

M e m o r a n d u m**315.0410**

To: Mr. Frank Zuppan
Return Review Unit

November 29, 1990

From: Stella C. Levy
Tax Counsel

Subject: Reconditioned Gun/C--- S---
SR – XX-XXXXXX

This is in response to your October 12, 1990 memorandum requesting a response to the following questions.

1. What is the sales tax obligation of a gun retailer who exchanges a reconditioned shotgun for a used shotgun?
2. Would the results differ if the retailer exchanged a reconditioned shotgun for a used rifle?

Generally, exchanges and trade-ins are governed by Regulation 1654 which provides that taxable gross receipts include the value of merchandise traded in or exchanged. The only situation under which the value of merchandise traded in is excluded from taxable gross receipts is that described in Regulation 1546(b)(4). In order for Regulation 1546 to apply, the reconditioned property must be identical to the property delivered by the customer. Since this type of transaction is the functional equivalent of one in which the customer's property is reconditioned, it is subject to the equivalent tax treatment – tax applies only to the added value or exchange price of the reconditioned property. Typically, Regulation 1546 applies when used automobile parts or airplane parts are replaced by reconditioned parts.

Applying these concepts to your questions, it is clear that only Regulation 1654 applies to question two. Either Regulation 1546 or Regulation 1654 could apply to your first question, depending on the degree of identity between the shotguns. The criterion one would use, in order to determine which regulation to apply, would be whether the customer's used property would, when reconditioned, be virtually identical to the already reconditioned property he or she will receive in exchange. If the properties are identical, tax applies only to the exchange price; if the properties differ, tax applies to the exchange price plus the trade-in allowance for the used property.

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