

M e m o r a n d u m**325.0300**

To: J. C. Ingle (DB)

Sacramento, California
September 8, 19XX

From: R. G. Hamlin

Subject: --- --- ---

You have inquired as to the allowance of a claim for refund filed by the above taxpayer.

The facts are that this taxpayer sold the truck to N--- & N--- of Portland, Oregon. The truck was driven from Long Beach to Oregon by F--- G---, shop foreman for this taxpayer. The truck, however, carried a load of freight on this trip, which this taxpayer contends was merely an accomodation to the buyer.

It is our view that placing the truck into service in this State created a tax liability on the part of this taxpayer. If it placed the truck into use on its own behalf and sold it after it reached Oregon, it would be liable for the sales or use tax, as the case may be, measured by the sales price of the truck to it. If, on the other hand, the sale of the truck to the Oregon buyers was consummated and it placed the truck into service in this State as agent of such purchasers the sale by this taxpayer is not exempt as a sale in interstate commerce and it is liable for the sales tax measured by its sales price.

From the information in our files it appears that the purchaser of the truck contracted for the load of freight to be hauled from Los Angeles to Portland and that it was hauled on their account. Accordingly, it would appear that the taxpayer's shop foreman was acting as the purchaser's representative in placing the truck into service in this State.

In addition to the above, a report dated May 31, 1950, by Auditor Rinehart states that he examined a lease of the truck to the L--- A--- - S--- M--- ---, Inc., by N--- & N---. The date of this lease is not given. Assuming, however, that the truck was operating under a lease from the purchasers to the L--- A--- - S--- M--- E--- at the time it hauled the load from Los Angeles to Portland it obviously was delivered by this taxpayer to the purchaser's representative in this State.

Upon the information which we have been furnished it does not appear that any portion of the tax was erroneously paid and it is, therefore, our opinion that the claim should be denied.

RGH:AMD