

**M e m o r a n d u m****330.2160**

To: San Jose - Auditing (SE:EL)

Date: November 29, 1965

From: Tax Counsel (EHS)

Subject:

We have considered the problem presented by your memo of November 19 and have reached the conclusion that the charge for the use of the driving range is not a rental to which tax applies even though the charge is based upon the number of balls used. The range is the consumer of the balls and tax applies to the sale of the balls by retailers.

Undoubtedly, it would be a practical impossibility to require the boys that you call "ball hawks" to take out a permit and pay tax. The chances are in most cases we would assume these sales would be isolated enough to regard as occasional, even though some boys may find it profitable to carry on the business of rounding up and selling balls with some degree of frequency. If any appeared definitely to be in such a business, they should, of course, hold permits. However, it would not appear that there is much to be gained by making any particular effort to "permitize" these boys. Probably, in many cases, they are merely returning balls to the owner and what they receive is something in the nature of a fee for recovering lost merchandise. We have had this problem up in connection with persons who gather up old soft drink bottles and return them to the bottling companies for a fee. We have never regarded this as representing taxable sales; rather, we have considered it to be the return of merchandise to its owner.

EHS:fb [lb]