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From:

Sent: Thursday, October 23, 2008 1:58 PM

To:

Cc:

Subject: RE: Reseller discounts

I think it is fair to say when I spoke to [redacted] before it was to give her ideas of how to pursue the potential issues depending upon the facts rather than telling her exactly what and how to argue.

[redacted]

So the issue of how to analyze the discount may depend upon whether there was a sale of products from [redacted] to [redacted], or a sale of products from [redacted] through [redacted] to the Government. To argue there was a price adjustment in selling its product, a taxpayer must show how it negotiated a lower price. What I don't understand is why [redacted] would be getting a reseller discount if it is not acting as the middleman (seems to be they would get a referral fee in this situation). So if the reseller discount only kicks in where [redacted] is buying the products from [redacted] to then resell to the Government, it is plausible for the taxpayer to argue the discount is not income. The only argument I see for the Service here is to argue that there is no price adjustment because the "discount" is not being given to [redacted] for the purpose of giving [redacted] a net lower price, but is really being given to [redacted] for bringing in Government business. That is why I mentioned United Draperies to [redacted] --it is an example of where a payment to a manufacturer to employees of the customer (the party buying the draperies) is consideration for something other than a reduced selling price. The customer didn't get a reduced selling price (its basis in the draperies was the same regardless of the payment to the employees in consideration of bringing customers to the tp). So the payment in that case was outside the sales transaction. Here, the payments are going from [redacted] (seller) to [redacted]. Is [redacted] the purchaser or is the Government the purchaser? If the Government is the purchaser, it doesn't end up with a reduced price, [redacted] ends up with some benefit (that makes this case like United Draperies). If [redacted] is the purchaser, then it does end up with a reduced price (basis). Which party is the purchaser? I think that depends upon what the documents say and that is not a determination I made in the past--maybe [redacted] has.