

# Memorandum

**570.0372**

**To :** Mr. Jack Warner  
Out-of-State District

**Date:** January 5, 1994

**From :** Rachel M. Aragon  
Staff Counsel

**Subject:** C--- F--- Corporation  
SS --- XX-XXXXXX

This is in response to your memorandum dated November 17, 1993 in which you ask about the taxability of leases of certain tractor trailers (MTE). You state:

"The taxpayer is leasing tractor trailers (hereinafter referred to as vehicles) to W---. W--- has a warehouse in --- California. This warehouse is stocked with merchandise that is manufactured outside of California.

"The vehicles are first functionally used outside of California and are dispatched empty to the --- warehouse within 90 days from the beginning of the lease. When the vehicles are dispatched to the O--- warehouse, they are not designated to pick up a specific load. It appears that they pick up the first available load. Once the vehicles reach the O--- warehouse, they are principally used in California to deliver W--- products from the warehouse to customers in California, Arizona, and Nevada.

"In our audit of the taxpayer, we picked up the cost of the vehicles on the basis that they were purchased for use in California under the criteria provided in Annotation 570.0430."

You have listed two arguments of the taxpayer which we will address separately. The first argument is:

"The vehicles were dispatched to California to pick up a specific payload. The taxpayer appears to define 'specific payload' as W--- appliances. In other words, when the vehicles are dispatched to the warehouse, it is known that they will be picking up W--- appliances, but they do not know specifically which appliances."

Business Taxes Law Guide Annotation 570.0430 to which you refer, Vehicles Purchased For Use In Interstate Commerce, states in part:

"There are four tests to be applied in determining whether the purchase price of a vehicle purchased outside the state and used in interstate commerce is subject to the California use tax:

"1. Is the first use of the vehicle in California, without any prior functional use outside the state? If so, it is presumed that it was purchased for use in California and that the use tax applies (*American Airlines v. State Board of Equalization*, 216 Cal. App. 2d 180; *Flying Tiger Lines, Inc. v. State Board of Equalization*, 157 Cal. App. 2d 85). 'Functional use' means use for which the vehicle was designed. For example, if the only use of a truck outside of California were to drive it empty into California to pick up any payload it could find, the first functional use would be in California. However, if it were dispatched to California to pick up a specific payload, the first functional use would be outside of California."

The initial question is where the first functional use occurred. The answer to that question depends on whether the payload the taxpayer's truck picked up was "any payload it could find" or "a specific payload". If the former, the first functional use occurred in California and use tax applies. If the latter, the first functional use occurred outside California and use tax applies only if taxable under tests 2, 3, or 4 of annotation 570.0430. You believe "'specific payload' should be narrowly defined to mean specifically identified property; i.e., serial numbers, etc." We do not agree that property has to be identified with such specificity in order for that property to come within the meaning of a "specific payload".

In this instance, there is a specific payload if the pick up time, date and location are specific. For example, if an airline dispatches an airliner to Los Angeles International Airport to pick up passengers who will depart on flight 382 at 3:00 p.m. on Sunday, December 24, 1993, the fact that the names of the passengers are not known does not render the pickup "any payload". The airplane in our example is being dispatched to pick up a specific payload. The same analysis would apply in the case of the W--- trucks. If a W--- truck is dispatched to its warehouse in O--- California to pick up a load of appliances at a specific time and date, that is sufficient for the load to be a "specific payload". On the other hand, if the W--- trucks are

dispatched to the O--- California warehouse to wait around for the next available load, that load would be "any payload" and the first functional use would be in California. We do not have sufficient information to determine whether the W--- trucks are first functionally used in this state.

For purposes of completing the applicable analysis, we will regard the vehicles as having been first functionally used outside California. Since they enter California within 90 days of their purchase, they are presumed to have been purchased for use in California. (Reg. 1620(b)(3), Annot. 570.0430(2).) If property is inside California for over 90 days of the first 180 days after the vehicles first entered California, then they are regarded as purchased for use in California and tax applies unless the use is otherwise exempt. (Reg. 1620(b)(3), Annot. 570.0430(3).) The applicable exemption is entry into California in the course of interstate commerce and continuous use in interstate commerce both within and without California. (Reg. 1620(b)(2)(B).) We use a test period of 6 months. (Annot. 570.0430(4).) Here, the vehicles entered California in the course of interstate commerce, which leads to the second issue in dispute: was W---'s use of the vehicles continuous interstate use. Taxpayer's argument is that all of the goods in the warehouse originated in other states and that further transport of such property is "interstate".

In addressing this issue we refer to the case of Gough Industries v. State Board of Equalization (1959) 51 Cal.2d 746. In that case, the California Supreme Court found that the existence of the following four facts established that a sale qualified as a sale in export:

"(a) the agreement of sale contemplated shipment of the goods in export, that is, from a seller in the United States to a buyer in a foreign country; (b) from the beginning of the transaction, the goods were committed to go all the way to the foreign country; (c) the movement of the goods had actually started when the tax was sought to be imposed; and (d) the journey was continuous and unbroken by an action or delay taken for a purpose independent of the transportation of the goods." (51 Cal.2d at 749.)

Although this is in the context of foreign commerce, the rules stated in Gough are equally applicable in the present case in regard to interstate commerce. The continuous and unbroken interstate journey in the case of W---'s goods takes place from the point of shipment of the goods (according to W--- all shipments originated out of state) until they reach the warehouse in O---. At that point, that continuous interstate journey, from outside California to the O--- warehouse, ended. Once the goods come to rest at the O--- warehouse, the journey is broken by a delay independent of the transportation, that is, storage pending resale to the customer. Thus, the vehicles were not used in continuous interstate commerce solely by virtue of the contents having sometime previously originated outside California.

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Nevertheless, taxpayer's use of the vehicles in California will be exempt from tax if meeting the test found in Annotation 570.0430(4). As long as any part of W---'s cargo is interstate in nature, for that journey, even though part of the cargo is intrastate in nature, the W-- - vehicles are regarded as being used in interstate commerce during that journey. Of course, any trip that carries only appliances for delivery outside California would be an interstate trip. W--- states that it delivers products to its customers in California, Arizona, and Nevada. If the appliances which are for delivery to those locations are in the same vehicle, the trip is interstate in nature even though there will be intrastate deliveries (from O--- to other California locations). However, any trip that carries appliances from the O--- warehouse for delivery only to California locations would be an intrastate trip. Any vehicle making even a single such intrastate trip during the six months after its first entry into California would not be regarded as having been used in continuous interstate commerce. Use tax would apply.

In summary, if the vehicles were first functionally used in California, no further analysis is necessary and tax applies. If not first functionally used in California the transaction is nevertheless presumed taxable if the vehicles entered California within 90 days of their purchase (which you state they have). If the vehicle was first functionally used in interstate commerce outside California and entered California during that use, and was then used continuously in interstate commerce while in California during the six-month test period, use tax does not apply. Interstate commerce includes a use in which part of the cargo is on an unbroken interstate trip. The fact that part or all of the cargo had at one time originated outside California is not sufficient to constitute an interstate trip.

RMA:ljt

cc: Out-of-State - District Administrator