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**STATE BOARD OF EQUALIZATION**

January 24, 1958

Mr. B--- F---  
---, ---, --- & ---  
Attorneys at Law  
--- --- --- Street  
--- ---, CA XXXXX

Re: R--- A. C---  
C--- T--- L---  
Account - - XXXXXX

Gentlemen:

In your letter of January 9, you make the following statement concerning one of the six tank trailers and truck tanks the purchase price of which is included in our determination.

“One tank trailer and one truck tank were purchased from B--- P--- and T--- Co. of ---, Oregon for delivery by common carrier to the taxpayer at the taxpayer’s office in ---, Nevada. The tank trailer and the truck tank were painted by R--- T--- and T--- Co. of [California] prior to delivery to the taxpayer in ---.”

Concerning this item our audit report states, “equipment delivered by taxpayer’s agent to R--- T--- and T--- Co., [California], for painting”. (Underscoring added). There appears to be a conflict of facts here. We would like to have this matter cleared up as it might have some bearing on the taxability of the equipment.

Concerning the five remaining tank trailers and truck tanks, you state:

“The five remaining tank trailers and truck tanks were purchased from R--- T--- and T--- Co. of --- ---, California for delivery by common carrier to the taxpayer in ---, Nevada for use in interstate commerce.

“All of the equipment was actually delivered to the taxpayer in ---, Nevada. Its first use was in interstate commerce on a round trip from ---, Nevada to ---, California, where oil was pumped into the tanks, to ---, Nevada, where the oil was discharged at the U. S. Navy Depot and return to the taxpayer’s office at ---, Nevada. At all times during the ownership of the equipment by the taxpayer, it was used exclusively and continuously in interstate commerce.”

With respect to the five tank trailers and truck tanks purchased from R--- T--- and T--- Company of [California], the audit report states that they were shipped to ---, Nevada, and deadheaded back to California for initial loading”. It further states, “The equipment was consigned c/o L--- C---’s Service Station, U. S. Highway 40, ---, Nevada. From such information as we have been able to elicit, there are no employees of C--- located at this point, it being a refueling point and a place to park equipment en route beyond --- and en route to San Pablo.”

This raises a question in our minds as to whether the equipment was in reality placed in use in interstate commerce at a point outside the State, or was placed in used in interstate commerce after it had been returned to this State. It also raises some question as to whether the delivery out-of-state by the seller is sufficient to avoid the tax that would apply had delivery been made to the buyer in California there being no apparent reason for the out-of-state delivery than to convert what would otherwise have been a taxable sale into a nontaxable sale by attempting to invoke the protection of the commerce clause upon a transaction handled as an interstate transaction for the sold purpose of invoking that protection against a State tax. We would not question a delivery to Nevada if the property were to be used outside this State or were to be placed in regular interstate use at a point outside this State where the purchaser normally places equipment in interstate use. But in view of the fact that the equipment apparently was returned to California to pick up its first pay load, we can hardly see any explanation for the out-of-state delivery as other than a device to escape tax without a sufficient business purpose to justify it as a legitimate means of tax avoidance.

We are asking our Oakland office for clarification of some of the facts and in the meantime would be glad to have your comments with respect to our observations in this letter.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:ds

cc: Oakland – Auditing