

M e m o r a n d u m**395.0013**

To: W. T. Denny

September 18, 1969

From: T. P. Putnam

Subject: Sales of Equipment After Close-out

--- --- ---

-- --- XX XXXXXX

In connection with our discussion of the above matter, I am attaching a copy of a memorandum from Mr. Lawrence A. Augusta together with som relevant material which he has discovered.

The material which Mr. Augusta discovered indicates that in 1953 Mr. Stetson placed a one-year limit on the taxability of a sale after close-out. In 1965, however, Mr. Trigueros concluded that tax applied to a sale two years after the seller quit business.

I am not sure what the explanation is for Mr. Stetson's limitation or from Mr. Trigueros' extension of that limitation. However, I am inclined to believe that Mr. Stetson felt that the longer the time between the close-out and the sale, the greater the administrative burden would be in maintaining follow-ups and the less likely that it would be that a court would sustain the application of tax. Mr. Trigueros' extension of the limitation may have been based, at least in part, on the apparent fact that the seller still held a permit for the business at the time of the sale.

I believe it is true that the longer the time between the close-out and the sale the more tenuous the rationale supporting the tax becomes and the less likely that a court would uphold it. Accordingly, it is my opinion that we would be justified in not maintaining a follow-up on an option in a lease for longer than one year after close-out of the seller's permit and in not attempting to impose tax on a sale pursuant to such an option.

It does not seem necessary or desirable to modify Mr. Hamlin's letter opinion of 1951 or to remove it from the California Tax Service. It has been in the California Tax Service for many years and has apparently been followed without creating administrative or legal problems. The question arising from its extension to the --- --- case appears to be an isolated one.

I suggest disposing of the --- --- matter on the basis expressed in this memorandum. If you would like to have the question presented to the Attorney General, however, or if you have any other suggestions, please let me know.

TPP:kc

Enclosure

cc: Mr. R. G. Hamlin – w/attach.
Mr. C. H. Otterman – w/attach.
Mr. B. D. Doyle – w/attach.
Mr. H. A. Dickson – w/attach.
Mr. R. R. Gregory – w/attach.
Mr. L. A. Augusta – w/attach.