

M e m o r a n d u m**330.2522**

To: Oakland – Auditing (NJC)

Date: February 25, 1983

From: HQ - Legal (LS)

Subject:

This is in response to your memorandum of January 6, 1983. The subject taxpayer leases equipment to hospitals. All equipment leased is purchased tax paid and leased in substantially the same form as acquired.

For its services of obtaining the equipment and leasing it, the lessor collects a service fee from the lessees at the time the leases commence. The service fee is 3% of the cost of the leased equipment. The lease period is five years and, in some cases, the lease provides the lessee with an option to purchase the equipment at leases end for "fair market value." Your memorandum indicated that sometimes this "fair market value" is a nominal amount.

You wondered whether tax should apply to the 3% service fee. We have reviewed the sample lease form utilized by the taxpayer which you furnished us as well as the rider which provides the lessee with the option to purchase at "fair market value." In our opinion, the form indicate that true leases are entered into pursuant to those forms.

While it is not altogether clear from the material in hand, we assume that the option riders are negotiated on or about the same time the leases of the equipment, to which the riders pertain, commence. Furthermore, there appears to be no evidence that the parties to the leases were attempting to avoid tax through artifice or sham, rather, they were dealing in good faith knowing that in a high technology ever changing area, they would let the market place dictate the option price. Under these circumstances, the fact that fair market value might be nominal at leases end would not alter our conclusion that true leases with bonafide options to purchase are present here.

Since the leases in question are true leases which are in a tax paid status, the 3% service fee which the lessor charges the lessee at the commencement of the leases is not subject to tax.

LS:rar