

**M e m o r a n d u m****335.0965**

To: Out-of-State – Auditing (DMA)

Date: March 25, 1975

From: HDQRS – Tax Counsel (GLR)

Subject: A--- I---

SR -- XX XXXXXX

Please excuse our delay in responding to New York's inquiry. This particular problem has given me more trouble than usual.

From reviewing New York's memo, we understand that they are concerned with the tax application of the unattached engines. The engines in question were leased, stored, and attached and used on aircraft in California prior to November 23, 1970 and have continued to be used in this manner to the present date.

New York states that through the audit period of March 31, 1971, rental charges pertaining to the unattached engines while they were in California were considered taxable as a continuing sale. They now have some second thoughts as to whether after November 23, 1970 the unattached engines should be regarded as continuing sales while they are in California. Their concern centers around that portion of Regulation 1661 which provides that the definition of mobile transportation equipment includes tangible personal property which is or becomes a component part of mobile transportation equipment. Evidently, they are under the impression that prior to the time such equipment is attached to mobile transportation equipment that it constitutes mobile transportation equipment.

After considering this problem at great length and discussing it with Messrs. Putnam and Nunes, it is our opinion that the New York audit staff is correct. Accordingly, the aircraft engine that is in California on stand-by on and after November 23, 1970 is regarded as mobile transportation equipment even prior to its attachment to the aircraft. This conclusion is consistent with our theory that mobile transportation equipment is determined by the kind of property rather than its use.

Accordingly, applying this precept to New York's aircraft engines, it is our opinion that during the period prior to November 23, 1970 the rental receipts that are attributable to the unattached engines during the time they are in California are properly subject to tax as continuing sales. On and after November 23, 1970, the unattached engines will be considered mobile transportation equipment with tax being due on their cost with an offset for the tax paid on the rentals.

The following example illustrates the above conclusion:

On October 1, 1970, A leases to B an aircraft for \$10,000 per month plus a spare engine for \$500 per month. The leased aircraft is exempt under Section 6356.1. On November 1, 1970, the spare engine is attached to the aircraft in California and the replaced engine remains in California after its removal. On November 23, 1970 the aircraft and unattached engine becomes mobile transportation equipment.

The \$10,000 per month payments made for the leased aircraft remains exempt under Section 6366.1 even after November 23, 1970. The \$500 per month payments for the unattached engine is regarded as a continuing sale and is subject to tax on the rentals while in California up to November 23, 1970. On and after November 23, 1970, the unattached engine being mobile transportation equipment would be subject to use tax measured by the lessor's cost with an offset for the previous rentals paid.

In regard to New York's last question regarding pilot training, it is our opinion that if the leased aircraft qualifies for the exemption under Section 6366.1 (we use the principal use test during the first six months after purchase as set forth in annotation 105.0210), no tax would be due on the rental receipts even though in their example the lessee used the aircraft 1/13 of the time for pilot training.

GLR:lb

cc: Mr. Robert Nunes  
Mr. T. P. Putnam