

M e m o r a n d u m**280.0720**

To: Out-of-State – Auditing (JDD)

Date: Sept. 11, 1967

From: Tax Counsel (TPP)

In your letter of April 25, 1967 to the legal staff you stated that you were withholding action on the “M” audit, pending word from the legal staff on the basic study of the premium question by Mr. Trigueros.

I am attaching a copy of Mr. Triguero’s memo on the premium question which I have reviewed and approved. As concluded by Mr. Trigueros, premium houses are retailers of premium merchandise which they transfer to recipients in exchange for stamps, coupons or points, which constitute valuable consideration.

Thus, for example, where an employer gives its salesmen “points” or other indicia as incentives, and a premium house redeems the points for merchandise which it transfers to the salesmen, the premium house and not the employer is the retailer. If the merchandise is transferred by the employer directly to the salesman as an incentive award, the employer is the retailer. In either case, the retail sale is made to the salesman. The salesman and not the employer is subject to any use tax that may apply.

The above principles should provide a sufficient basis to proceed with the “M” audit.

TPP:kc [lb]