

M e m o r a n d u m**325.1785**

To: Out of State Auditing (DMA)

Date: January 9, 1964

From: Tax Counsel (GAT) - Headquarters

Subject:

This is in reply to your memorandum of January 3 regarding the application of tax to tractors purchases by "A." it is our understanding the in June 1961 "B" company of --- California, sold a number of tractors to "A" for use in hauling goods in interstate commerce. The tractors were delivered by "B" to "A" in --- Nevada, presumable at one of "A's" stations in that state. Subsequently, a number of the tractors were used to haul loads from Las Vegas to Los Angeles. Others were driven empty from Las Vegas to Los Angeles where they picked up their first pay load. Presumable these tractors have been used thereafter continuously in interstate commerce. You have inquired whether --- as incurred tax liability with respect to the tractors which entered California empty and picked up their first pay load here.

The legal staff has previously concluded that a vehicle which is transported empty to pick up a load to be carried in interstate commerce is engaged in interstate commerce while traveling to pick up the load. This principle was the basis of our ruling that an Oregon resident who purchased a trunk in Portland and dead headed it to California where it picked up its first pay load was not subject to use tax because the vehicle was continuously engaged in interstate commerce from the time that it started on its journey to California. This principle was also the basis of the board's decision in the hearing of --- in which the seller was located in this state and the vehicles were delivered to the purchaser in Arizona and dead headed to California where they picked up their first pay load.

In view of the foregoing, it is our opinion that --- has not incurred use tax liability with respect to the tractors.

GAT:md