

M e m o r a n d u m**335.0043.150**

To: Hollywood – Auditing (JKG)

Date: May 6, 1975

From: HDQRS – Tax Counsel (GJJ)

Subject: Sections 6023 and 6274

This is in response to your memorandum of April 30, 1975.

You raised essentially two questions. The first question involves the leasing of tangible personal property which can be either a component part of mobile transportation equipment or used for some other purpose. For example, the lessor of aircraft engines may also lease the engines temporarily to a movie studio for use as wind machines.

The terms “sale” and “purchase” do not include a lease of “mobile transportation equipment for use in transportation of persons or property...” In the example given, the aircraft engine would be leased as “mobile transportation equipment for use in transportation of persons or property” when leased for use on an aircraft. It would not be so leased when leased for another purpose. The application of the tax at any point in time would then depend on the usual variables -- was the property tax paid on cost? was the property purchased under a resale certificate? were elections timely made? In particular, if the property had been purchased under a resale certificate and had been leased to the movie studio (with the lessor collecting use tax from the lessee) and the property was then leased for use on an aircraft, the lessor would owe use tax measured by the purchase price of the engine but he would be entitled to a credit for tax paid on the rental receipts basis.

Your second question involves the meaning of the terms “aircraft”, “vehicle”, and “vessel” as used in Regulation 1610. “Aircraft is defined to mean ‘any powered contrivance designed for navigation in the air, except a rocket or a missile.’ “Vehicle” means essentially any device by which any person or property may be propelled, moved or drawn upon a highway. “Vessel” means essentially any boat, ship, barge, craft, or floating thing designed for navigation in the water. You ask as to the application of Regulation 1610 if a 4-engine aircraft is sold with two engines missing and other malfunctioning parts at the time of sale, or if a motor vehicle is sold without an engine or with two wheels missing, etc.

We have attached for your reference a memorandum prepared by Mr. R. H. Anderson of this staff on July 17, 1967, with respect to the question as to what constitutes an “aircraft”. We agree

with Mr. Anderson's conclusion that we "...do not think we can or should make any set rule to follow." We also endorse the guidelines set forth in Mr. Anderson's memorandum.

With respect to vehicles, it is our understanding that if a vehicle is "...required to be registered under the Vehicle Code..." then we have taken the position that the vehicle is a "vehicle" for purposes of Regulation 1610. It is our understanding that DMV follows the same kind of vague rule with respect to vehicles that we follow with respect to aircraft. It is immaterial that the vehicle may not be running or that some essential parts may not be present.

GJJ:lb
Attachment.