M e m o r a n d u m   **435.0900**

To: Woodland – Auditing (WBM)   Date: January 18, 1955

From: Headquarters – Sales Tax Counsel (WWM)

Subject: X-----------------------

You state the taxpayer has a verbal contract with a prime contractor to furnish gravel according to State specifications at a price of $2.15 per ton f.o.b. plant. The prime contractor is building a State highway under specifications which require that gravel and asphalt be mixed before laying. The prime contractor furnishes the asphalt, delivering it to the taxpayer's place of business where it is stored in hot storage tanks until ready for use. When the prime contractor is ready to surface the highway, taxpayer mixes the identical asphalt previously furnished by the prime contractor with the gravel sold, charging $2.15 per ton plus sales tax reimbursement for the gravel and separately charging $1.50 per ton for "handling" of the asphalt, not charging sales tax reimbursement on this amount.

Let us assume that taxpayer is merely storing the asphalt for the prime contractor's convenience. If so, to that extent, we do believe this is not a necessary expense of the taxpayer's obligation to fabricate but is merely a separate handling service, charges for which should not be taxable. However, to the extent that the $1.50 per ton charge represents reasonable expenses for the labor and machinery and other costs of mixing the two products, the charge represents taxable fabrication labor. It is our opinion therefore, that an allocation should be made breaking down the $1.50 per ton charge into that portion which might reasonably be considered as a non-taxable charge for merely storing property <u>for the buyer's convenience</u> and that portion which represents a charge to the prime contractor for the use of labor, machinery, and other indirect costs in fabricating the final product. In other words, that portion which represents expenses which would have occurred if the prime contractor had only shipped the asphalt for immediate mixing should be taxable.

W. W. Mangels

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