

M e m o r a n d u m**460.0258**

To: Out-of-State - Auditing

Date: April 22, 1977

From: Headquarters – Legal (PRD)

Subject: S--- M---, Inc.

SS --- XX XXXXXX

Whether taxpayer sets its prices as a result of an analysis of its costs which include a specific amount of sales tax for each individual state, whether S--- uses the same average cost figure for establishing its prices in each state, or whether S--- does not take sales taxes into specific consideration as such a cost, is irrelevant to the question.

Whether the taxpayer's prices are tax included is determined solely by an analysis of the contract between the taxpayer and its customers, and not by any cost analysis of its operations or price. So the taxpayer's internal method of setting its charges is irrelevant to the question.

Since the sales and use taxes are measured by gross receipts and sales price, which are similarly defined, the taxpayer must very clearly demonstrate that each customer understood that part of the charge was for the goods and that the other part was for tax or tax reimbursement before the taxpayer can regard the price or amount charged that customer was "tax included" price.

In this instance, the order form did not have any statement about the tax included nature of the amount charged. That fact is sufficient, in my opinion, to negate the possibility that the amounts received were tax included.

Taxpayer's counsel was correct in its advice that the former announcement that taxpayer would "absorb" the taxes was in violation with Section 6053. However, in the future, taxpayer would accomplish its purpose by advising the customer with each order form that "all prices of taxable items include use taxes computed to the nearest mil". Even if the statement set forth in

Regulation 1700(a): "All prices of taxable items include reimbursement for sales taxes computed to the nearest mil", was used, that statement would be sufficient to comprehend use taxes collected on a "tax included" basis.

PRD:jw