

M e m o r a n d u m**325.0882**

To: San Bernardino – Auditing (RLL)

February 24, 1969

From: Tax Counsel (JKM) - Headquarters

Subject: C--- - H--- S--- Co. Inc.
P.O. Box XXXX
---, CA XXXXX

SZ --- XX-XXXXXX

This is in reply to your memorandum dated December 10, 1968, in which you asked whether certain sales made by this taxpayer were exempt from tax as sales in interstate commerce.

Taxpayer is engaged in the business of auctioning livestock, including horses. On July 20, 1967, it sold a mare and foal to H. E. S---. The mare and foal were then hauled to a ranch in Arcadia, California by F--- H--- in her own van and were held at the ranch until August 25, 1967, at which time they were shipped to Kentucky. The shipper and consignee were both shown as H. E. S---. On November 20, 1968, Mr. S--- certified that he purchased the mare and foal at sale for an out-of-state client and that he had to lay the mare and foal over because he could not get railroad transportation until the August date. You ask whether this sale was taxable as a result of the break in interstate shipment or exempt as a sale in interstate commerce.

As stated in the memoradum dated May 20, 1966, from E. D. McCarthy to E. H. Stetson, when auctioneers sell horses at auction in California to out-of-state purchasers, they attempt to handle the sales in such a way that they will be interstate sales exempt from sales tax. The interstate nature of a sale is established by the conditions of sale, by giving notice to prospective out-of-state purchasers of sales tax regulations and by having prospective purchasers of horses which are to be shipped in interstate commerce give notice of their intention to bid. It has been our position that if a prospective out-of-state purchaser has complied with the provisions of the notice of sales tax regulations, his submission of written notice of intention to bid, fully executed and prior to the sale, to the auctioneer-seller constitutes a preexisting agreement between the auctioneer and the purchaser which would require the auctioneer to deliver the horses to a point outside the state. Thus, under ruling 55, sales tax would not apply where the auctioneer was required to deliver the horses outside California and where delivery was actually made outside California.

Ruling 55(a)(1)(C) provides that sales tax does not apply to sales of property which is shipped to a point outside the state, pursuant to the contract of sale, by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, or delivery to a customs broker or forwarding agent for shipment outside the state. However, taxpayer did not deliver the mare and foal outside the state in a manner set forth in ruling 55, but, rather, it delivered them in California to Mr. S--- or to his representative, F--- H---, who had a ranch in California but who was not an interstate hauler. The mare and foal were then held for approximately one month until they were shipped to Kentucky. The shipping document showed Mr. S--- as both the shipper and the consignee, and in his November 20, 1968, letter, Mr. S--- stated that he had to lay the mare and foal over because he could not get any railway equipment. Since Mr. S--- took delivery of the mare and foal in California, the sale was not exempt from tax under ruling 55 as a sale in interstate commerce.

In another transaction, on July 19, 20 and 21, 1967, taxpayer sold 16 horses to J. W. M--- and delivered them to L--- A--- V--- Service, Inc. for shipment to the C--- R--- in L---, California. The shipping documents showed taxpayer as shipper. These horses were held at the C--- Ranch allegedly pending the availability of L--- A--- vans going to Texas. On August 15, 1967, the horses were delivered to L--- A--- V--- Service, Inc. for shipment to the M--- Ranch in L---, Texas. The shipping documents showed C--- Ranches as shipper. You ask whether these sales were taxable as a result of the break in interstate shipment or exempt as sales in interstate commerce.

Whether these sales were taxable or exempt under ruling 55(a)(1)(C) is dependent upon the capacity in which the C--- Ranch held the horses, prior to their being shipped to Texas. If the C--- Ranch held the horses on behalf of the taxpayer or on behalf of L--- A--- V--- Service, Inc., we think that these sales were exempt as sales in interstate commerce. However, if the C--- Ranch held the horses on behalf of Mr. M---, we think that these sales would be subject to tax since taxpayer delivered the horses to a representative or agent of Mr. M--- in California.

Although California Tax Service Anno. No. 1516.90 provides that when a seller's carrier delivers goods to a freight handling company for consolidation into truckload lots before final shipment to an out-of-state consignee, an interstate shipment is interrupted and, therefore, a taxable incident is created in California, we think that this annotation is distinguishable from this situation in several respects. First, the annotation concerns goods delivered to a freight handling company for consolidation into truck load lots before final shipment. In this case the horses were delivered to a ranch allegedly pending the availability of transportation vans. While it could be argued that the horses were delivered to the ranch for consolidation before final shipment, we think that the fact that the horses were all shipped to the C--- Ranch in July but were not shipped to Texas until August, when consolidation could have occurred as early as July 21, contradicts this argument and supports the conclusion that shipment was delayed pending the availability of the vans.

Secondly, in the situation covered by the annotation, there is no indication that the seller's carrier did not have trucks available to ship the goods at the time the goods were

delivered to the freight handling company. The purpose of the delivery was to consolidate the goods into truck load lots. Here, the unavailability of vans is the reason advanced for the delay in shipment to Texas. Finally, if the carrier took the goods from the seller but held them until it could begin to ship them, for example, if the carrier had a backlog of shipping orders which had interrupted its operations, the goods would still be moving in interstate commerce. The same result should follow where livestock shipments are backlogged and transportation is not available. The fact that livestock must be grazed until shipment while goods may be stored until that time should not warrant a different result in what are otherwise substantially similar situations.

JKM:smb

cc: Fred T. Larsen

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