

M e m o r a n d u m**570.0110**

To: San Bernardino – Aud. (RLL)

Date: January 28, 1974

From: Hdqrs. – Tax Counsel (GLR)

E--- P--- Co.

SR -- XX XXXXXX

H--- C---

SR -- XX XXXXXX

This is in reply to your memo of December 38, 1973 in which you request our opinion with regard to the following situations concerning the above taxpayers:

E--- P--- Co. manufactures and sells plywood. They also furnish wooden display racks to their wholesale customers without charge. The display racks are the subject of your question.

These racks are purchases ex-tax from a firm in ---, Tennessee. They are shipped to California for distribution to E---' customers. The display racks are then shipped to E---' customers, who buy the plywood, without charge. We understand that E---' customers are not required to purchase a certain amount of plywood before they will receive the racks. The shipments are made from California by common carrier.

You ask whether the shipment of the display racks to out-of-state customers qualify for exemption from the use tax under Section 6009.1.

As we discussed over the phone on January 21, it appears that the taxpayer by making delivery of the racks to the carrier in California relinquishes its control over the property here and thereby makes the gift in California. Accordingly, it is our opinion that the taxpayer has made a taxable use of the products in California.

Your second question concerns H--- C---. H--- purchases plate steel, under resale certificates, from California vendors. This steel is used to manufacture forms for dry cast pipe at its local California plant. The forms are all shipped to out-of-state divisions for use out of state. No dry casting is done in California.

No inventory of steel is maintained and purchases are made as steel is needed. The purchase invoices are issued for the specific job number and when the invoice is received it is referenced to the job for which it was purchased. Each purchase is then recorded on a job card by invoice number and amount.

Nuts, bolts, and miscellaneous small parts are purchased and charged to a common inventory account from which withdrawals are made as needed. Withdrawals for use in the manufacture of dry cast forms are charged to the specific jobs by use of withdrawal slips or requisitions.

Your question is whether this property is exempt under Section 6009.1.

It is our opinion that because of the wording of Section 6009.1 and because the items were purchased under a resale certificate and then later shipped to a point outside the state and used thereafter solely outside the state no tax is due. The only alternative we have is to tell the taxpayer to stop issuing such resale certificates and if he does not inform him that he can be subject to a misdemeanor charge and also the possibility of having his seller's permit revoked.

GLR:lb

cc: Mr. T. P. Putnam
Mr. J. Kenneth McManigal