

Memorandum

280.0766

To: Headquarters - Evaluation and Planning (RN)

Date: May 15, 1968

From: Tax Counsel (TPP) - Headquarters

Subject: Items Donated for Auction Sale

In reply to your memorandum of May 9, 1968, it is my intention that the principles set forth in my letter of May 2, 1968, to Mr. F--- -. W--- should govern in future transactions of the type described in the letter.

Thus, only one tax should be imposed when an automobile purchased by a dealer under a resale certificate is sold at auction through an educational television station which keeps the proceeds and (1) the television station has accepted the automobile for sale subject to return if it is not sold, (2) there is no transfer of registration to the station, and (3) the dealer handles the registration requirements on behalf of the purchaser and reports and pays tax on the sale.

Under these circumstances, the television station should be regarded as a trustee or agent for the dealer and the dealer should be regarded as having donated the receipts from the sale.

Although it seems desirable to avoid applying a "double tax" whenever any items are donated by dealers to be sold at auction without any intervening functional use of the items, it may not be possible to do so in all situations. How much further the result reached in my letter of May 2 can be extended will depend on the circumstances.

As a general rule, however, unless there is clear evidence that unrestricted title passes to the television station, there should be only one tax when the following conditions are present:

1. an item is purchased by a dealer under a resale certificate;
2. the item is put up by the dealer for sale through an auction by an educational television station; and
3. the receipts from the sale are retained by the television station.

The ground for imposing only one tax under these circumstances is that the dealer has merely donated the receipts from the sale of the item.

You ask what the result would be if a nonretailer makes a donation to a television station. Under those circumstances, tax would apply to the sale of the item at the auction. Even though the television station may be acting as a trustee or agent of the nonretailer, the station is an auctioneer and, therefore, is a retailer, assuming that it auctions a number of items supplied by various persons.

TPP:kc