

M e m o r a n d u m**460.0140**

To: Downey – Auditing

Date: December 15, 1965

From: Tax Counsel (JHK)

We have reconsidered the recommendations of our hearing report of October 11, 1965 concerning the above-named taxpayer. It was our understanding at that time that no portion of the sales tax reimbursement on the first four rental payments had been credited to the customer, "N". The taxpayer's attorneys, however, have demonstrated that this is not the case. In determining the liability arising out of the lease contract of July 17, 1963, the parties agreed the total liability was the \$110,000 option price, and that the lessee should receive credit for rental payments already made, plus the amounts received from the sale of five of the items, plus the value given to the remaining two items which were returned to the lessor. According to the attorney, the amount credited for the sale and return of the equipment was \$70,145.85. Credit was also given for \$37,440, \$36,000 of which constituted the first four rental payments and \$1,440 of which constituted sales tax reimbursement on these payments. Thus, the total credit is \$107,585.85 which, when subtracted from the agreed liability of \$110,000, leaves a remaining liability of \$2,414.15. Both lessor and lessee agreed to this liability and lessee executed a note to the lessor for this amount.

We have reviewed this matter with Mr. Edward. H. Stetson and also the problem of whether refunds for excess tax reimbursement must be made in money. It is our opinion that our earlier interpretation that actual monetary refunds must be made in order to entitle a retailer to maintain a claim is too strict an interpretation. There are several situations where credits may be given rather than monetary repayments. These will be made the subject of a current legal digest annotation. One of the times it is permissible for a retailer to offset tax reimbursement against a pre-existing debt is where the customer acknowledges that amount of the debt. This is true in this case because "N" agreed it should have a credit for the first four rental payments made, including \$1,440 paid as tax reimbursement.

Accordingly, it is our recommendation that the taxpayer is entitled to a refund of \$1,440 plus interest. Would you make such verification of the above amounts as you deem necessary and prepare the adjustments necessary to present the matter to the Board.

JHK:em [lb]