

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-6493

March 28, 1990

Mr. J--- -, V---  
B---, L--- & M---  
Suite XXX --- Square  
XXXXX East --- Street  
---, -- XXXXX

V--- A---, Inc. – SY – XX-XXXXXX  
Interstate shipments – shipment to storage in state

Dear Mr. V---:

In response to your February 5, 1990 letter to me, which sets out your contentions why V--- is entitled to regard its sales of certain hospital equipment to out-of-state hospitals as tax-exempt shipments in interstate commerce, I enclose my March 2, 1990 memorandum to Mr. Paul A. Nathan, San Jose Auditing, which I believe answers many of the contentions you have raised. I did not review your February 3 letter before sending my March 2 memorandum; however, after reviewing your contentions, my opinion remains unchanged, with one exception noted below. I thought it would be helpful to respond in more detail to the issues raised in your February 5 letter.

Your first contention is that the question of whether title passed in California from V--- to its customers is irrelevant for purposes of determining whether the Section 6396 interstate shipment exemption applies. I agree with this contention; see the last paragraph on page 3 of my March 2 memorandum. Nor does my March 19, 1985 memorandum to the Board's San Jose audit staff regarding these sales by V--- indicate that the Section 6396 exemption depends upon where title passed. Rather, in that memo I responded to the audit staff's information that V--- contended that title passed to its out-of-state customers following installation and acceptance of the equipment. I indicated that even if V--- had in its contracts such a title clause, the title clause would be limited in effect to a security interest once V--- completed its obligation to deliver the equipment, and would not affect the treatment of the transaction for sales and use tax purposes.

Your second contention is that the contract documents used by V--- (prior to the March 1989 revision of the Authorization For Shipment To Storage, which I dealt with in my March 2 memorandum) obligated V--- to ship the equipment from storage to the out-of-state hospital. With one exception noted below, I do not agree. Some of these contract documents,

including the shipment authorizations, specifically provided that V---'s shipment obligations were satisfied when V--- shipped the property to the California storage site, rather than to the hospital at the out-of-state location. For example, Paragraph 5, Terms and Conditions of Sale, Form RAD 1652B (9/78) states in part:

“As used in the clauses appearing herein or attached hereto, ‘delivery’ shall occur when Products are delivered to the transportation company at the location of V---’s or manufacturer’s plant from which the Products are shipped, notwithstanding installation by or under supervision of V---.”

Similarly, the Authorization for Shipment to Storage at V--- Selected Site, Form RAD 1934 (12/81), states in part:

“We agree that the shipment of the equipment to storage constitutes shipment by V--- A--- for purposes of our contract and we agree that upon such shipment we shall make the payments due upon shipment as set forth in the contract.”

The first indication that V--- has any contractual obligation to deliver the equipment from storage to the customer appears in Paragraph 7, Terms and Conditions of Sale, Form RAD 1652H (4/88), as follows:

“Title to the stored Product will remain with V--- until delivery by V--- to the transportation company when removed from storage for shipment.”

As is the case with the similar clause in the Authorization for Shipment to Storage at V--- Selected Site, Form RAD 1934 (3/89), referred to in my March 2 memo, this provision at least indirectly appears to place on V--- the obligation to delivery the equipment from storage to the transportation company. In other words, nothing in these contract documents (until the April 1988 revision referred to above) ever indicated that V--- had the obligation to ship both to the storage site and also to the out-of-state hospital. However, we will agree that V---’s sales qualify as exempt shipments in interstate commerce beginning with sales made pursuant to the April 1988 Terms and Conditions, rather than the March 1989 Authorization for Shipment.

Your third contention is that V--- still had obligations under the contract for the rigging-in, installation, testing and calibration of the equipment after its delivery to the hospital, and that these obligations for performance by V--- were not changed by the shipment to storage authorizations. However, none of these obligations to be performed by V--- after the equipment was delivered to the out-of-state hospital indicate that it was V---, rather than the purchaser, which had the obligation to ship the equipment from the storage site to the hospital. For example, paragraph 5 of the Terms and Conditions of Sale quoted above provides that V---’s delivery

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obligation is complete on shipment from V---'s plant "notwithstanding installation by or under supervision of V---."

Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Senior Tax Counsel

JA:cl

Enclosure