

M e m o r a n d u m**335.0010**

To: Mr. Robert Nunes

July 25, 1973

From: Glenn L. Rigby

Subject: Leases of Mobile Transportation Equipment - Purchase and Use
of Repair Parts

As you are aware, Sections 6094 and 6244 provide for the use of "fair rental value" as a measure of use tax on mobile transportation equipment under limited circumstances. We previously have taken the position that "mobile transportation equipment" includes components thereof. Accordingly, if the sole use of the property was the leasing of the "mobile transportation equipment" (Section 6094(d)), it would be proper to report the use tax on components on the basis of fair rental value. This could be accomplished by using the "fair rental value" based on a full maintenance rental charge. If this procedure is followed, the replacement and maintenance parts can be purchased ex tax.

If the use of the "mobile transportation equipment" falls under Section 6094(c) (use in addition to leasing), a question arises as to whether the use of the replacement parts may be reported on the basis of fair rental value. It could be argued that such parts are not "frequently demonstrated or displayed", and therefore the use of fair rental value is inappropriate. Under this analysis, the replacement and maintenance parts would have to be reported at cost. Following this reasoning the "fair rental value" of the equipment would be a base rental without maintenance.

Although the latter analysis may be theoretically correct, I question whether it would be desirable to apply it. First, distinguishing between situations involving Sections 6094(c) and 6094(d) may at times be difficult. Second, it would simplify matters to have just one rule with respect to replacement parts. Finally, and more important, for a number of years we have allowed auto dealers to place parts and accessories on demonstrators ex tax on the theory that the 1/60th formula included the fair rental value of such items. This policy was not changed with the enactment of Section 6094(d).

Taking all things into consideration, it is our opinion that we should follow the practice of allowing the lessor to purchase such parts ex tax with the "fair rental value" based on a fully maintained fair rental value (without fuel charges).

I will make a CLD of the foregoing conclusions.

GLR:lb

cc: Mr. T. P. Putnam
Mr. Robert H. Anderson
Mr. Philip R. Dougherty
San Diego – District (WAS)
Marysville – District (JF)
The foregoing conclusions concerning the purchase of repair parts will necessarily modify the chart that I previously prepared regarding aircraft leases.