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**STATE BOARD OF EQUALIZATION**

(916) 445-6450

May 4, 1990

Dear

The California State Board of Equalization's Out-of-State District Office has asked that the legal staff provide an opinion as to the application of sales tax to retail sales of tangible personal property in California to ---.

We understand that ---. A division of --- would accept delivery of the property in California and would transport the property to Florida for --- use in that state. We also understand that --- holds Interstate Commerce Commission Permit Number --- which provides --- with authority to engage in transportation as a contract carrier by motor vehicle.

A January 31, 1990 letter to --- from this Board's Out-of-State District Office implies that such sales to --- under the facts you described would be exempt from sales tax under Revenue and Taxation Code section 6396, which provides:

“There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of: (a) facilities operated by the retailer, or (b) delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

“For purposes of this section, the term 'carrier' shall mean a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.”

We disagree that the sales to --- are nontaxable. California sales tax is imposed upon retailers for the privilege of making retail sales of tangible personal property in California. We believe that sales by California retailers to a contract carrier are subject to sales tax notwithstanding that the carrier would transport the property out of state for use at an out-of-state location. Sales and Use Tax Regulation 1620 provides the Board's

interpretation of when sales applies to the sale of property to be taken out of state. The relevant part of subdivision (a)(3)(A) of the regulation provides:

“Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported...”

Subdivision (a)(3)(B) generally provides for the section 6396 Exemption. The regulation reflects in interpretation of section 6396 by the Board that, while the section allows a seller and purchaser to avoid sales tax by contracting for the out-of-state shipment of property, and while the shipment may be by a carrier hired by the purchaser, it does not allow the exemption when property is delivered to the purchaser in this state. (Pope v. State Board of Equalization, 202 Cal. App. 3d 73.) As the court stated in the Pope case, “The regulation thus interprets Section 6396 as creating only a limited agency allowing the purchaser to arrange out-of-state shipments by carriers or agents of his choice but not allowing actual delivery of the property to him in California.” (id. At p.80.) We believe that the carrier must be an entity separate and distinct from the purchaser itself.

We therefore believe that section 6396 does not provide a basis for an exemption from sales tax when the retailer sells tangible personal property at retail in California to a contract carrier which accepts delivery of the property in this state and transports the property to a point outside California.

The letter issues by the Out-of-State District Office also indicated that Sales and Use Tax Regulation 1621, Sales to and Use Tax Regulation 1621, Sales to Common Carriers, may be applicable to these facts. Again, we disagree. Regulation 1621 interprets Revenue and Taxation Code section 6385 and pertains solely to certain sales of tangible personal property to “common carriers” rather than to contract carriers such as ---.

We hope this answers your questions; however, if you need further information, feel free to write directly to this office.

Very truly yours,

Ronald L. Dick  
Tax Counsel

RLD:sr  
Enc. - Regs. 1620 and 1621  
cc: Out-of-St3te District Administrator