

M e m o r a n d u m**115.0050**

To: District Administrators

Date: June 8, 1988

From: Glenn A. Bystrom
Principal Tax Auditor

Subject: Impact of Section 6396 on Certain Sales by Auctioneers

On February 22, 1984, I wrote a memorandum on the above subject. Among other things, the memorandum provided that a sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. I indicated that where the condition or requirement to ship or deliver the property to an out-of-state location does not exist prior to the completion of the sale, the transaction is subject to sales tax. The remainder of the memorandum provided guidelines on posting of signs concerning interstate shipments and the customary control of property which exists with auctioneers.

In a recent Board hearing on this subject, the Board decided to treat documents confirming out-of-state shipments as evidence that the contract of sale was modified while the property was still in the hands of the seller, i.e. after the fall of the hammer, but prior to the delivery to the customer.

Accordingly, in those cases where the auctioneer has a bill of lading showing the property was shipped from the auction site, or other place where the auctioneer had control of the property, directly to an out-of-state point by common or contract carrier, the documents (bills of lading) confirming the out-of-state shipment will be accepted as evidence of meeting the "pursuant to the contract of sale" requirement of Section 6396.

GAB:gjm
0629Mcc: Mr. Judy A. Agan
Mr. Robert Nunes

Memorandum

115.0050

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of June 8, 1988 to District Administrators.

We are in agreement with his conclusion, as follows:

Sales by Auctioneers. At the time of sale, the auctioneer did not have proof of a condition or requirement to ship or deliver the property to an out-of-state location at the time of sale. In instances where the auctioneer has a bill of lading showing the property was shipped from the auction site, or other place where the auctioneer had control of the property, directly to an out-of-state point by common contract carrier, the documents (bill of lading) confirming the out-of-state shipment will be accepted as evidence of meeting the “pursuant to the contract of sale” requirement of Regulation 1620(a)(3)(B). 6/8/88.

Gary Jugum