

M e m o r a n d u m**495.0292**

To: Arcadia – District Principal Auditor

Date: May 29, 1984

From: Assistant Principal Tax Auditor

Subject: W--- C--- T---, Inc.

SR -- XX-XXXXXX

This is in response to your April 12 memorandum in which you asked for my opinion of the tax consequences of “growing contracts” for trees by W--- C--- T--- (W--- C---). My understanding of the contract is that W--- C--- agrees to grow, within one year, 100 trees for a consideration of \$X,000 from the purchaser. At the purchaser’s option, W--- C--- also agrees to repurchase, after 9 months, any of the trees at a price of \$XX per tree. The contract also specifies that the purchaser retains title to the trees during the contract period and may take possession of these trees by giving seven days notice and physically removing them from the nursery. The purchasers are not in the business of selling, growing or using trees. They do not have seller’s permits and none have requested possession of the trees. Although it is not specified, I assume these trees are grown in containers.

We recently had a similar case which involved the transfer of property interest in bulk wine by a winery to individuals. The winery remained in possession of the bulk wine but the buyer of the bulk wine had the right to resell the wine at any time. A preliminary hearing was held on this case and it was concluded that a sale was made under Section 6006(a). The hearing officer agreed that these transfers of bulk wine was a method of financing the aging, storing, and processing of the wine. However, the hearing officer concluded that a substantial beneficial interest was transferred. While the buyers did not receive possession of the wine, they paid the going market rate to purchase the bulk wine and they had clear title to the wine in the written contracts stating they were the beneficial owners of the wine. Additionally, the hearing officer held that the buyers did not purchase the wine for the purpose of resale since the buyers were not in the business of reselling wine. The transactions were considered analogous to an investment in such speculative items as coins, bullion, and works of art which are transactions subject to tax unless they meet the requirements of specific exemptions provided by law (see Sections 6355, 6365 and 6366.3).

I have discussed your case with the legal staff and it is our opinion that these growing contracts are similar in nature to the bulk wine contracts. The growing contracts are contracts to

sell goods and a sale takes place when the trees are identified to the contract. The contracts pass clear title to the trees to the purchaser for a consideration. A sale has occurred under Section 6006(a) and, unless the transaction is otherwise exempt under the law, it is subject to tax.

I note that there is some indication that although consideration was received, trees were not grown in all cases. If the property (trees) sold does not exist, then a sale of tangible personal property has not occurred and corresponding monies received by W--- C--- are not subject to tax.

If you have further questions on this matter, please let me know.

WDD:jb

cc: Mr. Glenn Bystrom

M e m o r a n d u m**495.0292**

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Bill Dunn's memorandum of May 29, 1984 to Arcadia - District Principal Auditor.

We are in agreement with his conclusion, as follows:

Grower of Trees Has Option to Repurchase. A tree grower has an agreement to grow, within one year, 100 trees for a consideration of \$5000 from the purchasers. The trees are grown in containers. At the purchaser's option, the grower also agrees to repurchase, after nine months, any of the trees at a price of \$75 per tree. The contract also specifies that the purchaser retains title to the trees during the contract period and may take possession of these trees by giving seven days notice and physically removing them from the nursery. The purchasers are not in the business of selling, growing or using trees. They do not have seller's permits and none have requested possession of the trees.

The growing contracts are contracts to sell goods and a sale takes place when the trees are identified to the contract. The contracts pass clear title to the trees to the purchaser for consideration. A sale has occurred under Section 6006(a) and, unless the transaction is otherwise exempt under the law, it is subject to tax.

In some instanced, although consideration was received; the trees were not grown. If the property (trees) sold does not exist, then a sale of tangible personal property has not occurred and corresponding moneys received by the grower are not subject tot tax. 5/29/85

Gary Jugum
By MB