

**M e m o r a n d u m****135.0370**

To: Ms. Velma Gregory – Van Nuys Auditing

Date: August 23, 1988

From: John Abbott, Tax Counsel

Subject: Insurance company exemption certificate – liability for sales tax

In your June 20, 1988 memo to Mr. John Adamo, which was referred to me for reply, you enclosed two examples of [X] Company's purchase orders and vendors' sales invoices, and asked for our opinion on whether these transactions are taxable or exempt. The two vendors in these examples are [X] and [Y]. In both cases, the product sold was a typewriter, presumably for use in [X]'s insurance business as an insurer and not for purposes unrelated to [X]'s insurance business. Also in both cases, the vendor shipped the typewriter to an independent dealer located in California, and the dealer delivered the type writer to [X]'s office in California. (The vendors' sales are at retail to [X], and are not sales for resale to the independent retailer).

In both cases, [X] included a stamp on its invoice which reads as follows:

“SALES & USE TAX NOTE

“Life insurance companies pay a premium tax ‘in lieu’ of other taxes including the California Use Tax. [X] takes title to the merchandise purchased under this order upon delivery by seller to common carrier outside California. Sales tax is not applicable and our exemption from Use Tax applies. Neither tax should be billed to us.”

In our telephone discussion on August 11, 1988, your question was how we should treat these sales in a situation where the vendor did not in fact ship the typewriter from an out-of-state location, but rather shipped the typewriter from its own California warehouse, either directly to [X] or to the California dealer for redelivery to [X]. We agreed that if the typewriter is shipped from the vendors' out-of-state location, then it is a transaction which is exempt from use tax as described by the sales and use tax note stamped on [X]'s invoices, whether the typewriter is shipped to the independent dealer or to [X] in California. Your question concerns the validity of the sales tax exemption claimed by [X] when the vendor ships the property from its California warehouse. [X] does not specify that the property must be shipped from an out-of-state location, and may even be unaware that the property is shipped from a California location of the retailer.

You wonder whether Revenue and Taxation Code Section 6421 and Regulation 1667(b)(2) apply to this situation. Regulation 1667(b)(2) states that if the purchaser certifies in writing to the seller that the property will be used in a manner or for a purpose entitling the seller to regard the

sale as exempt from the sales tax, and uses the property in some other manner or for some other purpose, the purchaser is liable for payment of sales tax as if he were the retailer making the retail sale. In both of these cases, the vendors have accepted the sales and use tax note on [X]'s invoices as a valid exemption certificate, and have regarded the sales as exempt from both the sales tax and the use tax.

### Opinion

Our opinion is that under the circumstances you relate, the sales tax applies to the sale of the typewriters from the vendors to [X] since the shipments were made from the vendors' California locations either to the California dealer or directly to [X]. (Regulation 1620(a)(2)(A)). It is not possible in this situation for the vendors to have accepted [X]'s exemption certificate stamp in good faith, since the vendors knew that the shipments were made from their California warehouses. While [X] sales and use tax not is legally correct in all respects, it simply does not apply to the actual facts of these transactions. Under Regulation 1620(a)(2)(A), sales tax applies to these in-state shipments regardless of whether the contract requires or contemplates delivery from out of state. Accordingly, the vendors cannot rely on this exemption certificate in order to relieve them of te liability for the sales tax.

In any case, the Board cannot bill [X] for sales taxes due under Section 6421 and Regulation 1667(b)(2). As expressed in its sales and use tax note, [X] pays an 'in lieu' insurers' tax to the state rather than sales tax. Article XIII, section 28 of the California Constitution specifies that the tax is in lieu of all other state and local taxes (with certain exceptions not relevant here). The Board has no authority to interpret Section 6421 as imposing the sales tax on [X], in light of the express prohibition of Article XIII, Section 28, on the purchase of property used by [X] in its insurance business.

JA:jb