

## **500.0000 SALES TO COMMON CARRIERS—Regulation 1621**

**500.0020 Air Charter Service.** An air carrier (other than a supplemental air carrier) holding a certificate of public convenience and necessity may perform charter trips as a common carrier without regard to the points named in its certificate under regulations prescribed by the Civil Aeronautics Board. (Title 14, Code of Federal Regulations, Part 207.) Thus, sales to such carriers may be exempt from sales tax under section 6385 even though the shipment from California is not between points named in the certificate of public convenience and necessity, provided, the shipment is between points where charter service is authorized. 6/21/66.

**500.0025 Aircraft Cargo Containers.** Igloos are large empty thin walled containers into which air common carriers place parcels and other property. During use in the aircraft, they are fastened inside the aircraft. These containers are “used by the carrier in the conduct of its business as a common carrier” as required by Regulation 1621. The sale of these cargo containers will be exempt from tax if the other requirements set forth in Regulation 1621 are met. One of the other requirements is that the property not be put to use until after the transportation outside the state. 8/21/90.

**500.0025.400 Aircraft Fuel—Immediate Shipment or Storage.** An international airline constructed an underground fuel storage facility which it intends to lease to a major oil company from which fuel will be sold to the airline, for immediate shipment to a foreign destination. However, the contract is titled “Terminalling Agreement” rather than lease. Further, the terms of the contract specify that the operator of the facility will be under the control of the airline, refer to the fuel being in the airline’s custody, and state that all risk of loss is with the airline. In these circumstances, sales into the storage facility cannot be considered to be for immediate shipment, but rather for storage. The exemption in Regulation 1621(b) does not apply. 6/8/88.

**500.0026 Aircraft Fuel Sales.** An airline purchases fuel which is delivered to a storage system owned by the airline. Since the fuel is not delivered to tanks of an aircraft for immediate use, the sale is not exempt pursuant to section 6357.5. 2/23/95.

**500.0029 Beverages Served by Foreign Air Carrier.** Federal law does not preclude the application of the sales or use tax to sale of alcoholic beverages served to passengers as complimentary drinks or sold to passengers by a foreign air carrier while in flight over the state of California.

The fact that United States Custom directive No. 3200.04 accords duty free and tax free status for liquor consumed in flight does not preclude the application of the sales and use tax because the liquor had been removed from bond and was not otherwise exempt from state taxation at the time the taxable event occurred. 1/27/92.

**500.0030 Beverages Served on International Flights.** Neither Article 24(a) of the Chicago Convention on International Civil Aviation of 1944, nor the customs laws and regulations of the United States (specifically 19 U. S. C. section 1309), prohibit the imposition of tax on complimentary alcoholic beverages served or sold to passengers during flights into and out of California airports. 7/9/93.

**500.0040 Bill of Lading.** Correction of a bill of lading for the sole purpose of changing the transaction retroactively to meet the requirements of section 6385 is not recognized as an effective procedure. 5/16/55.

**500.0049 Bunker Fuel.** A company purchases fuel in this state. The fuel was used on a vessel which the company had obtained under a time charter with the owners. Under the time charter, the company was responsible for furnishing the fuel for the operation of the vessel.

The company did not purchase the fuel as agent for the vessel owner nor was the fuel purchased for resale. The fuel is best characterized as “customer furnished fuel.” The sale of the fuel to the company does not qualify for the section 6385 exemption because it was not sold to a common carrier. Neither does it qualify as a sale in interstate commerce. The fuel was purchased for use in a voyage embarking from a California port and is subject to tax. 4/6/88.

500.0050 **Bunker Fuel.** A trading company also operates a bunker business. The company never uses any fuel oil or Marine diesel for its own use. All business transactions are strictly paperwork. As the vessel owners do not have credit with the suppliers, they hire a broker. The broker will use a trading house, like this company, to buy the fuel from the supplier, on the trading house's account. The trading company will in turn sell it to the vessel owner.

