



STATE BOARD OF EQUALIZATION

(916) 445-8485

August 20, 1985

Your letter of June 7, 1985 to Mr. --- of our staff has been forwarded to the undersigned for reply. The questions for discussion, which arose during a Board audit, are: (1) whether Revenue and Taxation Code Section 6396 exempts from sales tax certain sales of tangible personal property by --- Co. to --- Inc. and, if not; (2) whether such sales are, nevertheless, exempt from sales tax pursuant to Revenue and Taxation Code Section 6385.

Below is the description from your letter pertaining to the companies' business practices in general and to the specific sales which are in issue. The description will be followed by our discussion of the two questions you raised.

Together with an affiliated corporation, ---Inc., a New York corporation (--- New York"), --- provides a nationwide specialized transportation service for small packages. Both --- and --- New York are motor common carriers and are authorized by the United States Interstate Commerce Commission to operate in interstate commerce throughout the continental United States. --- is also certificated by the California Public Utility Commission to operate in intrastate commerce throughout California.

---'s service is designed primarily to meet the needs of commercial shippers for distribution of small packages. It was designed to provide those shippers with a practical alternative to the use of parcel post for such packages. ---'s service has features superior to those of parcel post but costs no more.

Among these features are automatic daily pickup calls, delivery to any and all points throughout the United States, and --- of particular relevance in the present situation --- a simplified system of documentation.

Most motor common carriers (as well as other types of common carriers) are required by law to provide a separate bill of lading for each shipment. A shipper having many small packages to send out and using such a carrier would face a severe paperwork burden. --- has eliminated this burden by seeking and obtaining from federal and state regulatory authorities the right to use a simplified system of documentation.

Substantially all --- shippers use one or another of three systems of documentation. These are (1) the non register pickup book system, (2) the parcel register

system, and (3) the computer manifest system. Generally, relatively low volume shippers will use the non register pickup book system. Higher volume shippers are likely to use the parcel register system, and the highest volume shippers are likely to use the computer manifest system.

In all three systems, the label on the package is the sole document used for controlling the actual movement of packages. No document other than the label accompanies the package to its destination.

In the non register pickup book system, additional documentation is provided using a book of .preprinted blank "pickup records". Each pickup record form contains fifteen lines each of which is used for information concerning one package. As packages are prepared for shipment, the shipper records on the pickup record the name and address of the consignee, the --- zone to which the package is destined, the weight of the package, whether the package is oversized, the declared value of the package if in excess of \$100, the COD amount if any, and whether an acknowledgment of delivery ("AOD") card is attached. When packages are picked up, the --- driver takes with him a copy of the pickup record which becomes the basic document for verification of shipment (if, e.g., the package is lost or damaged) and for customer billing.

The second system of documentation is the register system. In this system the shipper uses a postage meter to produce a register tape showing the amount of the --- charges for each package shipped. These register tapes are attached to the packages as they are prepared for shipment. The shipper also has a separate pickup record. On the pickup record he lists the reference number and COD amount of any COD packages, the reference number and declared value of any packages whose declared value is in excess of \$100, the beginning and ending register readings for the day, and the total number of packages shipped. The names and addresses of consignees, the weight of packages, and other information necessary for verification of shipment is not contained in the pickup record. A register shipper is required to maintain duplicate invoices or other business records showing the name and address of consignees, that --- is the carrier, the date on which a package is turned over to ---, the package weight, and the amount of any COD to be collected. Such records must be retained for at least three years, and must be available for inspection, if necessary, by --- or by the agents of regulatory commissions but are not, in the normal course of business, turned over to ---. In the register system, the pickup record is used for billing purposes. All other documentation functions are served by the duplicate invoices.

The third system of documentation is the computer manifest system. A computer manifest shipper uses a computer to prepare a manifest which contains on a separate line for each package the invoice number, the name and address of the consignee, the --- zone to which the package is shipped, the weight of the package, the shipping charges, the COD charge if any, the COD amount, if any, an indication if the package is oversized, the declared value if in excess of \$100, and an indication of whether an acknowledgment of delivery card was attached. Thus, the information on the shipping manifest is identical to that required in the non register pickup record. The computer manifest shipper also

prepares a computer manifest pickup record on which he indicates the reference number and declared value of those packages whose declared value is in excess of \$100 and, by -- zone to which packages are shipped, the number of packages shipped, the aggregate weight, the aggregate charges, the number of COD packages, the aggregate COD charges, the number of AOD packages, and the aggregate AOD charges. The computer manifest pickup record, like the register pickup record, is used for billing purposes. All information necessary for verification of shipment, etc., appears not on the pickup record but on the manifest.

