

325.0000 INTERSTATE AND FOREIGN COMMERCE—Regulation 1620

Common carriers, sales to, see also Sales to Common Carriers. Leases of transportation equipment used in, see also Leases of Mobile Transportation Equipment. Morticians, sales in interstate and foreign commerce by, see Morticians. Rentals or leases involving, see Leases of Tangible Personal Property—In General.

(a) IN GENERAL—SHIPMENTS INTO CALIFORNIA FROM POINTS OUTSIDE STATE

325.0001 Advertising Circulars—Title Passing Out of State. A California firm orders advertising circulars to be printed by an out-of-state printer. The purchase order provides that the title will pass to the firm at the location of the out-of-state printer at the time the printing order is completed.

The order is communicated by United States mail or by telephone to the out-of-state printer. Follow up on the printing order is done by telephone, mail, and through the printer's agents or representatives in California. The contact in California is for the purpose of obtaining the advertising copy that will be used by the out-of-state printer in printing the circulars. Such copy might consist of paste-ups, type-setting, or other prepared work done in California by the agent of the out-of-state printer.

The California firm does not take delivery of all the circulars. The out-of-state printer will mail circulars to potential California customers, deliver to common carriers for delivery to stores as store copies, or deliver to common carriers for delivery to publishers located in California for insertion in publications.

Based on the fact that title to the printed circulars passes to the purchaser outside California, the transaction is not subject to sales tax because the sale took place outside California. Therefore, circulars shipped to the customer's California stores for use as store copies are subject to use tax. The circulars shipped to publications and inserted into newspapers or periodicals which are exempt under section 6362 are exempt from the use tax. Circulars mailed by the out-of-state printer to addresses in California are not subject to use tax because the mailing from the out-of-state printer is regarded as an out-of-state use. 6/15/82.

(Note: Subsequent statutory change re printed sales messages, section 6379.5.)

325.0002 Aircraft—In-State Pilot Training. Use tax does not apply to the use of an aircraft purchased out of state and brought into this state within 90 days of purchase and used solely in interstate commerce for the six month period following its first entry into California. In-state training flights in aircraft will not affect the availability of the exemption if the flights are for the purpose of training personnel who will fly that specific aircraft, as contrasted to that type of aircraft. 4/29/94.

325.0002.100 Aircraft-Interior Installation and Test Flights. An aircraft purchased out of state is brought to California for the purpose of having the interior installed and for test flights. The aircraft had been registered to the manufacturer as an experimental aircraft (flown about 200 hours). Under the contract of sale, the purchaser will take delivery outside this state. The manufacturer invited the purchaser to conduct visual inspections of the aircraft during its completion (installation of interior). The purchaser was also invited to be present to observe and advise the manufacturer's employees of any problems during test flights. The purchaser's employees or agents are not authorized to take possession or control of the aircraft on the purchaser's behalf in connection with any test flight. Also, the aircraft will be painted outside California and the purchaser's employees or agents will be aboard for the flight from California to the out-of-state painting destination. They will be aboard to observe how the interior of the aircraft reacts to condensation or otherwise at high altitude during an extended period of time. The employees or agents will not be authorized to take possession or control during that flight.

The aircraft's presence in California which is limited to the purposes of the aircraft's completion will not be considered in determining whether the aircraft is purchased for use in California. Also, the mere presence of the purchaser's employees or agents during the completion of the aircraft and on the aircraft during the test flights and for the flight out of state for the reasons stated above would not result in the conclusion that the purchaser took delivery of the aircraft in California. 12/11/91; 5/21/92.

[325.0002.200](#) **Aircraft Modification.** An out-of-state resident purchases an aircraft out of state and first functionally uses it outside California (private and business). The owner thereafter has modifications performed on the aircraft outside California. The aircraft will then be flown within and without the United States. It is anticipated that the aircraft will not enter California within the first 90 days after the owner's acquisition and first functional use of the aircraft and that the aircraft will always be hangared outside California. However, the owner may eventually hangar the aircraft at an airport located in California.

