

Memorandum

330.2310.200

To: Supervisor
Audit Evaluation and Planning Section (MIC: 40)

Date: December 29, 1995

From: Sharon Jarvis
Staff Counsel

Subject: A---, Inc.
Account No. SR – XX-XXXXXX

This responds to a memorandum dated October 13, 1995 from your section concerning A---, Inc. (A---), and a December 14, 1995 telephone call from Ms. T--- A---. In order to facilitate a response at this time, we will answer your question in an abbreviated format, instead of providing a detailed legal analysis.

We have reviewed your memorandum and the April 18, 1995 memorandum from the district, as well as the attached correspondence from A---, including the copy of the front page of A---'s lease with A--- F---, Inc. (AF) and the amendment to the lease which provides an option to purchase. A--- manufactures and sells specialized x-ray equipment. A--- manufactured and sold a piece of this equipment to AF, and leased it back. AF did not issue a resale certificate and sales tax was not paid at the time of the sale to AF. AF has billed A--- for use tax on the monthly lease amounts. However, A--- has refused to pay the use tax contending that the equipment is held for resale and is used solely for nontaxable demonstration purposes.

The lease agreement is for 36 months with an option to purchase the equipment for \$1, plus a \$250 termination fee. You ask whether A--- may hold the equipment for resale and use the equipment ex-tax for purposes of demonstration and display. You are concerned that the \$250 termination fee exceeds the limit for the purchase option amount to be considered nominal, and, thus, that the transaction between A--- and AF is a true lease and not a financing transaction pursuant to Regulation 1660.

You state, "It appears that due to the \$250 termination fee, which exceeds the limit for the purchase option to be considered 'nominal,' the lease from AF to A--- is a true lease. Consequently, it is our opinion that the lessee does not have clear title to the equipment and cannot hold the equipment for resale in the regular course of business."

Under these specific facts, A--- has used this method for financing what amounts to a part of its resale inventory. Whether the contract between A--- and AF is a lease or not, under the specific facts here we agree with A--- that it is holding the equipment for resale, and that no tax applies until A--- resells the equipment. A--- may properly issue a resale certificate to the lessor/financing company, AF, for the equipment.

We hope this information is of assistance.

SJ:rz