

M e m o r a n d u m**325.0664.150**

To: Out-of-State – District Principal Auditor

May 28, 1968

From: Tax Counsel (GLR) - Headquarters

Subject:

Pursuant to our discussion of May 23, 1968, I have reviewed the petition for redetermination submitted on behalf of the [A---] regarding the conversion of seven piston planes.

It is our understanding that initially the [A---] contracted with the United States Government to convert seven piston planes to prop jets. The United States Government, in turn, sold the converted planes to the Canadian government. This contract was allowed as an exempt sale to the United States Government in a recent audit.

One of the converted planes caught fire in Canada but essential parts, including the engine and props, were salvaged. The Government of Canada then entered into a contract directly with the aircraft firm to convert another piston plane into a prop jet by using the salvaged parts. This conversion took place in Burbank, California. The converted plane was also delivered to the agent of the Canadian Government in Burbank, and they in turn flew the plane to Canada.

This conversion was considered to be taxable by the auditor under ruling 55(a)(2)(B).

It is the taxpayer's position that the sale is exempt from tax under one of the following theories:

1. The later conversion should be treated as an extension of the initial contract, or
2. The sale and delivery is exempt under (a)(1)(E) of ruling 55.

Although the first contract calling for the conversion of the seven planes was held to be exempt sales to the United States Government, this has no bearing whatsoever on a separately negotiated contract directly between the [A---] and the Canadian Government.

The Parties have their choice in how to handle the transaction. If they choose one that is taxable, they must abide by the tax consequences resulting from this decision, even though they could have chosen one that was exempt.

Therefore, it is our opinion that the second contract is not an extension of the first.

We do not agree with the taxpayer that the sale is exempt under (a)(1)(E) of the ruling. It is our opinion that the flying of the plane itself is sufficient to subject the plane to the sales tax under (a)(2)(B) of the ruling. You will note that section (a)(1)(E) is concerned with property being sold, boarded and delivered to a ship, airplane, or other conveyance for transportation out of the country. It does not, in our opinion, extend to the removal of the very items sold when that removal is accomplished under the property's own power.

It is for these reasons that it will be our recommendation that the petition for redetermination be denied.

GLR:kc

cc: Chicago