The test applicable to the modifications is separate from the aircraft. That is, if the aircraft is used outside California for 100 days prior to its first entry into California, use tax will not apply to its use in California. If the modifications are performed after 50 days of use outside of California, and then the aircraft, with those modifications, enters California 50 days later, the modification will be presumed to have been purchased for use in California, since the modified aircraft would have entered within 90 days of purchase, even though the aircraft will not be regarded as having been purchased for use in this state. Thus, use tax would apply to the purchase price of the modification unless the modification (i.e., the modified aircraft) is used or stored outside of California one-half or more of the time during the six-month period immediately following the first entry of the modification in California.

If the aircraft does not enter California within 90 days of the purchase (and first functional use) of the modification, excluding time of shipment and time of storage for shipment to California, California Use Tax will not apply to either the purchase of the aircraft or the purchase of the modification. 7/09/96.

[325.0003](#) **Aircraft Used Exclusively in Interstate Commerce.** A corporation purchases an aircraft that was first functionally used in interstate commerce outside California, entered California in the course of such use, and was then used continuously in interstate commerce while in California. However, several trips were made from San Jose to Long Beach Airport for purposes of service and maintenance. On these trips, only the crew members were on board.

If the sole purpose of the intrastate flights was to transport the aircraft to Long Beach for service and maintenance, the flights would not prevent the exemption from use tax based on exclusive use in interstate commerce. 3/17/92.

[325.0003.200](#) **Aircraft Used Exclusively in Interstate Commerce.** A corporation will take delivery of an aircraft outside California that will be first functionally used in interstate commerce before it enters California. It will thereafter be used in interstate commerce while in California. It is intended that the aircraft will be principally hangared at Van Nuys Airport. However, on the initial trip into California, a passenger having an out-of-state origin will be dropped off in San Francisco and the aircraft will be dispatched empty to Van Nuys Airport, the aircraft's home base.

The corporation has a maintenance facility at a California airport and the aircraft will have flights to and from that California airport (or other locations in California) solely for the purpose of maintenance.

The trip from San Francisco to Van Nuys on the initial flight into California would be considered a part of the continuous journey from outside California provided that flying the aircraft empty to Van Nuys was a part of the original flight plan. However, if any passengers or cargo are loaded in San Francisco, the trip will be regarded as an intrastate use.

Flights to the maintenance facility in California solely for purpose of maintenance are regarded as incidental to interstate use provided the aircraft is otherwise used continuously in interstate commerce both inside and outside California and not exclusively in California. If any such flight has an additional purpose, such as carrying cargo or passengers, that flight would not be regarded as incidental to interstate use. 11/7/90; 1/2/91.

[325.0004](#) **Aircraft Refurbishing.** An out-of-state company purchased a used commercial aircraft and took delivery outside California with title and possession transferring out of state. The first functional use of the aircraft took place shortly after the purchase and consisted of transporting representatives of the purchaser to another location outside California. The aircraft was subsequently flown to California for

refurbishing, which included the installation of a new interior, to modify the aircraft for noncommercial use. The aircraft entered California within 90 days from the date of purchase. The refurbishing of the aircraft interior in California took more than six months to complete. When the refurbishing was complete, the aircraft was delivered to the purchaser outside California. Thereafter, the aircraft was used non-commercially, solely outside the state.

The installation of an interior in an aircraft is considered to be an act of incorporating tangible personal property into other tangible personal property. Accordingly, installing the interior does not constitute “storage” or “use” of the aircraft when the aircraft is to be immediately transported outside California and thereafter used solely outside this state. If the sole utilization of the aircraft in California is that of installing a new interior, the use tax is not applicable pursuant to Regulation 1620(b)(6). The transportation of the aircraft into California under its own power is also excluded from the term “use.” 5/7/86. (Am. 2004–2).

325.0005 Annual Reports. An organization prints 14,000 annual reports in California, shipping from within this state 10,000 reports to New York and 4,000 reports to California. Assuming the 10,000 shipped to New York would be used out of California and were shipped in accordance with Regulation 1620, the sale of these reports would be exempt from the sales tax. The sales tax applies to the sale of the 4,000 reports shipped to the customer in California.

In a second situation, the organization has annual reports printed outside California and also shipped from the out-of-state point. As a retailer engaged in business in this state, the organization is required to collect the use tax from the purchaser and report and pay it to this Board. Accordingly, the organization is required to collect and report and pay use tax on the sales price of the 4,000 annual reports shipped to the purchaser in this state. 3/8/93.

