

M e m o r a n d u m**295.0646**

To: Evaluation and Planning (Keith Christensen)

From: DJH:5-30-73

Subject: Sales of Gasoline and Car Washes

In our memo of October 10, 1972 to Mr. Robert Nunes, we concluded that a "free" car wash, provided a stipulated amount of gasoline is purchased, is a service that is part of the sale of gasoline and that the gross receipts from the sale of the gasoline should not be reduced. The car wash was seen as analogous to the washing of windshields or pumping of tires.

In the same memo, we stated as a tentative conclusion that if a reduced charge was made for the car wash, based on the number of gallons of gasoline purchased, the reduced charge should be treated as a nontaxable charge for an optional service, similar to our policy on optional warranty charges.

Evaluation and planning now presents the variation of a reduced charge for the gasoline provided a car wash is purchased for a fixed price (\$1.99). The question is whether the measure of sales tax on the gasoline is the reduced charge, or should all or a part of the charge for the car wash be considered as receipts from the sales of gasoline? It is assumed that if a car wash was purchased, without a purchase of gasoline, the price of the car wash would be the same (\$1.99).

In our opinion, you should not attempt to include all or a part of the car wash charge in the sales price of the gasoline. You should accept the reduced charge as the selling price of the gasoline. As presented, the reduced charge is above cost and is the price posted on the pumps. There are other pumps, of course, posted with a higher gasoline price for customers not purchasing a car wash.

To include the car wash price, or part of it, as receipts from gasoline sales, is to dictate selling price to the dealer for sales tax purposes. It seems apparent that he should be free to stimulate car wash sales by reducing the sales price of the gasoline.

There is no indication that the dealer is reducing the charge on the taxable item (gasoline), rather than on the nontaxable item (car wash), simply to decrease his sales tax liability. It appears to be simply a more attractive sales gimmick.

There seems to be no contradiction in seeing the car wash as a service that is part of the sale of gasoline when it is given free, but seeing it as a separate sale of a "service" when a reasonable advertised price is charged for it. If a barber sold hair tonic at cost to stimulate his sales of hair cuts, we would not prorate part of the charge for the hair cut to the sales price of the tonic. The parties have contracted for a sale of the gasoline at the posted price provided a further purchase of a car wash is made at a given price. To rewrite the bargain for sales tax purposes is contrary to our usually precedents. Hawley v. Johnson 58 C A (2) 232. We would not be as quick to consider rewriting a sales contract if less tax resulted.