

M e m o r a n d u m**395.1058**

To: Mr. William D. Dunn

April 9, 1990

From: E. L. Sorensen, Jr.

Subject: V--- C--- T. V.
SR – XX-XXXXXX

This is in response to your memorandum of January 9, 1990 to Gary J. Jugum. Essentially, you asked for our opinion as to whether the sale of the taxpayer's cable TV business should be treated as the sale of a service enterprise which makes incidental sales (leases) of hand held remote control units, i.e., a Regulation 1595(a)(5)(A)(1) sale, or, whether the sale should be treated as the sale of an integrated business, i.e., a Regulation 1595(a)(5)(B)(2) sale.

I have discussed this case with both Gary Jugum and Don Hennessy. We all agree that although arguments can be made for either position, the case of Ontario Community Foundation, Inc. v. State Board of Equalization, 35 Cal.App.3d 811, compels the conclusion that the better position is to treat the sale as a Regulation 1595(a)(5)(A)(1) sale. That is to say, tax is only due based on the gross receipts from assets sold which are used in the incidental sales aspect of the business. Gross receipts from the sale of the tangible personal property used in the service aspect of the business would be exempt. Here, there would likely be no tax owing since it appears the only assets utilized in the sales aspect of the business were the remote control units themselves, which were leased as continuing sales and purchases and which would, therefore, retain that status in the new owner/lessor's hands (see Reg. 1660(c)(9)).

The audit of this taxpayer determined that the value/sales price of the tangible personal property sold exceeded \$57,000,000. Of that amount, only about \$37,000 was attributable to the remote control units. To deny this taxpayer the occasional sales exemption with respect to the vast bulk of the property which admittedly was utilized in its service enterprise of providing cable TV service to subscribers, is a type of "tail wagging the dog" approach which the Ontario court found objectionable in overturning Regulation 1595's previous unitary business approach.

If you wish to discuss this further with us before making your decision as to how this matter should proceed, please call.

ELS:jb

Cc: Mr. Gary J. Jugum
Mr. Donald J. Hennessy