325.0007 Cargo Containers and Chassis Used in Ocean Shipping. A domestic shipping company is engaged in worldwide ocean shipping, and does not engage in transporting cargo from point to point within California. It purchases cargo containers and chassis that are used in its shipping operations. After a brief period following the purchase, the shipping company will sell the cargo containers and chassis to a trust and then lease them back from the trust. The sale and leaseback is governed by one master agreement but there are multiple deliveries of both containers and chassis to the trust over a period of several months. Tax application to the cargo containers and chassis is discussed below.

(1) **Cargo Containers.** The cargo containers are manufactured in foreign countries and the shipping company will take delivery of them at the manufacturer’s premises and place them in service at the earliest possible moment. Title to the containers will pass to the shipping company outside of California. At the time of transfer to the trust and the leaseback to the shipping company, the containers will be physically located either outside of California, on the high seas, in a foreign country, or within California while being used in the course of worldwide shipping operations. Cargo containers entering California will be loaded with cargo and after delivery of the cargo, the containers will continue to be used in the shipping company’s worldwide shipping operations.

(A) The sales of the cargo containers to the shipping company are retail sales and not sales for resale since the shipping company will put the containers to use prior to its sale to the trust.

(B) Since the sales of the containers to the shipping company takes place outside of California, the sales are not subject to the sales tax. Although the containers are not subject to sales tax and the first functional use of the containers takes place while the containers are located outside of California, use tax would nevertheless apply to the shipping company’s use of the containers in California if the containers enter this state within 90 days from the date of purchase and are not continuously used in interstate or foreign commerce, or are not used by the shipping company outside of the state at least 50 percent of the time over a six month period. Use tax would not be applicable to any in-state use of the containers by the shipping company if the shipping company uses the containers outside of California in excess of 90 days from the date of purchase to the date of their entry into California exclusive of the time of their shipment unloaded with cargo to California.

(C) Sales tax applies to the sale from the shipping company to the trust for those cargo containers which are physically located within California at the time of sale, notwithstanding the fact that the containers are purchased by the trust for use in interstate or foreign commerce. Since cargo containers are mobile transportation equipment (“MTE”) under Regulation 1661, the trust as lessor of the MTE may make a timely election to report the tax measured by the fair rental value as provided by Regulation 1661. Although sales tax does not apply to containers physically located out of state at the time of sale, the trust as lessor may nevertheless be liable for use tax when the property is purchased for use (lease) in California. Regulation 1661 provides that if the sale and delivery of the MTE occurs outside of California and the property is purchased for use by the lessor, use tax will apply measured by the purchase price unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce, or the lessor makes a timely election to report his use tax liability measured by fair rental value.

When the containers are first functionally used by the trust outside of California in interstate or foreign commerce, the containers are nevertheless presumed to have been purchased for use in this state if they are brought into this state within 90 days from the date of the sale to the trust. This presumption does not apply, however, under the following conditions: (a) the property is used or stored outside of California one half or more of the time during the six-month period following its entry into California, or (b) the property is purchased for use and is used in interstate or foreign commerce prior to its entry into this state and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(2) Chassis. Chassis are pulled by the tractor unit of a truck and can be used to carry cargo containers on highways. These chassis are manufactured within the United States, including California. Title to the chassis will pass to the shipping company while they are located at the manufacturer’s premises and the manufacturer will deliver them to their ultimate destination, which will be in California in most cases. For the brief period between the shipping company’s acquisition of the chassis and their resale to the trust, the shipping company will not make any use of the chassis. The sales of the chassis to the shipping company are sales for resale and the tax application to the subsequent sales from the shipping company to the trust is the same as that under paragraph (1)(C) above. 9/20/84; 12/5/01. (Am. 2002–3).

(Note: Subsequent statutory change concerning sales and leaseback and subsequent change to Regulation 1620, adding subdivision (b)(2)(B)2. re intermodal cargo containers.)