The taxpayer here, ---, provides management services to --- and --- New York and acquires for resale to ---and --- New York automotive parts and other equipment and supplies for use in their business. In connection with the latter activities, --- maintained during the audit period a warehouse in --- California which it used for distribution of automotive parts and other equipment and supplies to --- locations in the states of California, Oregon, Washington, Nevada, Utah, Montana and Hawaii.

--- purchased automotive supplies inside and outside California for shipment to and warehousing at the California warehouse. All such purchases were made without paying California or other sales or use tax because they were purchases for resale.

When automotive supplies were needed at --- locations within the distribution area, --- personnel at the particular, location transmitted an order to --- at the California warehouse. In the most recent years these orders have been transmitted electronically through a network of computer terminals. At the California warehouse, a listing of the parts desired would be automatically printed out. Previously these orders were prepared by hand at the --- field locations and forwarded through ---'s interoffice mail system to the --- California warehouse.

In either case, when the order reached the California warehouse, employees removed the requisitioned parts from stock, packed them as appropriate, placed a label on the package, and shipped the parts via --- to the operating location. The label on such a package was, of course, exactly the same in substance as the label on any package shipped via ---. In accordance with ---'s procedures as described above, the documentation retained by both the shipper, --- and the carrier, ---, were similar to the type of documentation retained in the case of a manifest shipper.

Each part inventoried in the California warehouse has attached to it a "control tag" which is used to control inventory. As employees removed parts from stock to fill an order, they removed these control tags. The control tags associated with each order were accumulated and sent to the data processing department. There, the information contained on the-accumulated control tags was input into the computer and a report listing the parts shipped to a particular --- center was generated. This report was used for purposes of billing. It contained, in substance, the same information as is ordinarily contained in the manifest prepared by a manifest shipper and serves the same function in memorializing the shipment of the goods.

Does Revenue and Taxation Code Section 6396 apply to exempt ---'s sales to ---?

Revenue and Taxation Code section* 6006 defines "sale" to include:

*Note: Unless otherwise indicated, hereinafter all references to "sections" (§§) are to sections of the Revenue and Taxation Code.

“(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. 'Transfer of possession,' includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

* * * *

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price."

The California Uniform Commercial Code indicates that unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods (Cal. U.C.C. §2401; see, also, Reg. 1628(b) (3), copy enclosed). Section 6010.5 indicates that the place of the sale of tangible personal property is the place where the property is physically located at the time the act constituting the sale takes place (see, also, Reg. 1628(b) (4)). For purposes of the Sales and Use Tax Law, a "retail sale" is defined to mean a sale of tangible personal property for any purpose other than resale in the regular course of business (§6007). Unless specifically exempted by statute, retail sales in California are subject to tax measured by gross receipts (see §§6051, 6012).

Regulation 1620, copy enclosed, pertains to sales of goods shipped in interstate or foreign commerce. That regulation implements the above cited provisions of the law by providing in subsection (a) (3) (A):

"Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or his representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3) (D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the

purchaser or his representative in this state, or for any other reason it is not delivered outside this state."

The exemption from the general rules of taxation, which you maintain applies in this matter, is contained in section 6396, which states:

"There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of: (a) facilities operated by the retailer, or (b) delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

For purposes of this section, the term "carrier" shall mean a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment."

Regulation 1620, subsection (a) (3) (B), which is referred to in subsection (a) (3) (A) as an exception to the general rule of taxation, defines "carrier" in exactly the same way as that term is defined in section 6396.

The basis for your claim of exemption is that "... goods sold by a California seller but delivered by the buyer outside California are exempt from California sales tax." We cannot agree. Pursuant to the clear terms of section 6396 the exemption only applies to goods shipped by the retailer utilizing facilities which it operates or, to goods delivered to a carrier, customs broker or forwarding agent. Since the goods were shipped by the purchaser they were not shipped by facilities operated by the retailer. Neither was the delivery to a customs broker or forwarding agent since --- was the purchaser and, therefore, as principal, could not act as either broker or agent with respect to shipment of its own goods. The only possibility for coming within the terms of the statute arises if --- qualified as a "carrier" with respect to the transactions in question. In our view, ---, cannot so qualify since, at the time of shipment, owned the goods in question and therefore was not transporting "... tangible personal property owned by other persons..."

