

**M e m o r a n d u m****295.0260**

To: Out-or-State - Auditing

Date: May 29, 1969

From: Tax Counsel (PRD) - Headquarters

Subject:

This is in reply to your question whether the credit for "less customers dias. set" on transactions specified as "reset and return your own diamond bit" operations on the invoices of the taxpayer must be included in the taxable measure for the sale of the new diamond bits.

It appears that the diamonds in the returned, used bits are the only things salvaged from those bits. After removal they are sorted according to size and commingled with similarly sized diamonds in the taxpayer's inventory. No effort is made to reset a new bit going for that particular customer with the diamonds recovered from the old bit received from that customer. The new bits are made from diamonds of appropriate size taken from the taxpayer's inventory. Industrial diamonds of the same size are regarded as fungible goods in these transactions. Apparently, the industry makes no distinction between "new" and "used" industrial diamonds of similar size and quality.

Since the bits which are sold are properly regarded as completely new bits because there is no commercial distinction between the "new" and "used" diamonds in them, the transactions are not included within the exchange provisions of ruling 26. Yet because the diamonds are treated as fungible goods, it is appropriate to regard the diamond credit allowed on the new bits as a record of the return of the customer's own diamonds, and for that reason the credit may be excluded from the taxable gross receipts from the sale of the bit.

PRD: smb

cc: San Francisco - Dist. Admin.  
San Mateo - Subdist. Admin.