

M e m o r a n d u m

395.0080

To: San Diego – Tax Administrator

Date: January 19, 1962

From: Headquarters - Tax Counsel (JHK)

- Subject: (1) Liability of a county for sales tax upon the sale of personal property that has been seized for delinquent taxes
- (2) Sale of property seized by Marshal's office and sold pursuant to a judgment and writ of execution

Replies to our inquiries dated December 13, 1961, concerning execution and tax sales by cities and counties of personal property indicated that some counties do not enforce tax collections by sales of personal property while others do on a very minimum basis. Execution sales of personal property are more common place. The reports indicate that probably few, if any, cities or counties are charging sales tax reimbursement or declaring the sales in their gross receipts.

While the city or county has the power to pass title to the goods, the title remains in the tax or judgment debtor until it is vested in the buyer. Ordinarily, the former owner would be an occasional seller. Furthermore, the city or county is carrying out its duties as prescribed by statute.

After considering this matter, we believe there is an analogy to the position we have taken concerning executors and trustees. While they may at times make sufficient sales to take them out of the classification of occasional sellers, for the most part their sales amount to less than three and therefore are occasional.

From the reports received, it seems that there would be extremely few cases in which sales by tax collectors would exceed two in any twelve-month period of the property of a particular delinquent taxpayer, or in which execution sales by sheriffs or marshals would exceed such number. Furthermore, we are informed that sales in quantity would most likely be for resale.

Accordingly, in the absence of evidence to the contrary, it will be presumed that sales of the kind in question are occasional sales or sales for resale with respect to which liability for sales tax does not arise.

Under date of December 15, 1961, I wrote Mr. A, County Tax Collector of San Diego County. This letter was released by me without knowledge of Mr. ---s letter of December 13, 1961. Since it is contrary to the opinion expressed herein, I would appreciate it if you would contact Mr. A and inform him that the opinion expressed in that letter is incorrect and that the opinion expressed in that letter is incorrect and that tax will not be asserted on tax or execution sales.

JHK:dm