325.0009 Corporate Aircraft Used in Interstate Operations. An aircraft purchased out of state and brought into California within 90 days after purchase [see note below] could qualify for the exemption provided in Regulation 1620(b)(2)(B) provided it is used continuously in the corporation’s interstate operation (e.g., transportation of company’s employees from one state to another). Intrastate flights in another state will not affect the exemption from the California tax. 9/15/83. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0010 Deliveries from Storage. A taxpayer manufactures, prints, and purchases for resale business forms and supplies. The taxpayer stores the merchandise in its warehouses and ships the merchandise, as needed, by common carrier to customers in California and in other states. Some customers periodically order merchandise to be stored in the warehouse until needed. A customer may agree to a specific time limit for the storage of merchandise. The taxpayer may not know where specific merchandise so stored will be shipped until instructions are received from the customer. Some customers are billed for the merchandise when it is received for storage at the taxpayer’s warehouse. Others are billed when the merchandise is actually shipped to the customer. The contract provides that title passes upon full payment.

When merchandise is shipped from an out-of-state warehouse to a California customer, California use tax would apply. If the customer incurs tax or tax reimbursement liability in the other state, the customer is

allowed a credit for the tax or tax reimbursement liability actually incurred. However, if tax was paid to the other state in error, no credit would be allowed.

If shipment is made from a California warehouse to a customer's location outside the state and the contract specifically requires delivery to the out-of-state location, the tax will not apply even though title may have passed in California. This result is valid only if the purchaser is not authorized under the contract to direct that the property be diverted to a California destination.

If a shipment is made from a California warehouse to a California customer located in a different tax district, the applicable district tax is that of the destination district if the taxpayer is required by the contract to ship the merchandise to the customer in the other tax district.

If it is unknown at the time of the contracting whether merchandise will be shipped in-state or out of state, the application of tax will depend on the time of title passage. Under the contracts provided, title passes upon full payment. Accordingly, if the customer is billed when merchandise is delivered to the taxpayer's warehouse, tax will apply at that time. If the customer is billed at the time that the taxpayer makes shipment, tax will apply at that time if the merchandise is shipped to a California location. Also, when billing takes place at the time of shipment, no tax applies if the merchandise is shipped out of the state pursuant to the contract of the sale. 8/26/94.

325.0010.750 Delivery of Aircraft in Oregon. A purchaser intends to take delivery of a jet aircraft in Oregon. From the delivery point in Oregon, the aircraft will be flown to Nevada during which the purchaser will perform at least three landings for purposes of obtaining certification as a pilot for the aircraft. The aircraft will not touch down in California on this flight. The aircraft will be based in Nevada for 91–100 days and flown to non-California locations during this time. The aircraft will be regarded as first functionally used outside California when the taxpayer flies it in order to obtain pilot certification. Therefore, if the aircraft does not enter California within 90 days after its purchase, excluding time of storage for shipment to California, use tax will not apply to the use of the aircraft in California. 8/13/96. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0011 Delivery to California Post Office for Redelivery. A California consumer instructs an out-of-state printer/mailing house to ship packaged direct mail materials via common carrier to a post office in California for mailing from that post office directly to the addressees. Use tax does not apply to any of the printing or other charges related to the property delivered in this manner. Neither the carrier nor the post office can be said to be an agent of the consumer. The property began a continuous journey in interstate commerce when the out-of-state printer delivered it to the carrier at an out-of-state location. 8/24/84.

325.0011.450 Delivery from In-State Warehouse. Where the retailer ships the property sold from out of state to its warehouse located in California for assembly or consolidation of the property sold, and that warehouse location is the point from which the shipment is made to the customer, sales tax is the applicable tax. The local portion of the sales tax is allocated in accordance with Regulation 1802, sections (a) or (b)(5). Sales tax is applicable because the sale was completed in California by the retailer's shipment to the customer from a California location, and there was also participation by a place of business of the retailer, specifically its warehouse, in completing the delivery. The place of sale as defined in section 6010.5 is not the retailer's out-of-state location if the retailer does not complete its obligation with respect to delivery without first sending the property to its California warehouse. 8/11/89.

325.0012 Delivery of Tractor—Trailers to Interstate Carriers. An interstate carrier (lessor) purchased certain tractors, trailers, and converter gears out of state and leased them to its three subsidiaries. Two of the subsidiaries are interstate common carriers operating between points outside this state to points within this state. The other subsidiary is a radial carrier operating in California. Certain pieces of equipment were

delivered to the lessor out of state and placed in revenue service of the lessee there. Other equipment was delivered to the lessor in California and placed in service of the lessee in this state. When in revenue service of the subsidiary lessee, the equipment was variously used in interstate commerce or intrastate commerce in California.

