

**M e m o r a n d u m****330.2176**

To: Mr. E. V. Anderson

May 26, 1971

From: Glenn L. Rigby

Subject: M--- G---, Inc.

SZ -- XX XXXXXX

In your letter of May 14, 1971, you request our opinion as to whether or not M--- G---, Inc. (---) is entitled to the claim for refund of \$62,223 of tax.

It is my understanding that the facts giving rise to this claim basically as as follows:

On November 12, 1969, M--- sold a printing press for \$1,244,460 to W--- L--- Corp. (W---). M--- charged sales tax reimbursement on the sale which W--- paid. This amount was later reported to the State on M---'s fourth quarter return. Approximately a year later, November 5, 1970, W--- issued a resale certificate to M--- for the purchase of the printing press. M--- and W--- both contend that the sale was, for all intents and purposes, for resale and sales tax was paid in error. To substantiate this, they point to the fact that W--- collected tax measured by rental receipts from the time the property was put in leasing service by them.

It is our opinion that the claim for refund should be denied based on the following reasoning:

You will note that Ruling 70(c)(2)(F)2 provides that:

“If property is acquired on a tax-paid basis and is leased in substantially the same form as acquired, the lease cannot be converted into a sale by taking a tax-paid-purchases-resold credit.”

Since it is clear from this quoted section that the lessor cannot convert a transaction from a nonsale to a sale by simply taking a tax-paid-purchases-resold deduction, it would be absurd to allow the vendor to file a claim for refund and thereby circumvent the theory behind the above quoted section.

Mr. E. V. Anderson  
(SZ -- XX XXXXXX)

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Summarily, it is our opinion that when a person pays sales tax reimbursement to this vendor and leases that property in substantially the same form as acquired he has made an irrevocable election to treat the lease as a nonsale. Accordingly, he cannot later, either by taking a tax-paid-purchases resold credit or having the seller file a claim for refund, convert a nonsale into a sale. This is so notwithstanding the fact that he has collected use tax measured by rental receipts from the beginning of the lease period.

GLR:lt

cc: --- --- Dist. – Dist. Admin.  
--- – Subdist. Admin.