The basis for our position that --- owned the goods at the time of shipment is that the sales occurred prior to shipment. The facts clearly indicate that --- took physical possession of the goods here in California prior to shipment out-of-state. Pursuant to the Uniform Commercial Code, such transfer of physical possession represented the completion of ---'s performance regarding the physical delivery of the goods to ---. It follows, title passed, and the sale occurred at that time and place. As indicated in Regulation 1620(a) (3) (A) (cited above), where delivery is to the purchaser or his representative in California, the place of the retail sale is California and the tax applies

notwithstanding the disclosed or undisclosed intention of the purchaser to transport the property out of state.

Does Revenue and Taxation Code section 6385 apply to exempt ---'s sales to?

The same basic rules of taxation discussed in responding to your section 6396 question apply to this discussion. It follows, the sales in question are taxable unless section 6385 applies to exempt them.

Section 6385 states, in pertinent part:

(a) "There are exempted from the computation of the amount of the sales tax-the gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this State and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier. The term 'common carrier,' as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce."

Regulation 1621, copy enclosed, implements and clarifies section 6385 and provides in pertinent part:

“(b) Application of Tax.

(1) .Common Carriers. The sale of tangible personal property to common carriers, including foreign air carriers, is exempt from sales tax pursuant co Section 6385(a) when such property is:

(A) Shipped by the seller via the facilities of the purchasing carrier under a bill of lading, to an out-of-state point, and

(B) Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and

(C) Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and

(D) Used by the carrier in the conduct of its business as a common carrier.

(d) Proof of Exemption.

(1) Common Carrier.

(A) Bill of Lading. Any seller claiming a transaction as exempt from sales tax under Section 6385(a) must receive at the time of the transaction, and retain, a properly executed bill of lading, or copy thereof, pursuant to which the goods are shipped. The bill of lading must show the seller as consignor. It must indicate that the described goods are consigned to the common carrier at a specified destination outside this state. Where the form of the transaction is 'freight collect,' no specific freight charge need be shown on the bill of lading, inasmuch as such charges are not ordinarily shown thereon in 'freight collect' transactions. Furthermore, the carrier need not actually collect freight charges from itself. The form and language of the bill of lading should be similar to the form and language normally used where the purchaser and carrier are not the same."

We understand that there is no dispute between the Board's audit staff and yourself relative to the requirements of section 6385 and Regulation 1621 other than the bill of lading requirements. You contend that the bill of lading requirements have been met by --- and --- in that the goods were shipped "...under the equivalent of a bill of lading..."

You cited the cases of Satco, Inc. v. State Board of Equalization, 144 Cal.App.3d 12, Standard Oil Co. v. Johnson, 56 Cal.App.2d 411 and, Standard Oil Co. v. Johnson, 24 Cal.2d 40, in support of your conclusion.

We have reviewed the authorities cited and are of the opinion that a bill of lading as required by section 6396 and Regulation 1621 is not in evidence in this matter. It follows, the section 6385 exemption does not apply to exempt the sales in question.

In reaching our conclusion, we note that the regulation is very specific in its requirement that a properly executed bill of lading must show the seller as consignor and must show that the goods are consigned to the common carrier at a specified out of state destination. Here, there is nothing in evidence akin to a bill of lading, as described above. Rather, there are: electronically transmitted parts orders; computer printouts listing the ordered parts, and; labels on the packages to be shipped which, apparently, indicate the addressee to be --- and the address to be the out of state --- location where --- will transport the package.

The Satco court, which discussed and distinguished the other cases you cited, specifically upheld the validity of Regulation 1621 and struck down Satco's argument that the bills of lading, which showed the purchaser as both consignor and consignee, were in "substantial compliance" with section 6385 and Regulation 1621. Here, there is not even partial compliance with the regulation since there is no bill of lading or other similar documentation received by --- at the time of the transactions.

Under such circumstances, as stated previously, there is no basis for exemption pursuant to section 6385.

Very truly yours,

E. Leslie Sorensen, Jr.
Tax Counsel