When the first functional use of an instrumentality of interstate commerce takes place in California, regardless of whether the property is used thereafter exclusively in interstate commerce and used more outside the state than within, it is proper to assert the use tax. Accordingly, use tax applies to all deliveries of the tractor-trailers in California to the subsidiary lessees.

However, when the first functional use takes place outside of California and after the first use it is employed continuously and principally in interstate commerce, the use tax does not apply. Of course, use tax applies to out-of-state deliveries of tractor-trailers to the lessee operating as a radial carrier in California since the property was immediately brought into California for use in intrastate commerce. 10/13/65.

(Note: Subsequent statutory change re trailers, see section 6388.5.)

325.0012.350 Duplicate Copy of Software Source Code. Database software purchased out of state is to be located and used in New York for at least 100 days after its purchase. The purchaser made a duplicate copy of the source code in New York on new blank media and delivered this duplicate copy to an escrow agent in California before 90 days elapsed from the date of purchase of the original.

The delivery of the duplicate copy of the source code to an escrow agent in California does not affect the taxability of the original sale of the tangible media containing the original source code. When the duplicate copy of the source code is brought into California within 90 days after the blank media was purchased by the purchaser of the database, then the cost of that blank media plus the outside cost, if any, of copying the source code onto that media (but not the cost or value of the source code itself) would be subject to California use tax. 1/3/95.

325.0013 First Functional Use Out of State but Returned to the State. Two race engines were purchased out of state and delivered to the purchaser in California via common carrier in early 1971. The purchaser installed one of the engines in his race car and held the other one on standby as a backup engine. Although it was the purchaser's intent that the car and engine be raced in California, these engines were never tested or raced in the state.

Several months after purchase, both engines were removed from California via a trailer. Shortly thereafter, the car was raced in Arizona on March 26, 1971. After this race the engines were returned to California where they were stored. On April 27, 1971, they were transported outside the state to the East where they were used in the racing circuit. Unfortunately, the engines blew up. The purchaser, in turn, sold them back to the vendor instead of returning them to California.

Under the above circumstances, both engines are subject to the use tax. This conclusion is based on the following:

When tangible personal property is purchased and first stored or used in California, the item is subject to the California use tax notwithstanding the lack of some functional use in the state unless it comes within the exclusion provided in section 6009.1. Section 6009.1 provides, in part, that storage and use do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. Since it was not the purchaser's purpose upon the initial storage or use in California to merely transport it outside the state for use thereafter solely outside the state (i.e., it was to be returned to California after the Arizona race and after the East Coast race), we do not believe that it can be said that such storage or use in California was only for the purpose for transporting it outside the state for use thereafter solely outside the state. Therefore, it is concluded use tax is due on both engines. Standby service is a use within the definition of "use" under section 6009. 9/27/71.

[325.0013.200](#) **First Functional Use Test.** An opinion was requested regarding the legal department's position on the first functional use test as it applies to vehicles, vessels, and aircraft.

After a review of the Revenue and Taxation Code, Sales and Use Tax Regulations, and various court cases, including *American Airlines Inc. v. State Board of Equalization* (1963) 216 Cal.App.2d 180, it was concluded that if a vehicle or vessel is designed for commercial carriage, e.g., a bus, a tractor-trailer, or a sightseeing boat, the first functional use will be outside California if passengers are boarded or cargo is loaded onto the vehicle or vessel outside of California. If such vehicle or vessel is deadheaded into California, the first functional use will be in California unless the vehicle or vessel is brought to California to fulfill an existing lease or charter, or to pick up a specific load of cargo or group of passengers. The same applies to aircraft, though in some instances the purchase of such aircraft will be exempt under section 6366 or 6366.1.

Vehicles, vessels and aircraft which are purchased for commercial purposes and used for commercial purposes are not "functionally used" until used for the commercial purpose for which they were designed.

With respect to vehicles, vessels, and aircraft designed for personal use, such as a passenger vehicle as defined in Vehicle Code section 465, a small motor boat, or a small plane, the first trip or flight into California is a functional use outside of California without regard to who drives or pilots the vehicle, vessel, or aircraft or to whether it is carrying passengers or cargo.

