

Memorandum

To : [REDACTED]

Date : October 14, 1975

From : T. L. Hartigan

Subject: [REDACTED]

On September 10, 1975, you asked for a review of an inquiry from Hollywood auditing concerning Revenue and Taxation Code Section 6396.

Taxpayer owns and operates offshore oil drilling platforms located in waters outside California state boundaries. It purchases goods for the platforms from California vendors, and the goods are delivered to Port [REDACTED], California. What transpires thereafter is reflected by a series of typical agreements forwarded by the district.

Acceptance of the goods is by [REDACTED] an independent contractor, under an agreement with taxpayer to perform this service and to consolidate and load the goods onto a ship.

The ship is chartered by taxpayer ("Charterer") from [REDACTED] the owner of the ship, under a "Bareboat" charter agreement.

The essence of the agreement is found in Paragraph II. "The vessel shall be delivered to Charterer at Santa Barbara. . .properly equipped. . .seaworthy and in good running order and repair. . .the delivery to Charterer of the vessel shall constitute a full performance by the owner of all its obligations. . ."

Another provision of note is Paragraph IV. "Charterer agrees to restrict the use of the vessel solely to the lawful movement of its materials and personnel incidental to operations

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in connection with the exploration for and/or the production of oil, gas and other minerals in the waters of or adjacent to California Coast. The vessel shall not be engaged in carriage of goods or personnel for hire."

Contemporaneously, taxpayer, still referred to as "Charterer," enters into an "Operating Agreement" with [redacted] "Operator." As the name indicates, this agreement provides in Paragraph II. "Operator hereby agrees . . . to man, operate, victual, navigate and supply the vessel" With regard to the operation of the vessel, Paragraph VI provides that it will be under the "exclusive control and command of Operator," which includes as the paragraph further indicates that operator will provide the master of the vessel.

The same paragraph expressly limits the role of the Charterer, taxpayer, to request the "times" when the vessel will be operated and the services described in the agreement will be performed by the operator. But acceding to these requests by the Charterer is "subject always to the right of the master of the vessel to determine whether a movement may be undertaken. . . ."

The relationship between Charterer and the master of the vessel as employee of Operator is even more clearly established by the following provision in the same paragraph.

"Notwithstanding anything to the contrary herein, it is agreed that if any operation, voyage, movement. . . on the part of Operator and/or the vessel is insisted upon by the Charterer. . . and undertaken by the master of the vessel under protest on account of the opinion of the master that said operation. . . . is hazardous and likely to cause loss, damage. . . the liability for such loss, damage. . . shall. . . become. . . solely Charterer's."

The "Operating Agreement" contains a provision in Paragraph V similar to that in the "Bareboat Agreement" that

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"the vessel shall be employed solely in the . . . movement of materials and personnel incidental to operations of Charterer in connection with exploration for . . . oil . . . in the waters . . . adjacent to California Coast. The vessel shall not be engaged in carriage of goods or personnel for hire."

Section 6396 provides:

". . . 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.

". . . '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. . . . 'forwarding agent' shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment."

Consistent with prior interpretations, it is our view that [redacted] the Operator, qualifies as a "carrier" under Section 6396 and that the requirements of Section 6396 are thus met where goods are delivered by [redacted] to taxpayer's offshore facilities. The Operating Agreement is in essence a subcharter agreement under which [redacted] bareboats the vessel to [redacted] who in turn agrees to carry goods for

TTH/at

TLH/gdj