



205.0082

Mr. Neilon M. Jennings

May 12, 1980

See Inventory Exemption

Glenn L. Rigby

Business Inventory Exemption - Mobile Radios

In your memorandum of April 3, you asked whether the business inventory exemption applies to mobile radios held by radio-telephone companies. We understand there are three different ways that a radio-telephone company provides radios to their customers. These are listed below and depend upon the rate schedules the commission has approved.

1. The radio may be provided along with communication service for a single charge (similar to a telephone company).
2. The radio may be leased to the customer for a fixed rate and communication service provided for a separately stated amount.
3. The radio may be sold to the customer and communication service only billed periodically.

As you are aware, I was originally of the opinion that these companies would not be entitled to the business inventory exemption. To my way of thinking the answer turned upon the question of whether the companies were performing a service and were therefore consumers of the property used in their business or whether they were in the business of selling or leasing the units. Although I found some court cases concluding that for sales tax purposes similar companies were the consumers of such units, I have found no property tax cases directly on point. From reviewing Rule 133(c), we evidently have taken a different approach to the problem in the property tax law than that taken in the sales tax law.

Paragraph (c) provides:

"(c) Service Enterprises. Property held by a person in connection with a profession which is primarily a service activity such as medicine, law, architecture or accountancy is not 'business inventories' held for sale or lease even though such property may be transferred to a patient or client incidental to the rendition of the professional service. Property held by enterprises rendering services of a nonprofessional type such as dry cleaners, beauty shop operators and swimming pool service companies is to be regarded as 'business inventories' held for sale if such property is delivered to the customer as an item regularly included in the service."

As noted therein, certain "service businesses" are entitled to the inventory exemption.

In view of this rule and the fact that under the specific contract you supplied me, the radio-telephone companies state they are renting certain units; and since they do make specific charges for those units in such instances, I must reluctantly conclude they are entitled to the inventory exemption. Of course the exclusions under paragraph (b) of Rule 133 apply to any such units, and in particular, subparagraphs (4), (5), (6), and (7). Clearly, under those exclusions, those units which are on lease on the lien date would be ineligible for the inventory exemption as well as those units that are supplied without a specific rental charge.

We can discuss this if you wish.

ELR:sfb

cc: Mr. J. J. Delaney
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