Finally, regardless of what purpose the vehicle, vessel, or aircraft was designed for, the first functional use of such items will be in California if they are not brought into California under their own power and they have not otherwise been functionally used outside of California. 8/10/92.

[325.0015](#) **First Use in Interstate Commerce.** An aircraft was leased by a California business from a lessor located in Oregon. On the date the lease expired, pilots who are employees of the lessee fly the aircraft from California to Oregon with some of the lessee's employees as passengers. At that point, the aircraft is sold to the lessee. The pilots then fly the aircraft to California with other employees of the lessee as passengers. The aircraft is used thereafter solely in interstate commerce. The first use of the aircraft is regarded as having been in interstate commerce because the lessee did not own the aircraft on the flight to Oregon. 10/19/87.

[325.0016](#) **First Use in Interstate Commerce.** An aircraft is purchased by a California business in a state in which the buyer does not have a company location. An executive of the buyer is authorized to take delivery of the aircraft at the out-of-state point. The executive takes delivery and flies the aircraft to California together with two nonemployee passengers. The aircraft is used thereafter solely in interstate commerce. The fact that the buyer has no company location in the state of purchase has no bearing on regarding the first use of the aircraft as being in interstate commerce. 10/19/87.

[325.0018](#) **Functional Use.** For purposes of Regulation 1620(b)(3), only *functional use* outside this state is counted in establishing out-of-state use. Time for assembly, disassembly, testing, preparation for shipment, and shipment does not count. 11/6/90.

[325.0020](#) **General Rules Stated.** Corporation maintains manufacturing plant out-of-state and a sales office in California. Practically all products sold through California office are manufactured and fabricated out-of-state, but in some cases parts are fabricated at California office. Shipments of goods sold through California office are often made directly from out-of-state factory to the consumer and point of delivery may or may not be within California.

When delivery is made to the consumer at a point outside of California, the sales tax would not apply. Where delivery is made directly to consumer in California, sales tax would not apply unless the California office of the seller participated in the transaction. If sales tax does not apply in the latter instance, the transaction is subject to use tax and required to be collected by the California office.

Sales in which delivery is made to points outside California from the California office would be exempt from tax providing the conditions of the regulation are met by the seller. 3/3/53.

325.0040 Horses. Breeding a mare and selling the foal can be consistent with holding the mare for resale because it proves to potential buyers that the mare is healthy and capable of reproduction. However, the taking of depreciation deductions on the mare for income tax purposes is inconsistent with holding it for sale in the regular course of business. If the mare was purchased outside the state and was purchased for breeding purposes in California, the purchaser is liable for use tax.

If the purchaser can show that the mare was not purchased for use in California, tax does not apply. See Sales and Use Tax Regulation 1620(b)(3). The breeding of the mare or the giving birth to a foal by the mare outside this state is a “functional use” of the mare outside the state within the meaning of the Regulation. 5/11/87.

325.0053 Installation by an Agent of the Retailer. A computer manufacturer, having no place of business in California, has an agent located in California who solicits equipment orders from California customers and forwards the orders to the manufacturer for acceptance. When the order is accepted, the equipment is shipped and billed directly to the customer by the manufacturer, although in some isolated instances, the shipment is to the agent for redelivery to the customer. While shipments are made by common carrier, F.O.B. out of state, the agreements require the manufacturer to install the equipment at the customer’s location and the manufacturer completes its installation obligation by contracting with third parties to install the equipment.

The manufacturer is obligated to collect use tax on its sales to California customers since it is engaged in business in this state pursuant to section 6203. The manufacturer is not liable for sales tax on its retail sales in California. This is because the manufacturer itself (as distinct from its agent) has no place of business in California. Regulation 1620 provides in summary that the sales tax applies only if there is both a sale which occurs in California and some involvement in the sale by a place of business of the retailer. The latter condition is not met when the manufacturer’s installation agent, rather than the manufacturer itself, completes the delivery of the equipment in California by installing the equipment at the buyer’s location. 5/21/85.

325.0055 Installation by Out-of-State Seller. A purchase order for tangible personal property was sent by Company A from California direct to Company B located out of state. B has no California branch or office. Delivery in California was made via common carrier from out of state with freight prepaid FOB destination. Installation in California was performed by B’s representative from an out-of-state facility.

