



STATE BOARD OF EQUALIZATION

September 3, 1964

“F”

This is to inform you of our conclusions with respect to your petition for Redetermination of sales tax. We regret we must recommend to the Board that the petition be denied. Your only protest of the recent audit concerned the disallowance of claimed sales for resale involving “C”. These sales were made at your Vernon office. The goods were placed aboard the truck of one “G”, who delivered the goods to the buyer, a construction contractor, in Las Vegas. The sales were not exempt under Section 6386 of the Sales and Use Tax Law, copy enclosed, because the contractor did not hold a seller’s permit as required by the section. It is your position that the sales were exempt interstate transactions.

The exempt status of the sales depends upon the nature of “G” operations. The sales are exempt under Ruling 55 if “G” qualifies as a carrier. Otherwise, we believe he is properly construed as receiving the goods on behalf of the buyer, making the sale a taxable intrastate transaction.

It is our conclusion that “G” is not a carrier within the meaning of Ruling 55. After consulting with a specialist in highway regulations, “G” and the buyer, “C”, entered into an agreement whereby “G” leased the tractors used in the hauls and apparently became some kind of employee of “C”. While “C” has been unable to produce the contract in question, we think that in order to circumvent ICC requirements, the contract must have been of this nature. We think, since “G” holds himself out to these regulatory agencies as being other than a carrier in connection with the Los Angeles to Las Vegas hauls, he cannot maintain, for sales tax purposes, that he is a carrier. These positions are utterly inconsistent.

“C” is a party to the contract with “G”. Since it wishes to do business in this manner and avoid ICC regulations, we think it cannot complain that its purchases from you are subject to sales tax. We would like to point out, however, that in the future it may qualify under Section 6386 as an out-of-state contractor improving real property located outside the state. In order to do this, it must obtain a seller’s permit and furnish you with a certificate stating that it will use the property purchased from you in the manner exempted by the statute.

Very truly yours,

John H. Knowles
Associate Tax Counsel

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