

M e m o r a n d u m**495.0045**

To: Los Angeles Dist. – Dist. Prin. Aud. (JTQ)

Date: September 29, 1971

From: Assistant Chief Counsel (TPP) - Headquarters

Subject: Containers Sold to Blood Banks

In your letter of August 31, 1971, you raise the question whether blood banks should be regarded as service organizations which are not making sales of blood, with the result that sales of containers to them would be taxable.

The blood banks are properly regarded as making “sales” within the meaning of section 6006 of the Revenue and Taxation Code, i.e., they are transferring tangible personal property, blood, for a consideration. The sales, however, are exempt under section 33 of the code, which exempts blood from taxation for any purpose.

The blood banks are not required to hold seller’s permits because they are not selling property “of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax” and are therefore not “sellers” within the meaning of section 6014 of the code, or section 6066.

The anticoagulants involved in the sales by blood banks are integral parts of the blood and fall in the same class with the blood.

The only possible basis that I am aware of for treating the banks as service organizations which are not making sales of blood is section 1606 of the Health and Safety Code. That section provides, in part, that the “distribution” of blood is a service and not a sale. That section, however, should not be regarded as controlling the definition of a “sale” for sales and use tax purposes. The section is not a part of the Revenue and Taxation Code. Moreover, it was indicated in the case of Gottsdanker v. Cutter Laboratories, 182 Cal. App. 2d 602, that the purpose of the section was to bar the application of implied warranties to the furnishing of blood. California Tax Service annotation 355.0220 which indicates that the preceding section 1606 was controlling for sales and use tax purposes, will be deleted.

TPP:kc