

**M e m o r a n d u m****190.2487**

To: Hollywood – Auditing (MKR)

Date: July 24, 1964

From: Tax Counsel (EHS) - Headquarters

Subject: B--- D--- Company

Account AA-X-XXXXX

Re: your memo of July 14, 1964

It is our understanding that B--- D--- Company is in the business of fabricating and installing steel reinforcing bars in highway and building construction projects. B--- D--- contracts directly with general contractors, and supplies its own materials including reinforcing bars. It purchases these materials for resale and reports tax on its cost, if such materials are consumed on jobs, or on its selling price on jobs not involving installation.

B--- D--- also subcontracts with Company A and Company B, agreeing to fabricate and install reinforcing bars furnished by the respective steel companies. B--- D---'s fabrication consists of shearing the steel to the required length and bending it to shape.

The contracts specify that the reinforcing bars are to be furnished by the respective steel companies. However, because of inventory considerations, B--- D--- sometimes uses its own reinforcing bars or Company A's bars, on Company B's jobs, or Company B's bars on its and on Company A's jobs and Company A's bars on its own and Company B's jobs. Eventually, however, B--- D--- obtains from Company A and Company B a sufficient quantity of bars to satisfy the requirements of those two steel companies.

We are of the opinion that your suggestion in the last paragraph of your memo that we "follow the thinking used in the fungible goods section of the law" is a proper solution. Thus, as long as B--- D--- has enough steel on hand obtained from Company A to satisfy Company A's requirements, the fact that this steel is commingled with steel obtained from other companies will not result in tax liability on the theory that B--- D--- purchased steel from the other companies. On the other hand, if in order to fulfill an order B--- D--- must use steel in excess of that which it has on hand which originally came from the contractor giving the order, B--- D--- will be considered as having purchased such excess steel and the tax would apply to its cost price.

EHS:fb

Attach: Contracts