

M e m o r a n d u m**335.0049**

To: Oakland – Auditing (NJC)

April 26, 1984

From: HQ – Legal (ELS)

Subject: L--- Corporation
XXXX --- Lane #XXX
--- ---, CA

SR --- XX-XXXXXX

M--- Incorporated
XXXX-XX --- Avenue
--- ---, CA

Unlicensed

This is in response to your memorandum of March 20, 1984. L--- Corporation (L---) acquired several mobile CT Scan Units ex-tax from its vendor and leased these units to M--- Incorporated (M---). M---, in turn, entered into agreements with various hospitals whereby the units were to be present at those hospitals during certain periods each week. M--- was required to provide two full time experienced technologists to operate each unit on site.

Externally, the appearance of the units is that of semi-trailer moving vans. All equipment is located and permanently affixed in the semi-trailers in accordance with various floor plans offered by the manufacturer of the units. You wondered first, if the units are classifiable as mobile transportation equipment (mte) and; second, if not so classifiable, whether the agreements between M--- and the hospitals should be construed as leases.

Revenue and Taxation Code Section 6023 defines mte as follows:

“‘Mobile transportation equipment’ includes equipment such as railroad cars and locomotives, buses, trucks (except ‘one-way’ rental trucks’), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. ‘Mobile transportation equipment’ does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers and baggage containers designed for hauling by passenger vehicles, or ‘one-way rental trucks’ as defined and identified pursuant to Section 6024.”

In the past, the criteria used in determining whether items such as the mobile CT Scan Units in question constitute mte are that the items be capable of being used to transport persons or property, substantial distances, at highway speeds. Clearly, these criteria have been met in this case and the units in question must, therefore, be treated as mte. We are not persuaded otherwise by the taxpayer's argument that the units have been classified as "special mobile equipment" under section 575 of the Vehicle Code. Had the Legislature intended that such equipment not qualify as mte for Sales and Use Tax purposes, it would have so stated in section 6023. However, the Legislature's use of the phrase "such as" prior to the list of items identified as mte indicates that items akin to those listed must be treated as mte. Here, the units in question are akin both in appearance and function to "truck trailers...and tangible personal property which is...a component part..." of those trailers.

Having concluded that the units are mte, there is no need to analyze the second question.

ELS:fr

bc: Oakland - D. A.