M e m o r a n d u m

395.0420

To: Mr. John J. Hayes Date: April 9, 1951

From: E. H. Stetson

Subject:

This is in answer to your memo of April 5 enclosing a copy of the form of contract referred to in Auditor Farrar's report of March 19 together with a copy of that report and his prior report of March 6.

There seems to be no doubt but what --- & --- are not subject to sales tax on their sales of merchandise both because such sales are made to a post exchange and because they are made for resale. It seems clear from paragraph 5 of the agreement that r --- & --- to the extent that they supply merchandise, sell it to the exchange rather than to the ultimate consumer. It is specifically stated that the merchandise from the time it is delivered to the exchange is the property of the exchange until vended. It also appears from paragraph 9 that --- & --- shall account to the exchange for the entire retail sales value of all merchandise vended. --- & --- compensation is a stated percentage of the retail sales value of the vended merchandise, apparently whether the merchandise is supplied by --- & --- or by the exchange. It appears, accordingly, that the only question is whether --- & --- are liable for sales tax measured by receipts from the sale of the vending machines or other tangible personal property to --- Inc.

We think that the sale of the merchandise, even though made to the exchange for resale purposes, required --- & --- to hold a seller's permit. The only exception would be in the event food products were vended exclusively. Apparently, however, this is not the case. A permit is required because --- & --- are selling tangible personal property of a kind the receipts from the retail sale of which are taxable (section 6014 defining seller and section 6066 requiring sellers to hold permits). It is immaterial that the sales are made to a Federal instrumentality. Therefore, under section 6015 defining "retailer" as "every seller who makes any retail sale or sales of tangible personal property", the tax is applicable to the sale of the equipment by --- & --- to ---, Inc., even though only one sale thereof is made, unless you find that actually the merchandise vended through the machines was not sold by --- & ---.

As you know, section 6015 was amended effective July 1, 1949, so as to make the tax applicable with respect to a single retail sale made by a wholesaler, except wholesalers of exempt merchandise such as food products for human consumption. It appears, accordingly, that tax is due with respect to the sale of vending machines, equipment, or other tangible personal property used in connection with the wholesaling of merchandise to the post exchange.

We have not apparently been contacted in this connection by Mr. --- or anyone else. If Mr. --- or the taxpayers disagree with our conclusion we shall be glad to write to either, setting forth the basis for our position.

EHS:ph