



STATE BOARD OF EQUALIZATION

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July 10, 1984

R---r L. H---
Assistant Secretary/Treasurer
O--- C--- & S--- C---, Inc.
P.O. Box XXXX
---, CA XXXXX

Re: O--- C--- & S--- C---, Inc. – SR -- XX-XXXXXX
Freight forwarders – interstate commerce

Dear Mr. H---:

This is in reply to your May 2, 1984 letter to Mr. Don Hennessy of the Board's legal staff. You ask for our opinion on the following question:

Is tangible personal property (oil drilling pipe and equipment destined for use in Federal offshore waters) exempt from the application of State Sales Tax when it has been shipped in interstate commerce to O--- C--- & S--- C---, Inc., a company licensed by the P.U.C. as a common carrier in the state of California, and O--- C--- & S--- C---, Inc. maintains control, prepares the property for further shipment, and transports the property to a California port for loading on offshore oil supply vessels for final transportation to Federal offshore waters?

As background to this question, you state:

Your answer to the above question is very important to our business because a large number of our potential customers are oil companies located outside the state of California and are telling use that our company must be an "interstate commerce commission licensed carrier or freight forwarder" in order to maintain their equipment in an interstate movement status and thus be exempt from the application of sales tax on tangible personal property destined for use in Federal offshore waters.

Our conclusion is that the tangible personal property which O--- C--- receives in interstate commerce is exempt from sales and use tax, when O--- C--- makes no use of the property in California other than to maintain control, prepare the property for further shipment, and transport

the property to a California port for loading and final transportation to Federal offshore waters. The basis for this conclusion is as follows.

In our opinion, a “forwarding agent” within the meaning of the Sales and Use Tax Law is not required to be licensed by the I.C.C., or for that matter by anyone at all, for sales and use tax purposes. Section 6396 states:

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of: (a) facilities operated by the retailer, or (b) delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

For purposes of this section, the term “carrier” shall mean a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term “forwarding agent” shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

Interpreting and applying section 6396, the Board has adopted Regulation 1620, Interstate and Foreign Commerce. As related to the issue you raise, Regulation 1620(a)(3)(B)(2) provides in part:

As used herein the term “carrier” means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term “forwarding agent” means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a “carrier” or “forwarding agent” within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state.

We note that neither the definition of “carrier” nor the definition of “forwarding agent” refers to any licensing requirement.

Ordinarily, if a purchaser were to receive title to or possession of tangible personal property within this state by designating an agent to receive the property, the sale would be subject to California sales or use tax, even if the purchaser intended to and did in fact immediately ship the property out of the state. One of the purposes served by section 6396 is to make it clear that a carrier or forwarding agent, as defined in that section, is not such an agent. Therefore, when property is delivered to a carrier or forwarding agent, even if hired by the purchaser, the property so delivered does not thereby lose its status (if it had such status) as property moving in interstate commerce.

I enclose a copy of Regulation 1620 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Very truly yours,

John Abbott
Tax Counsel

JA:ss

Enclosures