The trading company is a retailer of the bunker fuel and the measure of tax would include any charges for overtime and any other additional charge related to the sale of the fuel. Any charge for barging also would be subject to tax unless it meets the requirements of separately stated charges for transportation (see Regulation 1628). The entire charge is subject to sales tax, with the possible exception of the transportation charges. 5/14/92.

[500.0054](#) **Cargo Containers.** Cargo containers (a.k.a. igloos) are large, empty, thin-walled, enclosed containers into which the common carrier places parcels and property. When used, the cargo containers are filled and loaded into the fuselage of an aircraft. The containers are custom designed to the specification of the carrier. During use in the carrier's aircraft, the containers are fastened inside the aircraft. The common carrier in this case purchases empty containers and ships them empty to its out-of-state location.

The exemption provided by section 6385 applies to all property, except fuel and petroleum products, used by the carrier in the conduct of its business as a common carrier if the sale satisfies the requirements of the exemption. The sale to the carrier will be exempt if the requirements of Regulation 1621(b)(1) and proof of exemption described in Regulation 1621(c)(1) are met. 8/21/90.

500.0056 **Commercial Fishing Vessels.** A commercial fishing vessel carrying passengers for purposes of sport fishing could qualify as a common carrier under section 6385(a) if goods are shipped by the seller via the purchasing carrier under a bill of lading to a point outside this state and the property is actually transported to the out-of-state destination. However, fuel consumed in a sport fishing trip that commences and ends in California would not be shipped by the seller . . . "via the purchasing carrier . . . to a point outside this state." Accordingly, the exemption does not apply. 12/14/82.

500.0060 **Contract Carrier.** A taxpayer sells property to a corporation, one division of which is an authorized contract carrier. The property sold is delivered in California to the contract carrier division of the buyer. The property is transported to Florida by the contract carrier division for use by another division.

The sale is not an exempt sale in interstate commerce because the property was delivered to the buyer in this state. Further, section 6385 of the Revenue and Taxation Code is inapplicable because it exempts only sales to common carriers. 5/4/90.

500.0073 **Exemption Under Regulation 1621(b)(1).** When a sale to a common carrier does not follow the conditions set forth in subdivision (b)(1)(A) through (b)(1)(D) of Regulation 1621, the sale of tangible personal property to that common carrier is not an exempt sale pursuant to section 6385. All of the conditions under subdivision (b)(1) must be met for the exemption to apply. 9/19/95.

500.0080 **Fuel Exemption Registration.** The exemption under section 6385(c) does not apply if the purchasing carrier does not have a valid seller's permit or valid fuel exemption registration number at the time of purchase and does not obtain a fuel exemption registration number within 45 days after purchasing the fuel. 11/15/90.

500.0084 **Fuel for Immediate Shipment.** To be exempt from sales tax, fuel must be sold for immediate shipment by the purchasing carrier. This requirement is not violated by the delivery of the fuel into a refueler truck from which the fuel is then delivered directly into the conveyance. The requirement is also met in a case in which the fuel is transported via pipeline from the seller's storage facility through an "isolation valve" to the carrier's fueling hydrant, with title to the fuel passing at the isolation valve. The fuel in the pipeline between the isolation valve and the hydrant is considered to be in the delivery system,

not in storage, provided the pipe is not deliberately designed to be wider or longer than necessary to the extent that it would be a storage facility. 6/6/89.

**500.0090 Fuel Sold to Air Common Carriers.** Sales of fuel to an air common carrier for immediate shipment or consumption in its business as an air common carrier on a flight whose first destination is a foreign destination is exempt from sales tax. A sale of fuel for consumption on a flight to either Alaska or Hawaii would not qualify for the exemption, and that sale would be subject to sales tax. 8/3/92.

500.0120 **Hotel,** operation of by steamship company is not part of its business as a common carrier, within the meaning of section 6385 of the Sales and Use Tax Law. 10/9/50.

500.0122 **Ice Cubes Used in Complimentary Drinks.** Ice cubes sold to airlines for the purpose of placing them in complimentary drinks for passengers are not being resold by the airlines, but rather consumed by the airlines. Thus, ice cube sales to airlines for such purposes are subject to sales and use tax. 10/4/94.

