

200.0040**Memorandum**

To: San Diego – Auditing

Date: November 18, 1957

From: Headquarters – Sales Tax Counsel (WWM:SGL)

Subject: REDACTED TEXT

Retailers entered into a conditional sales contract with buyer for the sale of tangible personal property. Subsequently, buyer wishes to assign his interest to another person who is willing to continue making payments on the balance due. If seller enters into a conditional sales contract with buyer's assignee in regard to the same chattel and showing the balance due as the purchase price, is this transaction a sale taxable to retailer?

If there is any repossession by the retailer from the original vendee, the subsequent transaction is a sale. Furthermore, even though the dealer does not repossess, if the transaction is one where the dealer obtains the person who is to take possession of the tangible personal property by taking over the original buyer's interest in the contract and directs the original purchaser to assign his interest to this new customer, there is a sale, since it is a transaction whereby the possession of the property is transferred, but the seller retains the title as security for the payment of the price (Section 6006(e)).

However, where the conditional vendee of the tangible personal property independently assigns his interest to another person, and, subsequently, the assignee independently enters into a conditional sales contract with regard to that same property with seller, this latter transaction would not be a taxable sale, since the possession of tangible personal property passed to the conditional vendee's assignee in the former transaction, wherein the conditional vendee was the seller. Hence, there would be no transfer of possession of tangible personal property by the retailer in the latter transaction.

Therefore, in the instant situation, if the original purchaser obtains the new buyer and assigns his interest to him prior to the making of a new conditional sales contract between the dealer and new buyer, then the latter transaction would not be taxable to the dealer. However, if it is the dealer who obtains the new buyer, enters into a conditional sales contract with him, and then directs the original purchaser to transfer the tangible personal property to the new buyer, then the transaction is taxable to the dealer.

SGL:tl

Warren W. Mangels