

M e m o r a n d u m**335.0083**To: Mr. Charles Tavookjian
Fresno District Office

Date: January 21, 1992

From: David H. Levine

(916) 445-5550
ATSS 485-5550Subject: Section 6388.5

This is in response to your memorandum dated December 4, 1991, in which you ask for written confirmation of our conversation of November 27, 1991. You inquired regarding a retailer who sells trailers to truckers and lessors. When the trailers are sold to truckers under certain circumstances, the sale would be exempt under section 6388.5. You ask whether the same exemption would apply to sales of the trailers to lessors.

Since a trailer is mobile transportation equipment under section 6023, the lease of that trailer is never regarded as a sale. (Rev. & Tax. Code § 6006(g)(4).) That is, the lessor of the trailer is always regarded as the consumer of that trailer. For purposes of the section 6388.5 exemption, the use of the trailer determines whether the exemption applies. Since the lessor consumes the trailer by leasing it to the lessee, the manner in which the trailer is used by the lessee is regarded as the lessor's use for purposes of section 6388.5. If the trailer is used by the lessee in a manner qualifying for the section 6388.5 exemption, then the consumer of that trailer, the lessor, obtains the benefit of the exemption. The affidavit required under section 6388.5 should be obtained from the lessor. If the trailer is not used in the manner specified in the exemption certificate provided to the vendor, then the lessor bears the burden of having issued and incorrect exemption certificate.

If you have further questions, feel free to write again.

DHL:cl
0563E