believe any sales tax is involved as it appears that Mr. P--- has merely been granted the right to remove sand.

We agree that no sales tax is involved as between the lessor and Mr. P--- as lessee. However, we believe that if Mr. P--- removes sand and sells it that he, Mr. P---, is making a sale of tangible personal property and is subject to the tax.

You inquire whether or not there will be any tax on account of an option granted by Mr. P--- to a contractor pursuant to which the contractor will provide excavating and transporting equipment and dig the sand from the river bottom. As we have said, if Mr. P--- sells sand, he will be subject to the tax. On the other hand, if he merely assigns his right to remove sand, then the removal of the sand by the assignee would be in the same status as removal of the sand by P--- himself, and the tax would not apply.

We think, however, that the lessor should probably be asked to consent to the assignment in order to remove any doubt as to the right of the contractor to enter upon the land and remove the sand and gravel. This, perhaps, is not a question of the application of sales tax but it would make it clearer that the contractor stands in the shoes of Mr. P--- in exercising his right to excavate gravel or sand.

EHS:fb