M e m o r a n d u m

330.3630

To: Out-of-State – Auditing (DMA) Date: September 26, 1972

From: Tax Counsel (GJJ) - Headquarters

This is in response to your memorandum of August 2, 1972, in which you raise a question as to whether persons who lease automobiles on a "wet rental" basis and who are reporting tax on rental receipts are entitled to tax-paid purchases resold deductions in instances where lessees of the automobiles are given credit (i.e., are reimbursed) for tax-paid gasoline purchased by the lessees during the period of the lease.

You refer us to Operations Memo 434, June 30, 1972, which provides that:

> "When a lessee on a 'wet rental basis' purchases gasoline, he shall pay sales tax to the service station dealer even though he will be reimbursed by the lessor."

We are of the opinion that the lessor may take a tax-paid purchases resold deduction with respect to his furnishing of the tax-paid gasoline to the lessee in the instance under consideration.

The --- rental agreement furnished to us by our New York office specifically provides that the customer (lessee) is ---'s agent "…for the purchase of necessary fuel…" under "wet rental" leases. (Agreement, page 1, paragraph 2 of "Terms and Conditions.")

Lessors should retain appropriate records to substantiate their deductions.

We note that it is our opinion that a tax-paid purchases resold deduction is proper here even though the basic tax liability with respect to the lease of the vehicle itself is a use tax liability on the part of the lessee, and notwithstanding any possible implication of CTS Anno. 330.0700* that the lessor is not selling the fuel to the lessee unless the gasoline charge is segregated. [See Mr. P. R. Dougherty's letter of November 24, 1965, to Mr. L--- D. K---, Attorney for C--- A---, Inc. (SR -- XX XXXXXX.)]

*No longer an annotation. SPJ 12/22/00.

GJJ/ab

cc: Mr. Robert Nunes
New York