

M e m o r a n d u m**420.0320**

To: Marysville – Auditing

Date: July 9, 1958

From: Headquarters – (WWM:SGL)

Subject: X-----

From your memorandum of May 19, 1958, we understand that this taxpayer takes a black and white negative from a customer and through certain processes reproduces the image in color or contrast on raw film which he delivers to the customer for a consideration. It appears in the process there are a number of attempts made before a desirable reproduction is effected and that there is a certain amount of film wasted or discarded in the process.

The problem is whether taxpayer is the consumer or seller of the discarded film.

If the discarded film is used for the purpose of conducting tests to adjust the equipment in order to attain the final picture negative or is used in any intermediate steps, then said film should be regarded as being consumed by the taxpayer. On the other hand, if the original intent is to sell particular raw film to the customer and if said particular raw film is discarded only because of spoilage or because of some error in judgment, then said film should be regarded as being purchased and held for resale and not consumed by taxpayer where purchased ex tax under a resale certificate.

In any event, if the film is purchased “tax-paid”, then no refund or credit should be allowed unless it is actually resold (subsection (a), first paragraph, Section 6012). It is only when the film is purchased ex tax under a resale certificate that the above distinction becomes significant.

Therefore, in view of the fact that the discarded film in question has been purchased tax paid, taxpayer is not entitled to a refund or credit thereon. However, with respect to future purchases under a resale certificate, whether or not the discarded film is taxable as self-consumed depends upon the test stated above.

Warren W. Mangels

SGL:vad