

M e m o r a n d u m

570.0415

To: Downey – Auditing (SRK)

Date: August 23, 1976

From: Headquarters – Tax Counsel (HLC)

Subject:

This is in reply to your memorandum dated July 19, 1976, concerning tax applicable to sales of truck tractors by subject taxpayer.

We understand that taxpayer is a certificated motor vehicle dealer selling truck tractors. Certain purchasers designate delivery to an out-of-state point. When this occurs, taxpayer delivers the tractor to a drive-away carrier at taxpayer's place of business. The carrier furnishes only the driver. The purchaser may also purchase a trailer from a different California dealer and authorize taxpayer to instruct the carrier to pick up the trailer at the trailer vendor's location and deliver both the trailer and the tractor to the out-of-state point using the tractor to tow the trailer. In other cases, the purchaser contacts the carrier and instructs the carrier to pick up the trailer using the tractor to tow the trailer. In the former situation, the carrier prepares one bill of lading showing taxpayer as the shipper of both the tractor and the trailer. In the latter case, the carrier prepares two bills of lading, one for the tractor showing taxpayer as shipper and one for the trailer showing the purchaser as the shipper. You inquire whether the use of the tractor by the carrier to pull the trailer constitutes a taxable use of the tractor in this state, and if tax applies, if the taxpayer is liable for the tax.

It is our opinion that the use by the carrier of the newly purchased tractor to tow the newly purchased trailer out of the state is not a taxable use of the tractor in this state. Taxpayer is not liable for any tax.

Where taxpayer's purchase agreement specifies only delivery of the tractor out-of-state and taxpayer delivers the tractor to a carrier for delivery out of the state, receiving therefore a bill of lading, all of the requirements of Sales and Use Tax Regulation 1620(a)(3)(B) are met. The fact that the purchaser later instructs the carrier to pick up the trailer and tow it out of the state cannot affect taxpayer's liability.

We do not believe that the use of the newly purchased tractor to haul the newly purchased trailer out of the state is a taxable use of the tractor in this state. If the buyer purchased both the tractor and the trailer from taxpayer and had required both to be delivered out of the state, we would have considered the tractor and trailer as a single unit for purposes of deciding whether there was a taxable use of the tractor in hauling the trailer and would not have applied the tax. We see no reason to arrive at a different result because the buyer elected to buy the items separately. Even if

we were to consider the haul as a taxable sale, there appears to be no basis for asserting liability on taxpayer. He has still complied with Regulation 1620(a)(3)(B) as far as sales tax is concerned. The use cannot be considered to be by taxpayer, since it is the carrier that is making the use. The carrier did not purchase the tractor, so that the carrier is not liable for the tax, either. It could possible be considered that the buyer made a taxable use if we consider the carrier as the buyer's agent, but this is a tenuous argument at best.

If the trailer was a unit previously owned and used by the buyer, our conclusion might be different since the element of delivery as part of a sale of the trailer would be lacking.

HLC:js