

M e m o r a n d u m**557.0615**

To: Oakland – Auditing (RLM)

Date: November 16, 1972

From: Tax Counsel (PRD) - Headquarters

Subject: T--- H--- Corporation
---, CA XXXXX

SS --- XX XXXXXX

We understand from your memorandum and its enclosures that the above account is a construction contractor who has been declaring as taxable self-consumed merchandise, the purchase price of structural steel, net of freight charges. Taxpayer purchases this steel from two different suppliers, N--- A--- Corporation (SY -- XX XXXXXX) and B--- S--- Corporation of ---, Texas. The question is whether or not the shipment from the point of origin is directly to H---, or whether it is shipped to the retailer or his agent.

In the case of Japanese steel, H--- purchases from N--- A--- Corporation. H---'s purchase order had printed thereon "Ship To: XXXXX --- Road, ---, California". Its printed f.o.b. clause was superceded by a typed clause stating "SHIPPING POINT OF ORIGIN ITEMIZE FREIGHT CHARGES. DOCK OAKLAND/ALAMEDA, ALL DUTIES PAID".

N--- A--- Corporation's invoice to H--- stated "Including ocean freight and other charges".

The ocean freight was shipped by N---, Ltd., Tokyo, under a bill of lading consigned to the order of N--- A---, notice to be given to N--- A---. All orders of steel from Tokyo are shipped under order bills of lading, whether the steel is to fill a certain order or for N--- A---'s inventory. For unknown reasons, the order bills of lading are easier to guide through customs procedures.

J. J. B--- and Co., which is probably N--- A---'s customs agent, forwarded to H--- a final release from Alameda Terminal, a customs permit and its shipping order recognizing J. J. B--- & Co., as the shipper and H--- Corporation as the consignee. This document was probably the receipt signed by H---'s trucker when H--- picked up the steel at Oakland/Alameda dock.

Because the purchase order requires shipment to the Oakland/Alameda terminal, which is not owned or controlled by the retailer or any of its agents, shipment is not to the retailer or his agents on that ground.

In this instance, the retailer had the goods shipped to his order, which means that the bill of lading in N---A---'s hands is the so-called document of title. That document vests N--- A--- with the right to direct the carrier to deliver the goods to the person specified. It is not equivalent to a delivery of the goods to N--- A---. In fact, N--- A---, through J. J. B--- & Co., ordered the goods delivered to H---, and that was the only physical delivery which the carrier made.

It appears that the transportation charges may be excluded from the measure of the tax.

Although the B--- S--- Corporation's sales to taxpayer are less documented, nothing in the documentation indicates that a different procedure exists from that concerning the Japanese Steel. Therefore, the same conclusion would apply, so far as we can review the transaction.

PRD/vs