

M e m o r a n d u m**325.1530**

To: Mr. J. A. Najarian

Jan. 7, 1976

From: Gary J. Jugum

Subject: U--- O--- C--- C---

SZ -- XX XXXXXX

This is in response to your memorandum of December 23, 1975. You have asked that we consider the question as to whether the acceptance of goods at the wharf by O--- C--- and S--- Co., under contract to U--- O--- [U---], has any effect on the exemption from tax on sales to U--- as provided by Revenue and Taxation Code Section 6396.

As stated in Mr. Gee's memorandum of September 3, 1975, the material and supplies are accepted and unloaded by O--- C--- and S--- Co. who consolidate the merchandise for reloading onto ships for transportation to the drilling platform. Occasionally, U---'s employees, rather than O--- C---, accept the merchandise directly from the vendors.

Section 6396 provides that:

“There are exempted from the computation of the amount of the sales tax 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...delivery by the retailer to a carrier...or forwarding agent, whether hired by the purchaser, or not, for shipment to such out-of-state point.

“For purposes of this section, the term ‘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. The term ‘forwarding agent’ shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.”

Our Regulation 1620 provides that “An individual or firm not otherwise so engaged does not become a ‘carrier’ or ‘forwarding agent’ ...simply by being designated by a purchaser to receive and ship goods to a point outside the state.”

The blanket service contract entered into between U--- and O--- C--- and S--- Co. provides that O--- will “furnish crane and forklift service” as requested by U---.

It appears from Mr. Gee’s memorandum that O--- C--- and S--- Co. operates as a common carrier, although O--- may not be operating as a common carrier under the terms of its agreement with U---. It is our conclusion that O--- is a “forwarding agent” within the meaning of that term as it is used in Section 6396 since O--- is consolidating the merchandise for reloading. It appears that O---, in addition to being designated by U--- to receive and move the goods to the barges, is also “otherwise so engaged” as a “forwarding agent.” [See BTLG Anno. 325.1480.]

Where U---’s employees accept the merchandise from the vendors, the exemption will not apply.

J:alicetilton

cc: Mr. T. P. Putnam