

M e m o r a n d u m**295.1640**

To: Out-of-State - Auditing

Date: October 30, 1964

From: Tax Counsel (GAT) - Headquarters

Subject: W--- S--- and S--- C---
416 Seneca Street
Seattle, Washington -----[now] XX-XXXXXX
-- XXXX

We have reviewed the documents which you submitted pertaining to the procurement of furniture and fixtures by W--- S--- and S--- C--- for C--- C--- H--- Corporation.

Paragraph 2(f) of the contract provides that "W--- S--- personnel will supervise the work of interior decorating, furnishing, and fixturing of the hotel. W--- S--- will on behalf of Prime Lessor, select, purchase and supervise the affixing or installation of all of the furniture, carpeting, fabrics, kitchen equipment, restaurant and bar equipment, and other Hotel furnishings, equipment and fixtures to be supplied by Prime Lessor under Section 1.02 of the lease."

Paragraph 3(b) provides, "As further consideration, W--- S--- shall be entitled to receive a fee equal to five per cent (5%) of the net total cost to Prime Lessor of the furniture, furnishings, fixtures and equipment, including kitchen equipment, purchased by W--- S--- for the account of Prime Lessor as provided in this agreement. Said furniture, furnishings, fixtures and equipment as purchased by W--- S--- for Prime Lessor shall be purchased at cost and paid for directly by Prime Lessor. Any discount or other rebate which may in any way be returned shall be for the account of Prime Lessor, and the net cost to W--- S--- of said furniture, furnishings, fixtures and equipment shall also be the net cost thereof to Prime Lessor. In performing this agreement W--- S--- will make available to Prime Lessor the benefits of all contracts under which W--- S--- is a franchise dealer."

Paragraph 3(d) provides that, "Original invoices received by W--- S--- for materials, goods and services obtained or provided by W--- S--- under this agreement, from the parties furnishing such materials, goods or services to Prime Lessor and/or W--- S---, shall be presented to Prime Lessor within sufficient time to assure that the most favorable discounts will be obtained, and in any event, not later than twenty (20) days after receipt thereof by W--- S---. W--- S--- agrees that it shall certify the invoices presented to Prime Lessor to be true and correct in quantity and specifications, and that the amounts shown therein shall be those originally quoted by W--- S---."

Paragraph 4(3) provides that the "Prime Lessor or its designated representative may determine the cases where materials, goods and services shall be purchased directly without competitive bidding, and the cases in which competitive bidding will be required, and may require additions and deletions from any proposed list of bidders. Prime Lessor or its designated representative may direct W--- S--- to place orders for materials, goods and services with parties selected by Prime Lessor or its designated representative in all cases where Prime Lessor or its designated representative and/or A--- would benefit therefrom."

The auditor states that prior to August 1964 it was the practice of vendors to bill their invoices to W--- S--- which, in turn, transmitted the invoices to C--- [C---] for payment directly to the vendor after W--- S--- had verified the invoices and checked the property to determine whether it conformed with the purchase order, conditions, etc. In August or September of 1964, C--- [C---] agreed to have W--- S--- instruct vendors to bill their invoices to W--- S--- and S--- C---, for the account of C--- C--- H--- Corporation. Other procedures, such as direct payment by C--- [C---] to the vendor, remained the same.

It appears to us that this contract required W--- S--- and S--- C--- to act in two different capacities with respect to the procurement of tangible personal property.

Where W--- S--- placed orders with vendors for the purchase of property on behalf of C--- C--- and the vendors made out their invoices to C--- C--- as purchaser, it appears to us that W--- S--- acted in the capacity of purchasing agent for C--- C---. Under such circumstances, W--- S--- was not the seller of such property to C--- C---; therefore, the 5 per cent fee payable by C--- C--- with respect to the cost of such property did not constitute additional taxable gross receipts to W--- S---.

In those cases where W--- S--- purchased tangible personal property as a principal, in its own right by virtue of its being a franchised dealer, such purchases were for resale. The transfers of such property to C--- C--- were retail sales. The amounts received by W--- S--- from C--- C--- inclusive of the 5 per cent fee, therefore, constituted taxable gross receipts.

GAT:spg

cc: Out-of-State – District Administrator