

**M e m o r a n d u m****490.0160**

To: Mr. Michael Kitchen  
Audit Review and Refunds Unit

Date: February 6, 1990

From: David H. Levine  
Tax Counsel

Subject: S--- E--- Corporation  
SR -- XX-XXXXXX-002

You have asked for our opinion regarding S---'s claim for refund. In that claim, S--- states that it sold a machine in March, 1989 for a sales price of \$155,125 and collected sales tax (reimbursement) of \$10,083.13 from the customer and paid that amount to the state. Thereafter, the customer returned the machine to S--- and S--- issued a payment to the customer for "the full purchase price, including tax." S--- requests a refund of \$10,083.13 because the full amount of tax previously paid to the Board has been fully refunded to the customer.

A review of the claim alone would indicate that S--- is entitled to a refund because S--- would have been entitled to a returned merchandise deduction under Revenue and Taxation Code Section 6012(c) and Regulation 1655(a). However, you have obtained further information that shows that the transaction was not as simple as indicated in the claim for refund.

The machine that was returned was one of two purchased by the purchaser. The sale price of the returned machine is listed above and the price of the other machine was \$153,757 plus \$9,994.21 in tax for a total sale price for the two machines, including tax, of \$328,959.34. This price reflects a 4% quantity discount allowed by S--- to the purchaser because two machines were purchased. In determining the amount it would refund to the purchaser, S--- recalculated the sale price for the machine kept by the purchaser based on no quantity discount having been allowed. Thus, the recalculated sale price for that machine was \$161,849.47 plus \$10,520.22 in tax for a total sale price of \$172,369.69. This amount was deducted from the total sale price of the two machines to reach the amount actually refunded to the purchaser for returning one of the machines. That refund was \$156,589.65.

You believe that the refund actually issued by S--- to the purchaser does not qualify for the returned merchandise deduction and that S--- is therefore not entitled to a refund. We agree. It is clear that the total price with tax for the returned machine was \$165,208.13. The refund was in an amount almost \$9,000 less, 156,589.65. The only amount which may be deducted by the retailer from the sale price plus tax and still have the refund qualify for the returned merchandise deduction is the deduction for rehandling and restocking costs. The amount withheld for these costs may not exceed the actual costs of rehandling and restocking the returned merchandise. The amount deducted from the refund issued by S--- was not for rehandling and restocking. You

interpret the deduction made by S--- from the refund as compensation for increased overhead costs because of the return. We agree that a deduction may not be taken for increased overhead costs because of the return of the merchandise and still have the refund qualify for the returned merchandise deduction unless that increased overhead cost is due to rehandling and restocking the returned merchandise. We believe that the claim should be denied.

DHL:wak  
1897C

cc: Mr. E. L. Sorensen, Jr.