

**M e m o r a n d u m****140.0010**

To: Pleasant Hill – Auditing (ODM)

Date: June 22, 1978

From: Tax Counsel (HLC) – Headquarters

Subject: S--- O--- of California  
C--- U---, Inc.SZ -- XX-XXXXXX  
SZ -- XX-XXXXXX

This is in response to your memorandum dated June 16, 1978, in which you request clarification of the application of tax to certain exchange transactions involving the subject taxpayers.

Basically, the tax applies to gross receipts. In the case of an exchange, the gross receipts are other tangible personal property rather than money, and tax applies to the value of the property received. In my previous decisions in this case the value was in general established as the cost to the exchange partner of the property received by the taxpayer. It is thus entirely possible that taxpayer and the exchange partner would have different tax liabilities on any given exchange. The cost which would form the basis for the tax is the present issue. You feel this cost should include all direct costs to the exchange partner, who is, in the example you provide, P--- --- and ---. This would include freight, canal toll charges, inspection fees, import fees, broker fees, and tax. Taxpayer feels that only the purchase price paid by P--- should be used to compute sales tax. I had previously indicated to taxpayer that I concurred with its position. You have asked me to reconsider.

After further analysis and discussion within the legal staff, I conclude that all direct costs associated with the property received in the exchange should be included in the measure of the tax. Historically, in setting tax basis, we look first to the agreed selling price in dollars. Where there is no agreed price in dollars, we look to market value, which is of course less objective than agreed price. In order to reduce subjectivity in this case, we have decided that cost will be used as market value, which leaves profit out of the tax basis. However, the direct costs other than purchase cost which you listed occur prior to transfer of title. They would certainly be considered if a selling price in dollars or a market value were being established.