

M e m o r a n d u m

To: San Francisco – Auditing (BHT)

Date: October 14, 1964

From: Tax Counsel (PM) - Headquarters

This is in reply to your memorandum of September 2 requesting an opinion on the application of tax to certain purchases of REDACTED TEXT, a manufacturer of women's apparel. The facts and our conclusions are set forth below.

1. Style Samples Purchased in the U.S.

REDACTED TEXT buys many garments of other manufacturers to use as style samples. Such garments have been purchased ex tax from manufacturers in the United States. They are normally kept on hand for several months for use in designing. When they have served their purpose, approximately 95 percent are sold in REDACTED TEXT special Saturday bargain sales for about half of the original price. The remaining 5 percent are said to be destroyed, presumably when they are taken apart to serve as patterns.

It is clear, we believe, that REDACTED TEXT is liable for use tax on the cost of the style samples, as well as for sales tax on the gross receipts from the subsequent sales. The garments are used to aid the company in designing its own products. This is a use other than retention, demonstration or display while holding the garments for resale. Accordingly, the use is taxable under section 6244.

2. Style Samples Purchased Abroad

During the current audit period, certain style samples were purchased abroad and placed under customs bond. Subsequently, these garments were reexported. It is assumed that they were used in the same manner as garments purchased in this country, i.e., that they were used as models or patterns for garments manufactured by REDACTED TEXT.

The taxability of these items is controlled in part by section 308 of the Tariff Act of 1930 (19 U.S.C.A. 1308). This section, which was repealed in 1962, provided for the importation of certain articles without payment of duty, under bond for exportation within one year. Included within the listed articles were "(m)odels of women's apparel imported by manufacturers for use solely as models in their own establishment, and not for sale." The repeal was effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 31, 1963.

In McGoldrick v. Gulf Oil Corp., 309 U.S. 414, the court held that the imposition of a state tax on the sale of articles exempt from duty under section 309 of the Tariff Act was an infringement of the Congressional regulation of commerce. The same would appear to be true of a state tax on the use of articles exempt from duty under section 308. Accordingly, it is our opinion tha REDACTED TEXT is not liable for use tax on the cost of garments imported prior to August 31, 1963, assuming it met all of the statutory requirements. The use of garments imported on or after August 31, 1963, however, is taxable to the same extent as the use of garments purchased from domestic manufacturers.

3. Cloth Samples

REDACTED TEXT purchases samples of cloth which are also used for designing purposes. These samples are usually large enough to make one or more garments. It has been stated that most of the samples are, in fact, made into garments and that the garments are sold. Samples not made into garments are sold as remnants.

Again, it appears that REDACTED TEXT purchases the subject property for its own use rather than for the purpose of resale. Accordingly, the tax is applicable.

PM:fb