

M e m o r a n d u m**570.1380**

To: San Jose – Auditing (SE/JGL)

October 23, 1964

From: Tax Counsel (PM) - Headquarters

Subject: I--- Corp.
S--- J--- General Products Plant
--- and --- Roads
--- ---, California

OS-G-XXXXXX

This is in reply to your memorandum of August 19 concerning a possible use tax liability on the part of the above company.

Briefly, I--- made an ex-tax purchase of tubes and pluggable units to be used in computers. On installation it was found that the tubes and pluggable units hummed slightly, causing minute vibrations which disrupted the delicate balance of the computers and caused them to malfunction. The tubes and pluggable units were identical to those used in ordinary television sets and could conceivably have been sold to surplus stores for sale to the general public. I--- decided against this, however, because of the warranty problems. Instead, it had the tubes and pluggable units destroyed by L---'s M--- & S--- Co. of S--- J---.

It is our opinion that, under these circumstances, I--- should not be regarded as making a taxable use of the property. Although the destruction was a deliberate act, it was involuntary in the sense that I--- had sound business reasons for destroying the defective tubes rather than marketing them. We believe that its act of destruction should be treated in the same manner as an accidental destruction.

PM:md