

M e m o r a n d u m**515.0019.200**

To: Modesto Compliance

Date: February 28, 1980

From: Philip R. Dougherty

Subject: T--- S---, Inc.
R--- I---Sales Tax – Unlicensed
SV -- XX XXXXXX

Although the matter is by no means free from doubt, I believe that on balance, we should conclude that T--- S--- as well as R--- I--- in-transit temperature monitoring contracts are service contracts rather than, respectively, sales and leases of tangible personal property.

On one hand, the carrier must have possession of the temperature recording instrument during the carriage, the instrument is the item which makes the recording of the temperatures without the attending services of the monitoring company's personnel during the recording, and the mere presence of the item in the vehicle may tend to inhibit frivolous claims. On the other hand, the instruments must be turned over to an expert to read, the company providing the instrument also provides its further cooperation without additional charge, the instruments are not directly productive in the hands of the carrier, and the testimony of the company representatives in arbitration or court proceedings is the most powerful practical consequence of the contracts.

Were we to regard T---'s provision of the disposable devices as sales of tangible personal property, we would, perforce, regard R---'s provision of the returnable devices as leases since the only distinction between them from the customer's viewpoint is that R---'s instruments must always be returned while T---'s need only be returned should the customer desire a reading of the temperature record.

PRD:ba

cc: Out-of-State Compliance