

M e m o r a n d u m**495.0725**

To: Orange County – Auditing (RFC)

July 22, 1976

From: Headquarters – Tax Counsel (HLC)

Subject: ---

This is in reply to your memorandum dated July 13, 1976, which was addressed to Mr. G. Rigby. You inquire as to the tax applicable to a transfer of furniture and fixtures from subject taxpayer to taxpayer's parent corporation, [I].

We understand that the transfer comprised less than 80 percent of the tangible personal property owned by taxpayer. Taxpayer's books show the transfer as a dividend paid; the parent company's books show the transfer as a dividend received. Corresponding entry was made to taxpayer's retained earnings account.

Dividends, including dividends in kind, are not sales. If there is no evidence of consideration of any kind passing from the parent to the subsidiary, we would conclude that the transfer in this case is not subject to tax. If there was consideration of any kind comprising even intangible benefits to taxpayer, we would consider the transfer a taxable sale. Taxpayer's statement that the transfer simplified taxpayer's accounting is not, however, the type of intangible benefit that would cause the transfer to be considered a sale.

HLC:js

“Consideration” would, of course, include any assumption of indebtedness by the transferee, or any inter-company debt incurred in connection with the transfer. DHL 10/6/98