

**M e m o r a n d u m****275.0021**

To: San Jose – Auditing (PMS)

August 24, 1972

From: Headquarters – Tax Counsel (GLR)

Subject: L--- H---, G. S---, et al.  
dba S--- J--- D---'s Service

SR -- XX XXXXXX

This is in regard to your memo of July 25, 1972 in which you refer to annotations 275.0120, dated May 19, 1955; and 275.0020, dated July 17, 1959, and ask what the present thinking is regarding sales of air.

As you point out annotation 275.0020 differentiates between air previously compressed into cylinders delivered to the purchaser and the furnishing of the use of the taxpayer's compressor.

You currently have an audit in progress in which you find that the air is purified and stored by the taxpayer prior to filling tanks furnished by the customer. You are informed that the taxpayer is required to purify the air.

The air is processed as follows:

1. A compressor pumps air from a pipe extending above the roof of the building through a water separator.
2. The air then goes through a small tank filled with silicate jell.
3. The air then goes through a small tank filled with alumina.
4. The air then goes through a small tank filled with activator charcoal.
5. The air is then stored in three storage tanks which are hooked in succession.
6. When a customer's tank is filled, the air is withdrawn from the storage tank passing through a multiple filter composed of the above-three materials into the customer's tank.

Your questions are: Where the customer furnishes the aqua lung tank and the taxpayer fills it with air which has been processed as above, is the charge for the air taxable? If the customer brought in an empty tank and exchanges it for a previously filled tank, would the charge for the air be taxable?

Our answer to both of your questions is yes. Annotation 275.0020 is distinguishable on the basis that it contemplates a situation where ordinary air is merely compressed into a cylinder; the idea

being that air is free to all and merely compressing it is not taxable fabrication or processing under Section 6006(f). While recognizing an argument could be made for taxation, it is clear from the annotation that we did not press it. In addition, annotation 275.0020 can be distinguished on the basis that it refers to a situation where a taxpayer “merely furnishes the services of his compressor”.

In the case at hand the taxpayer is not merely furnishing the services of his compressor nor is he simply moving air from one place to another; quite to the contrary, he is collecting, processing, and storing air that he definitely owns. Accordingly, when he transfers it he is selling air and special clean air at that.

GLR:lb