

M e m o r a n d u m**570.0200**

To: San Jose – Auditing (SE:JPO)

Date: February 2, 1965

From: Tax Counsel (PRD)

This is in reply to your memo of December 7 in which you inquire about the taxability of the loan of gas lasers to out-of-state customers.

The taxpayer is a manufacturer of lasers. As we understand the situation, the taxpayer is behind in his production schedule so that the taxpayer sometimes takes instruments out of stock and loans them to customers who have lasers on order. In most cases these lasers on order are different models from the loaner. Quite often the availability of the loaner instrument (laser) is influential in receiving the order. The model the customer orders is shipped to the customer anywhere from one to six months after receiving the original order. The out-of-state customer then returns the loaner to the California plant. The returned instrument is then checked, calibrated, and returned to stock to be sold as a new instrument; however, it may be loaned again. The lasers are shipped out of state by common carrier but are, in all cases, returned to California.

In our opinion, these loans do not constitute a taxable use. The situation is somewhat analogous to the leasing of equipment to an out-of-state lessee. We have held in such cases that where the lessor has properly acquired the property under a resale certificate and subsequently leased the property to an out-of-state lessee, with the term of the lease commencing upon delivery at a point outside the state, he will not be liable for use tax for that out-of-state use. The same rule should apply where equipment is delivered to a bailee at an out-of-state point for use outside this state.

PRD:spg [lb]