

M e m o r a n d u m**335.0015**

To : Mr. Ramon Hirsig, Supervisor
Audit Evaluation and Planning Unit

Date : September 14, 1989

From : David H. Levine
Tax Counsel

Subject : City Garbage Company – Debris boxes as MTE

This is in response to your memorandum dated August 23, 1989. The Santa Rosa District Principal Auditor has asked for your opinion regarding whether certain debris containers constituted MTE and whether a garbage company uses those containers in providing its service or is leasing them. You have asked our opinion.

A, Inc. manufactured 20-yard debris containers and sold them ex-tax to a related firm, B, Inc. A then leased them to C of Eureka. C rents the containers to customers at \$85.85 for each 24-hour period. The daily charge includes delivery of the empty box as well as pick-up and disposal of its contents. Tax has not been reported on any of these transactions.

You conclude that these containers are MTE because they are identical in use and purpose to “reusable cargo shipping containers,” which are MTE under Section 6023 and Regulation 1661. Based upon your draft memorandum to the Santa Rosa District Principal Auditor, we are not convinced. However, in your memorandum to us you explain further that neither these containers nor reusable cargo shipping containers has attached running gear, and neither is registered under relevant vehicle codes. You explain that the cargo container is transported on a “bogie” and the debris container is transported on a specialized self-loading truck chassis. Each time the debris container is moved, it essentially becomes the body of a dump truck. Based on the explanation in your memorandum to us, we agree with your conclusion that the 20-yard debris boxes are MTE. We recommend you include that explanation in your memorandum to Santa Rosa so that readers of your memorandum understand the reasons for your conclusion.

Since you have concluded that the containers are MTE and that B, the lessor, is therefore the consumer of the equipment, you also conclude that tax is due on the sale of the MTE to B since it failed to issue a resale certificate. Essentially, we agree, but we note that if the sale occurred from out of state the tax would be a use tax on the use of the property by B and not a tax on the sale. We also note that even had B issued a resale certificate pursuant to Sections 6092.1 or 6243.1, its use would nevertheless be subject to use tax measured by purchase price

unless it made a timely election to pay use tax measured by fair rental value. (Rev. & Tax. Code §§ 6094(d), 6244(d), Reg. 1661(e).) We recommend you include this discussion in your memorandum to Santa Rosa so that there is no confusion.

Based upon your conclusions with respect to the containers being MTE, tax was due measured by purchase price or, if B had made a timely election, by fair rental value on the lease to C. Since B is the consumer of the MTE, no sales or use tax is applicable to any use of the MTE by C (including the lease). Thus, it was not necessary to analyze whether C provides the containers incidentally to its service of trash removal, or leases the containers to the customers. However, you did make that analysis, and you concluded that C provides the containers incidentally to its services. We do not agree.

We believe that some transactions of this type might be the providing of the service of trash remove, with the containers being provided incidentally to that service. However, based on the facts presented to us, we do not believe that such is the case in this transaction. C rents the containers to customers at a daily rate. Drop off and removal are included in that price. The customer is charged for the length of time it has possession of the container.

A charge based on time of possession indicates a rental, and we believe that this is what occurs here. If this were a taxable rental of non-MTE tangible personal property for which no election to pay tax on purchase price had been made, we would conclude that the drop off and removal are services which are part of the sale (lease) of those containers, the charges for which would be included in the taxable rentals payable.

If you have further questions, feel free to write again.

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cc: Mr. E. L. Sorensen, Jr.