

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2705

October 28, 1975

H--- H---
Division of --- Corporation
--- ---, CA XXXXX

SY -- XX XXXXXX

Attention: Mr. E--- M---

Gentlemen:

Your letter to Mr. Doctrow of our West Los Angeles office has been referred to the legal department for review.

In your letter you explain that on its television program, B--- B--- P--- (B---) solicited donations from the public to pay for a helicopter which was to be used in Kenya for the detection of poachers. B--- agreed to purchase one from H--- H--- (H---). H--- invoiced the aircraft to B--- (F.O.B. Palomar, California). However, the invoice, in addition to a receipt signature on behalf of B---, also contains a statement of nonresidency of Kenya Nation Parks (Kenya) by its employee agent. The aircraft was subsequently shipped to Africa.

An examination of the invoice does not reveal whether H--- delivered the aircraft to a representative of B--- or to a representative of Kenya.

If the overt intention of B--- and H--- was that the aircraft be delivered by H--- to a representative of Kenya and if this intent was effectively carried out, the title passed from H--- directly to Kenya notwithstanding B--- was required to pay for the aircraft. In that case, it appears that the sale is exempt under Revenue and Taxation Code 6366. The definition of sale (Revenue and Taxation Code 6006(a)) refers to a transfer of title or possession for a consideration, but Section 6366 does not state whether the property is "sold to" the person receiving title from the seller or the person providing the consideration for the contract. The purpose of 6366, however, is to exempt certain aircraft which are used outside this state. Consequently, it appears that the term "sold to" in that section refers to the person who will use the aircraft, i.e., the person who will exercise a right or power over the aircraft incidental to the ownership (CF Section 6009). If the title passed from H--- to Kenya, that person is Kenya.

On the other hand, the invoice shows a B--- receipt for the aircraft, which implies that H--- delivered it to B---. If B--- received the title or possession in lieu of title, the H--- sale could only be to H---. The sale would not be exempt under 6366 notwithstanding B--- gave the aircraft to Kenya very shortly thereafter.

From the documentary evidence, I cannot determine which person the aircraft was "sold to" for the purposes of Section 6366 because the documentation does not clearly establish who received title to it.

If you have any further questions or comments, please do not hesitate to contact me.

Very truly yours,

Philip R. Dougherty
Tax Counsel

PRD:js