

M e m o r a n d u m**495.0820**

To: Long Beach – Auditing (JTQ)

Date: October 5, 1964

From: Tax Counsel (PM) – Headquarters

Subject: X-----

This is in reply to your memorandum of August 27 requesting an opinion on whether the president of the above corporation would be entitled to a tax-paid credit in connection with the sale of certain machinery and equipment.

As we understand the facts, the corporation became indebted to the president, its principal stockholder. In consideration for the cancellation of this indebtedness, the corporation transferred some machinery and equipment to him in the last quarter of 1961. The president placed the equipment in dead storage, where it remained until most of it was sold piecemeal for resale in the second and third quarters of 1963. The president did not hold a seller's permit at the time he acquired the property. No tax was charged by the corporation, but apparently the president intends to reimburse it for the tax if liability is asserted.

You cite a digest letter of August 19, stating that it appears to set forth the principle that a sale cannot be for resale unless the buyer intends to sell the purchased item in the regular course of his regular business. If this is so, you conclude, the sale of the machinery and equipment was taxable at the time of the original transfer. The question then arises as to whether a tax-paid credit could be allowed to the president on the subsequent sales, even though no tax reimbursement was charged by the corporation at the time of the original sale.

Whether or not a sale is actually a sale for resale depends upon the circumstances of the ultimate disposition of the property, not upon the purchaser's intention at the time of the sale. In the present instance, the president may not have intended to resell the machinery and equipment in the regular course of business. However, he later sold that property in a series of sales constituting an activity requiring a seller's permit. And since any activity engaged in by a person with the object of gain, benefit or advantage is a "business" for purposes of the Sales and Use Tax Law, he must be regarded as reselling the property in the regular course of business. It follows that the sale of the property to him was, in fact, a sale for resale in the regular course of business, and, of course, that no tax is due on the sale of that property by the corporation.

The digested letter concerned a situation in which an individual made an isolated sale having no connection with his normal retail activity. That sale was not one of a series of sales constituting an activity requiring a seller's permit. Consequently, the sale of the property to him was not a sale for resale in the regular course of business.

PM:spg