

M e m o r a n d u m**420.0340**

To: Audit Review (RN)

Date: December 14, 1965

From: Tax Counsel (GAT)

Subject: X-----

This is in reply to your memo of December 3. It is our understanding that taxpayer is a photographer who has entered into contracts with schools pursuant to which taxpayer takes photographs of the schools' pupils. Taxpayer ships the negatives out of state where they are developed and prints made which are sent back to taxpayer.

Taxpayer sends the prints to the schools. The school, in turn, forwards the prints to the parents of the pupils. The parents purchase the prints from the schools, and the schools remit all sums collected less selling commission to taxpayer.

In some cases parents refuse to accept the prints. In other cases they accept the prints but do not pay for them in which case taxpayer makes no effort to enforce collection. Taxpayer's cost of the prints which are returned and the prints which are not paid for have been set up as self-consumed merchandise on the theory that such prints are used in promotion.

Under the conditions described above, we are unable to ascertain any promotional advantage accruing to taxpayer by virtue of his failure to receive payment or enforce collection for prints not returned. It is, therefore, our opinion that taxpayer's cost of such prints are not subject to tax.

GAT:md [lb]