



COMMONWEALTH of VIRGINIA

Department of Taxation
Richmond, Virginia 23219

MEMORANDUM

TO: Ronald L. Holt, Supervisor
Technical Services Section
Office Services Division

Wallace S. Cordle, Director
Field Services Division

DATE: March 31, 1987

SUBJECT: Sales Factor and Form 4797 Proceeds

It has come to my attention that there is some confusion as to the application of paragraph e. of the definition of "Sales" in Regulation VR 630-3-302, which states:

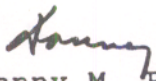
e. The term "sales" does not include amounts required by federal law to be included in federal taxable income as recapture of items deducted in prior years.

This paragraph is intended to exclude from the sales factor an amount required to be included in federal taxable income as a result of an event which is inconsistent with a deduction claimed in prior years. Instead of amending the prior year return to remove the deduction, the amount is deemed to be income and is reported in the current year return as a recapture. The amount is excluded because there is no actual receipt of money or property which produced the "income."

This paragraph is not intended to exclude from the factor gross proceeds actually received from a sale merely because some of the gain on the sale is characterized as ordinary income instead of capital gain. This characterization of the gain is referred to in some cases as a "recapture" of depreciation, particularly on I.R.S. Form 4797, Part III.

Accordingly, all Form 4797 proceeds, including those shown in Part III, should be included in the sales factor. Please convey this information to all of our auditors.

Thank you for your cooperation.


Danny M. Payne, Director
Tax Policy Division