

# Memorandum

500.0450

To: San Francisco – Auditing (RC:EL)

Date: January 8, 1985

From: Principal Tax Auditor

Subject: --- --- --- S---

SY -- XX-XXXXXX

In your memorandum of December 11, 1984, you requested my opinion as to whether S--- and its realted corporation, H--- S--- T---, qualify as a common carrier under Section 6385. You believe that the vessels operated by these entities are contract rather than common carriers and, therefore, the exemption does not apply.

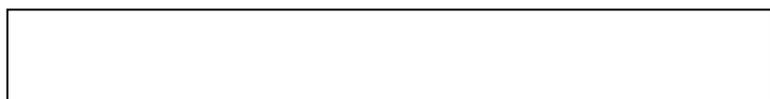
Section 6385 defines the term “common carrier”, with respect to water transportation, “...to include any vessel engaged, for compensation, in transporting persons or propety in interstate or foreign commerce.” Therefore, for watercraft only, the carrier does not have to be a “common” carrier as generally defined. A contract carrier can also qualify under this section of the law provided that certain conditions are met. The carrier must be a separate entity from the entity that is shipping the product, such as a separate corporation. This may be a wholly owned corporation but may not be a division of the corporation that is providing the goods to be transported.

The contracts you provided show H--- S--- T--- either owns or charters all the ships it uses to transport the sugar or other commodities. However, your memorandum indicates that for a period of time m/s S--- I--- was being operated by S--- itself. \*When the vessel was operated by S---, the exemption provided under Section 6385 is not available, since it is not a separate entity providing the carrier service for compensation.

I agree that H--- S--- T--- Corp. (HSTC) may not be a true common carrier. However, HSTC is a separate corporation engaged in the business of transporting property for compensation in interstate commerce. If the proper bills of lading and exemption certificates are timely filed, HSTC would qualify for the exemption under Section 6385(a).

While conducting this investigation do not go back into the prior audit period. If you have information that makes the transactions taxable in prior periods, please notify S--- of this so they will be on notice that if the same situation occurs in the future the exemption will not be allowed.

GAB:nc



cc: Mr. Donald Hennessy

# Memorandum

**500.0450**

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of January 8, 1985 to San Francisco – Auditing (RC:EL).

We are in agreement with his conclusion, as follows:

**Vessel.** The exemption afforded to common carriers by section 6385 applies equally to watercraft contract carriers by virtue of the wording in sub-paragraph (e). This paragraph also requires that the carriage be provided for compensation, which precludes voyages of vessels owned by the shipper whether directly or by a division. Such an agreement could not be construed as providing the carrier service for compensation. The carrier must be an entity separate from the shipper, such as a separate corporation, even if it is wholly owned by the shipper. The exemption must be supported by the required bills of lading and exemption certificates, whether the carrier is classified as common or contract. 1/8/85

Gary Jugum  
By MB