

**M e m o r a n d u m****435.1266**

To: X----- – Auditing

Date: April 8, 1971

From: Tax Counsel (GJJ) – Headquarters

Subject: X-----

This is to advise you of our opinion as to the proper application of the tax to the following set of circumstances, as described by taxpayer:

"We have an exchange policy with dental colleges throughout the United States, including California, on our dental gold alloys. We have an arrangement as an example, with the X-----, whereby when they return used gold to us in the form of scrap, we exchange this for new gold on a weight for weight basis.

"Depending upon the circumstance, this is either no charge to X----- or at times we charge them 8% of the value of the new gold. In other words, if the value of the new gold would be \$1000.00, we charge X----- \$80.00. This is merely a service charge to take care of our expenses in refining the gold.

"For the purposes of internal bookkeeping, we do make a charge and do issue a credit, as per our debit invoice [No.] X----- and credit invoice [No. ] X----- attached. I repeat, this is an exchange, no charge, or with a nominal service charge. The purpose of the invoice attached is simply for our own internal stock control and record keeping purposes."

Consistent with Mr. Robert Nunes' letter of November 5, 1970, to X-----, the tax should be applied as follows:

- (1) The processing of scrap dental gold alloy to stock dental alloy is a fabrication process.
- (2) The "fungible goods theory" applies to dental gold alloy. That is, we do not require that taxpayer trace particular lots of customer-furnished gold.
- (3) If X----- purports to retain title to the scrap dental gold shipped by it to taxpayer or if the parties have not agreed by contract that title to the scrap gold passes

from X----- to taxpayer, then tax applies only to the exchange price if, and to the extent that, customer-furnished scrap gold was available for processing prior to the shipment of recovered gold to the customer. The processing time may be ignored. That is, we do not require taxpayer to show that the new gold could have been fabricated from the scrap gold actually furnished by the customer. To the extent that taxpayer does not have on hand, at the time of shipment of the new gold, sold resources equal to the new gold shipped to the customer, tax applies as measured by both the processing [refining] charge and the value or the “trade-in gold.”

GJJ/ab

cc: Mr. Robert Nunes