

**STATE BOARD OF EQUALIZATION**

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August 17, 1978

M--- P. W---, Controller  
U--- T--- S--- Company  
P.O. Box XXXXX  
--- ---, CA XXXXX

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Dear Mr. W---:

Your letters of May 18, 1978 and July 11, 1978 addressed to Mr. R. B. Petersen, District Administrator, have been forwarded to this office, for direct reply to you.

The letters concern the exemption provided by Section 6388.5 of the Revenue and Taxation Code and request advice as to how U--- T--- S--- Company (S--- Co.) can avail itself of the exemption.

Sales Co. is an independent corporation and the authorized Southern California retail dealer for the full product line of truck trailers manufactured by U--- T--- M--- Company (M--- Co.).

The question here generally involves refrigerated trailers and the method utilized by S--- Co. in its sales transactions with respect to such trailers for which the Section 6388.5 exemption is requested.

In your May 11 letter you provide the following facts:

“A refrigerated trailer consists of two main components (1) an insulated trailer and (2) a diesel refrigeration unit. U--- T--- S--- Company would generally buy the insulated trailer from U--- T--- M--- Company and the refrigeration unit from either C--- T--- Company, T--- K--- Sales and Service, or A--- T--- - S--- C---, Inc., our subsidiary. Installation (of the refrigeration unit) would generally be subcontracted to one of the three suppliers but sometimes would be performed by ourselves or by a third party. The cost of U--- T--- S--- Company of an insulated

van currently ranges between approximately \$12,000-\$14,000 and a refrigeration unit between \$6,800-\$8,500 plus installation. Additional 'extras' such as bulkheads, widewinders, "E" rails, tracks, lift gates, etc., installed by us or by our subcontractors can range from 0-\$4,000 per trailer.

You suggest that S--- Co. qualifies as a manufacturer and its delivery of the completed trailer to the purchaser should meet the delivery requirement for exemption under Section 6388.5.

As stated in Mr. Petersen's reply to your May 11 letter, we have concluded in the decision prepared on 5/1/78 in the matter of the Petition for Redetermination filed by S--- Co., which involved the identical issue, that S--- Co. does not qualify as a manufacturer of trailers for sales and use tax purposes.

Your July 11 letter acknowledges the above conclusion and requests a further clarification as to how S--- Co. can avail itself of the exemption (Section 638.5).

You assume that it is possible for M--- Co. to make the actual delivery to the customer in which case the transaction would qualify for Section 6388.5 exemption. You request confirmation that delivery by M--- Co. would qualify the transaction for exemption as well as a ruling on where delivery must take place and how the manufacturer's delivery should be documented. You also request advice as to how it is possible for S--- Co. to take possession of a trailer, complete that trailer either in its own shop or at subcontractor's locations, and then arrange for a "qualifying" delivery by the manufacturer.

Section 6388.5 provides:

"Notwithstanding Section 6388, where a new trailer or semitrailer with an unladen weight of 6000 pounds or more is purchased for use without this state and is delivered by the manufacturer to the purchase within this state, and such purchaser drives or moves such vehicle to any point outside this state within 30 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 17 (commencing with Section 37001) the gross receipts from the sale of and the storage, use, or other consumption of such vehicles within the state, provided that the purchaser furnishes the following to the manufacturer:

- (a) Written evidence of an out-of-state license and registration for such vehicle.
- (b) The purchaser's affidavit attesting that he purchased such vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate commerce.

- (c) The purchaser's affidavit that such vehicle has been moved or driven to a point outside this state within 30 days of the date of delivery of the vehicle to him."

We confirm that actual delivery by the manufacturer does meet the delivery requirement of the statute. The place of delivery is not limited beyond the confines of this state – it can be any place within this state. The statute in subsection (a), (b) and (c) expressly provides the documentation required to be furnished to the manufacturer to support the exemption.

Whether there can be a "qualifying" delivery by the manufacturer after S--- Co. has purchased the trailer, taken possession of it from the manufacturer and completed such trailer in it is own shop or at subcontractor locations, is at best problematical.

Clearly, delivery by the manufacturer to the dealer, with the dealer's subsequent delivery to the purchaser, does not meet the delivery requirement of the statute.

Under the particular facts as presented, it would appear possible for the manufacturer to deliver the insulated van to the purchaser, who in turn could contract for the additional work to be performed by S--- Co. However, under such arrangement only the sales price of the van, exclusive of the value added by the work performed by S--- Co., would qualify for exemption, provided however, that the requirement of removal from the state within 30 days from the date of delivery of the van (by the manufacturer) was met, along with the furnishing of the required documentation to the manufacturer.

The sales and installation of the refrigeration unit and other "extras" by S--- Co. would not qualify for the exemption.

In those instances where possession of the trailer is taken from the manufacturer and work completed by S--- Co., before the trailer in its completed form is delivered to the purchaser, we are unaware of any method by which a bona fide qualifying delivery can be made by the manufacturer. The manufacturer at this point in time has sold the trailer to S--- Co. and is no longer a party to the completion of the transaction between S--- Co. and its customer.

In the event that S--- Co. could find it feasible to contract with the manufacturer to deliver a completed trailer (including refrigeration and extras) whereby the manufacturer is obligated to perform all the necessary tasks, in its plant or through subcontractors, delivery of the completed trailer by the manufacturer would meet the delivery requirement of Section 6388.5.

We realize that S--- Co. is in a difficult position with respect to the Section 6388.5 exemption. It is possible and perhaps more appropriate for S--- Co. to look to the exemptions provided by other sections of the Sales and Use Tax Law. For example, Section 6385, Common Carriers, which is available where S--- Co.'s customers are common carriers. Also, Section 6396, Interstate Shipments, which provides exemption for sales of tangible personal property which

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pursuant to the contract of sale is required to be shipped and is shipped to a point outside this state by the retailer.

Any suggestions you may have regarding how manufacturers delivery for Section 6388.5 purposes may be effected under U--- T--- S--- Company's present mode of operation will be given consideration if submitted.

Very truly yours,

Joseph Manarolla  
Tax Counsel

JM:rt

bc: Mr. T. P. Putnam  
Mr. W. E. Burkett  
Inglewood District Administrator