

M e m o r a n d u m**335.0073**

To: Downey Auditing (George M. Sawaya)

Date: October 6, 1977

From: Headquarters – Legal (R. H. Anderson)

Subject: --- ---

Reference is made to your memorandum of September 12, 1977.

I have reviewed the letter sent by Mr. XX of --- to Mike Groover and it does appear that Mr. XX believes all that is necessary to qualify a truck for the so-called one-way rental and keep it out of the mobile transportation category is to “intend” that it be a one-way rental. This is not so.

Mr. XX listed seventeen trucks (units) with dates of delivery and dates retnd to A. He claims he cannot find any evidence to support that they were rented for periods of less than 30 days prior to being rented to A but appears to urge us to conclude that there were such short term rentals thereby bringing the trucks into the one-way rental category forever. We cannot and will not do this.

He states that it is his understanding that “once a vehicle is purchased for daily rental it should stay under daily rental and not be subject to the mobile transportation equipment tax”. Apparently he did not read or understand the conclusions in my decision and recommendation. On page 4 I cite section 6024 and a portion of Regulation 1661 and then set forth what the lessor must do to qualify his vehicle for the one-way rental category.

Intent to rent the vehicle as a one-way truck is not enough; he must, in fact, principally rent it for periods less than 30 days and must timely report and pay tax measured by receipts from such rentals. If there is no evidence of any such rentals and timely reporting we cannot consider the vehicles as one-way rental trucks, and that is the situation with the seventeen trucks Mr. XX refers to in his letter. This brings up oyour inquiry of what is meant by the word “principally” as it appears in Regulation 1661.

I could not find anyone who knew the answer to what is meant by the word “principally” as used in the Regulation. However, the word appears in section 6024 of the Sales and Use Tax Law which is why it also appears in Regulation 1661. I am told that section 6024 was an industry sponsored bill. Lessors of trucks wanted something that would enable them to treat their trucks under lease as continuing sales and pay use tax measured by the lease receipts rather than pay tax on the cost. Maybe they inserted the word “principally” in the statute.

I guess that rental trucks like those in a A rental fleet were the kind the Legislature had in mind when it spoke of trucks “principally employed by a person in the rental business as being leased out for short-term periods of not more than 31 days to individual customers.”

We cannot ignore the word “principally”; it must mean something, and I believe the Board’s six-month test would be reasonable in this case since the statute requires that to be a one-way rental truck it be “principally” used in short-term rentals.

The door is open for the Board to apply a reasonable principal use test on vehicles a taxpayer claims are one-way rental trucks. The principal use test the Board has consistently applied would consist of testing the use of the trucks for a six-month period.

If over 50 percent of the rental use of a given truck, during the first six months after the lessor acquires it, is leasing for short-term periods of not more than 31 days to individual customers for one-way or local hauling of personal property of the customers, and tax on such rentals is timely reported to the Board, the truck qualifies for the one-way rental truck classification.

I believe we have to count the number of days a truck is out on rental in the short-term category as compared to the number of days in the over 31 day rental category to apply the test. In other words, if a person rents a truck five times for a total of 30 days and then makes one rental of the truck for 60 days the truck would not be principally employed in short term rentals even though there were mor short term rentals than long term rentals.

RHA:pp