

M e m o r a n d u m**295.0700**

Sacramento
June 5, 1951

To: Mr. Burnett Sheehan (ESA)

From: E. H. Stetson

Subject: S--- O--- Company
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Account No. X-XXXX
SZ – XX-XXXXXX

Following consideration of your memo of May 15, and previous correspondence on this matter, it is our opinion that S--- O--- Company is the consumer of the safety glasses which it purchases from a dispensing optician and furnished to its employees to whom a charge is made of 15% of the cost of the glasses to S---.

We are of the opinion that under these circumstances we are not warranted in regarding S--- as having sold the glasses to its employees to the extent that the sale of the glasses to S--- is tax exempt as a sale for resale. A charge of merely 15% of the cost price does not seem to us sufficiently related to the fair retail selling price to regard it as gross receipts within the meaning of the statute. We do not, of course, take the position that a person may not sell his merchandise for whatever price he may wish to fix and ordinarily we should not question established selling prices, even though the selling prices may in some cases be less than the cost of the goods. Where, however, the discrepancy between selling price and cost is as great as in the present case, we do not believe that the tax law contemplated that the tax would be measured by such a nominal amount. Just where to draw the line is admittedly difficult and the facts of each case must be considered. A line must be drawn somewhere otherwise it is obvious that the tax with respect to so-called self-consumed merchandise could be virtually nullified by the making of a nominal charge for goods to all intents and purposes given away.

EHS:ph

cc: Mr. W. S. Freeman