

M e m o r a n d u m**330.3010**

To: Headquarters - Petition Unit

Date: January 7, 1971

From: Tax Counsel (WEB) - Headquarters

Subject:

This petition was originally heard by the board on February 17, 1970. The matter was taken under consideration and the staff was directed to give further consideration to the petitioner's contention that its rental transactions qualified for the leasing sale exclusion provided by Revenue and Taxation Code section 6006(g) (5)(A). The resolution of the matter requires consideration of two basic questions; namely, (1) was the Paramount U-Drive operation conducted as a separate business activity, and (2) if so, was the purchase of the assets "a transaction described in section 6006.5(b) of the code" (per section 6006(g)(5)(A)).

While there is a conflict in the evidence, we have decided to recommend that the question of whether the --- operation was carried on as a separate business activity be resolved in favor of the petitioner. The operation was conducted as a separate business activity prior to its purchase by petitioner and is continued to operate in a similar fashion after the purchase. Although some of the --- U-Drive trucks were apparently used in the --- and ---Trucking operation there is evidence that an attempt was made to account for the inter-company transactions. Contrary to our earlier information it, would not appear that there was any commingling of employees. The fact that the trucks were jointly registered to --- and --- Trucking and --- U-Drive does not warrant a finding that the operation was an integral part of the --- and ---Trucking business activity.

We have also recommended that petitioner corporation's acquisition of the assets be classified as a transaction described in section 6006.5(b) of the code. The assets represented substantially all of the property held or used in the --- U-Drive activity and the transfer was to an entity having the same real or ultimate ownership as the transferor. The transfer was exempt from the sales tax because the transferor, K and L Trucking, was not a certificated or licensed dealer of motor vehicles and did not hold a seller's permit. The transfer qualified for exemption from the use tax under the provisions of Revenue and Taxation Code section 6281.

At the time of the transfer the substantive requirements for exemption from use tax under section 6281 were precisely the same as set forth in section 6006.5(b) except that the classification under section 6006.5(b) was limited to transactions in which the transferor held a seller's permit: It is our conclusion that the Legislature did not intend to differentiate and create different tax consequences solely on the basis of the holding of a seller's permit. In using the phrase "transaction described in subdivision (b) in section 6006.511 we consider the Legislature to have intended the exclusion to include any transfer that met the requirement of a transfer of substantially all of the property of a particular activity and for which the real or ultimate ownership after the transfer remained substantially similar. The transfer in question meets these substantive requirements and is, therefore, within the exclusion provided by section 6006(g)(5)(A). If the board accepts our recommendation the following statement of board action is suggested:

The board found that the rental transactions qualified for exclusion from classification as leasing sales under the provisions of Revenue and Taxation Code section 6006(g)(5)(A).

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