**500.0123 Information Required on Certificate E.** Certificate E in Regulation 1621 contains 17 inquiries formulated to obtain the information necessary to verify that a water common carrier meets the specific requirements to qualify for the exemption accorded under section 6385(c). In a situation where a purchaser does not want to release information regarding the quantity of fuel on board at time of arrival in port, the amount of fuel to be consumed while in port ,or the amount of fuel to be consumed to reach the first out-of-state destination, the purchaser is not entitled to the exemption provided under section 6385.

Certificate E must be obtained either within the seller's normal billing and payment cycle or 45 days from the date of delivery, whichever event occurs later is to be considered "timely filed." (Regulation 1621(c)(3).) However, Regulation 1621(d)(3) provides that in the event an exemption certificate is not received within the time permitted, the seller may nonetheless be relieved of sales tax liability if the seller presents satisfactory evidence that the sale met the requirements of section 6385(c). The evidence required in this situation should provide at least the same information elicited by Certificate E, not less. 1/27/97.

500.0130 **Pallets Sold to a Common Carrier.** A blanket certificate of exemption issued by a carrier for pallets is not sufficient to relieve the seller of liability for tax. If the sale meets the requirements of the exemption for sales to common carriers (section 6385 and Regulation 1621), the seller must obtain and retain a timely exemption certificate which is substantially in the same form as required by Regulation 1621 and a bill of lading or copy thereof which meets the requirements of this regulation.

If the pallets are nonreturnable containers and the carrier is claiming that it is filling the pallets with contents which it sells, the seller must obtain an exemption certificate in accordance with Regulation 1667. 3/24/95.

500.0145 **Sale of Part of an Aircraft.** A manufacturer of aircraft parts is contracting with a common carrier for the sales of an "aircraft." The common carrier will purchase the "aircraft" without any engines being furnished by the manufacturer and, instead, will furnish its own engines.

The delivery of the aircraft in California will occur under one of the following three fact patterns:

- (1) The purchaser will take delivery after manufacturer installs the purchaser's engines onto the aircraft.
- (2) The purchaser will take delivery after a contractor other than the manufacturer installs the purchaser's engine onto the aircraft.
- (3) The purchaser will take delivery of the aircraft with engines being loaned by the manufacturer. The purchaser will then have its own engines installed elsewhere and return the loaned engines to the manufacturer.

In each of these cases, the proposed sale of the airframe with installed engines to a common carrier, as described above, would qualify as an exempt sale of an aircraft pursuant to section 6366. 4/28/86.

500.0160 **Tankers.** “Tankers” come within the term “any vessels” engaged in transporting persons or property in interstate commerce, under section 6385. 9/19/63.

500.0180 **Tramp Steamers.** Tramp steamers have no greater exemption than that granted to other common carriers. The tax still applies to fuel which will be consumed en route between California and the first port of call. 10/7/63.

500.0200 **Use of Vehicle to Transport Payload.** When a carrier gives an exemption certificate for a vehicle purchased, claiming exemption under section 6385, but uses the vehicle to transport a payload to a point outside the state, the carrier is liable for sales tax notwithstanding the vendor, under the decision in *H-R Truck & Equipment Co. v. State Board of Equalization*, 166 Cal.App.2d 378, would not be liable if he had no knowledge of the fact that the carrier made such a use of the vehicles. Such a use of the vehicles is incompatible with the exemption when claimed by the carrier. 2/16/65.

[500.0450](#) **Vessels.** The exemption afforded to common carriers by section 6385 applies equally to watercraft contract carriers by virtue of the wording in sub-paragraph (e). This paragraph also requires that the carriage be provided for compensation, which precludes voyages of vessels owned by the shipper whether directly or by a division. Such an arrangement could not be construed as the providing of carrier service for compensation. The carrier must be an entity separate from the shipper, such as a separate corporation, even if it is wholly owned by the shipper. The exemption must be supported by the required bills of lading and exemption certificates, whether the carrier is classified as common or contract. 1/8/85; 7/10/96.