



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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325,0884

PROPERTY (HORSES) NEED NOT BE
 SHIPPED IMMEDIATELY TO
 QUALIFY AS SALES IN INTERSTATE
 COMMERCE

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 Controller, Sacramento

DOUGLAS D. BELL
 Executive Secretary

August 17, 1984

Dear [REDACTED]

This is in response to your letter of June 15, 1984 to [REDACTED] of our staff. We understand that certain of your California clients are in the business of selling horses to out of state buyers. You wondered what the tax consequences would be under the California Sales and Use Tax Law where delivery of the horses from California to the buyer's out of state location did not occur immediately after signing of the contract of sale.

Following are the facts and circumstances, surrounding a particular transaction, upon which you asked us to base our opinion:

1. The sale is by installment contract.
2. Responsibility for board and expenses (and risk of loss) passes to the Buyer upon execution of the sales agreement.
3. Title and registration remain with the Seller until the Buyer's final installment is received by the Seller.
4. The horse is insurable by both the Buyer and the Seller, although the Buyer is usually required to maintain insurance in an amount equal to the balance due under the installment contract.
5. The installment contracts extend for up to 5 years.

August 1, 1984

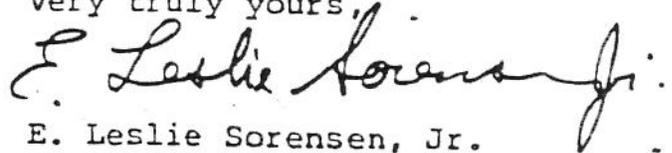
6. If the horse is in foal at the time of sale, the Buyer may choose to postpone delivery until after the horse foals so as to reduce the risk of injury to the horse and the foal by shipping in a delicate condition. The Buyer might delay delivery until the Buyer is prepared to accept delivery or until the Buyer and Seller rendezvous at an out of state exhibition. The Buyer might delay delivery for other reasons whether economic or merely practical.
7. During the delay, the horse is not bred or used for any other business purpose within the State of California.
8. Ultimately, the horse is shipped out of state by common carrier or contract carrier or by the Seller.

In our opinion, ~~neither the California sales nor use tax apply with respect to the transaction in question.~~ With respect to the sales tax, Revenue and Taxation Code Section 6396 specifically exempts from the application of sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped to a point outside California by the retailer by means of: facilities operated by the retailer, or; delivery by the retailer to a carrier, whether hired by the purchaser or not, for shipment to the out of state point (see, also Reg. 1620 (a)(3)(B), copy enclosed).

August 1, 1984

So long as the method of delivery, purpose of retention, and use during the period of retention remain as indicated, the mere fact that the actual shipment is delayed will not cause the transaction to lose its exempt status.

Very truly yours,



E. Leslie Sorensen, Jr.
Tax Counsel

ELS:rar

Enclosure