

M e m o r a n d u m**325.0597**

To: District and Subdistrict Principal Auditors

Date: March 11, 1981

From: Headquarters – Principal Tax Auditor

Subject: Use in Interstate Commerce

In September 1978, Regulation 1620(b) was amended. Part of the change was a result of the United States Supreme Court's decision in the case of Complete Auto Transit vs. Brady. The major change was that property purchased for use and used in interstate or foreign commerce prior to its entry into California, and used continuously thereafter between termini within California in connection with interstate and foreign commerce activities, became subject to tax.

Recently, several districts have noted the inconsistency between Regulation 1620(b)(2)(B) and both Regulation 1594(a)(1), which covers the exemption for watercraft, such as tug boats, and Regulation 1620(c), which explains the exemption for rail freight cars. Specifically, they wanted to know if these sections should be amended as a result of the Complete Auto Transit case.

The Complete Auto Transit case was a Mississippi case in which the State of Mississippi imposed a sales tax on gross receipts of transportation revenue. The taxable revenue consisted of only the revenue earned from the transportation performed in the State of Mississippi, notwithstanding the fact that the taxed trips were all interstate trips starting outside of Mississippi. The Supreme Court agreed that this revenue was subject to the sales tax.

Sections 6368, 6368.1 and 6368.5 statutorily exempt watercraft and rail freight cars when they are for use in interstate or foreign commerce. It is the legal staff's opinion that these sections provide specific exemptions for watercraft and rail freight cars and that the exemption includes those that are used exclusively in California in connection with interstate and foreign commerce activities. However, the Complete Auto Transit case does support our position with regard to other modes of transportation which enter California in interstate or foreign commerce and thereafter operate continuously between termini located within California. Such property is subject to tax even though it is used in connection with the transporting of persons or property moving in interstate commerce.

D Brady

Memorandum

325.0597

To: Mr. Glenn Bystrom

July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Headquarters – Principal Tax Auditor’s memorandum of March 11, 1981 to District and Subdistrict Principal Auditors.

We are in agreement with his conclusion, as follows:

Use in Interstate Commerce. Sales and Use Tax Law Sections 6368, 6368.1, and 6368.5 create exemptions for watercraft and rail freight cars when they are for use in interstate or foreign commerce, even if the use is entirely within this state in connection with interstate or foreign commerce activities. This exemption does not extend to other modes of transportation entering California in interstate or foreign commerce and then operating entirely between termini in this state, even though the transportation is in connection with interstate or foreign commerce. 3/11/81.

Gary Jugum
By MB