

**M e m o r a n d u m****395.0260**

To: Mr. Robert Nunes

Date: December 13, 1977

From: T. P. Putnam

Subject: Section 6015 Retailers

In response to your memorandum of November 28, this will confirm my earlier statement to you that a sale by a motel operator of his business, including personal property, is not subject to tax if the only prior sales by him were of items through a vending machine on which tax was reported by another party who had been authorized by the Board to report the tax as the retailer under Section 6015. Under those circumstances, the motel operator, through the exercise by the Board of its discretion under Section 6015, is not required to hold a seller's permit. Accordingly, his sale of his business qualifies as an occasional sale under Section 6006.5, i.e., a sale of property not held or used by a seller in the course of activities for which he is required to hold a seller's permit.

You also asked whether we can place a soft drink bottling company under Section 6015 as a retailer with respect to soft drinks it furnishes to a delicatessen operator for over-the-counter sales by him. I believe the terminology of Section 6015 should be liberally construed to give effect to its basic purpose, i.e., to achieve efficient administration. Accordingly, if there is some ground on which the Board can reasonably determine that it is necessary for the efficient administration of the sales tax law to treat the bottler as the retailer, I believe the Board could appropriately do so, with the concurrence of the parties involved. However, the ground should be something other than a desire to avoid the consequences of Regulation 1595 with respect to a sale of assets by the delicatessen operator.

As you suggest, the opinion with respect to the motel operator will be annotated.

TPP:po