

555.0021

## Memorandum

To: Mr. Robert Nunes

Date: January 30, 1973

From: T. P. Putnam

Subject: REDACTED TEXT

You have received a copy of a memorandum from REDACTED TEXT to me regarding REDACTED TEXT. He has concluded that a discount should be allowed in the amount of the "credits" on REDACTED TEXT purchases but that contract to REDACTED TEXT letter, the discount should apply to the REDACTED TEXT purchases rather than to the purchases of automotive repair equipment in connection with which the credits were used. Although this would appear to be in line with Regulation 1671, I believe there is a distinction that justifies the REDACTED TEXT approach.

Section (e) of Regulation 1671 describes a situation that is somewhat parallel to that before us, i.e., a two-party situation in which the seller incurs the expense in relation to the premium when he delivers the premium to his customer. The regulation, however, contemplates a situation in which the indicia alone are used to acquire the premium. Also, the right of the customer to use the indicia is not contingent upon his paying a substantial part of the price of the premium with his own funds. Since the seller incurs no expense until the indicia are used to acquire the premium and also since the expense can be measured only by the seller's cost of the premium, the discount accrues when the premium is delivered. The discount, however, is applied against the original sale of merchandise. This is the only way the discount can reasonably be handled under the circumstances where indicia alone are used to acquire the premium.

There is no similar necessity for applying the discount to the original sale of the REDACTED TEXT in REDACTED TEXT's case. The credit that a dealer gets when he buys REDACTED TEXT represents a wholly contingent right; contingent upon his making a subsequent purchase of automotive repair equipment using at least 70% of his own funds toward the regular price of the equipment. Under these circumstances, it does not seem at all unreasonable to treat the amount of the credit as a discount on the subsequent purchase of automotive repair equipment. Such treatment would be consistent with Annotation 295.0920 and, in view of the particular facts involved, would not be inconsistent with Annotation 280.0740 or 280.1100.

The REDACTED TEXT approach strikes me as logical and realistic on the facts in the REDACTED TEXT program. I see no compelling reason to change it.

TPP:lb

cc: Mr. Glenn L. Rigby  
Mr. Philip R. Dougherty  
Mr. Donald J. Hennessy