Under Regulation 1620, the sales tax can not apply. It makes no difference whether the terms of the delivery are FOB destination or whether the California installation is performed by the seller’s out-of-state representatives. Use tax, rather than sales tax, applies to the purchase price in this transaction. 10/20/88.

325.0057 Installation by Out-of State-Vendor. A vendor performs repairs on property it sells, but does not do so pursuant to maintenance contracts or warranties. Rather, it makes a charge for repairs, separately stating the charge for parts it furnishes. The vendor keeps the repair parts at its out-of-state plant. The repair parts are sent to California by one of two methods: (1) repair parts to replace parts which break frequently are sent by the vendor from its out-of-state plant to its in-state employees prior to knowing who the ultimate customer will be, or; (2) repair parts to replace parts which break infrequently are sent by the vendor from its out-of-state plant to its in-state employees only after an initial field visit to the ultimate customer. In both of these methods of delivery, the field service employee personally hand carries the repair parts to the customer’s location at the time the repair is made. The vendor is making a retail sale of the repair parts inside this state since delivery of the part is made by an in-state field employee of the vendor. Since the in-state employee operates from a location of the vendor in California, sales tax applies to the separately stated charges for the repair parts. 5/20/96.

325.0060 Installation of Special Equipment. An out-of-state retailer places an order for a truck which order is filled by the manufacturer’s division in California, who in turn delivers the truck to another firm in

California for the purpose of installing special equipment. If the out-of-state retailer's contract was to sell a completely equipped truck and he made the agreement for installation of the special equipment in California and also arranged to transport the vehicle to his customer out-of-state, it is an exempt sale for resale. If, however, his customer made the installation contract, delivery to the installer in California would amount to delivery to a consumer and a taxable retail sale would result. 1/7/55.

325.0080 Local Participation. In interstate transactions, unless sales are made with the participation of a local office or place of business, the sales are made in interstate commerce and the use tax is the applicable tax. If the seller maintains a place of business in this state, he would be liable for collection of the use tax. 3/31/55.

325.0080.400 Motorhome and Auto Tow Tractors. A couple, who are California residents, purchases a motorhome and auto tow trailer in Oregon. They drive both units to California to clean and pack the vehicle. Within one or two weeks, they drive the units outside the state to visit relatives during the following five months. If the motorhome was driven empty into California for cleaning, packing, and outfitting, its first functional use was in California and its use is subject to use tax. However, if the motorhome was used to tow the auto tow-trailer to California, then the first use was outside of California. Under these circumstances, assuming the motorhome is used outside of California for five of the following six months, its use would not be subject to California use tax.

Likewise, the auto tow trailer would be subject to tax if it did not carry a car back to California since the first functional use would be in California. However, if it did carry an auto then its use likewise would not be subject to tax if its use was outside California for five of the six months after its first entry into California.

The fact that the auto is registered in California for insurance purposes would not affect the analysis. 4/29/97.

325.0081 Out-of-State Delivery of Motorhome. A California motorhome dealer will make a sale of a motorhome to a California resident who will take delivery out of state. The purchaser will functionally use the motorhome for a period of not less than 90 days outside of California. The vehicle may be registered in California.

Revenue and Taxation Code section 6247 creates a presumption as to the retailer that property delivered outside of California to a purchaser known to be a resident of California is regarded as having been purchased for use in California. The section 6247 presumption may be controverted by a statement in writing, signed by the purchaser, and retained by the dealer that the property was purchased for use outside of California. If the dealer takes a section 6247 statement in good faith, the dealer is no longer responsible for collecting use tax even if the purchaser actually purchased the motorhome for use in California. Under such circumstances, the purchaser, of course, would be liable for the applicable use tax. In order to regard the section 6247 statement as being taken in good faith, the dealer must believe that the motorhome is being purchased for use outside this state and be without knowledge of any facts which would put a reasonable prudent business under similar circumstances on notice that the motorhome is being purchased for use in this state. [See Cal. U. Com Code section 1201(19).] If the dealer obtains a section 6247 statement from a purchaser who requests that the dealer register the vehicle in California, and it is subsequently determined that the purchaser purchased the motorhome for use in California, the dealer's good faith acceptance of the section 6247 statement may be questioned.

If the motorhome is functionally used outside of California in excess of 90 days from the date of purchase prior to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, Regulation 1620(b)(4) provides that such use will be accepted as proof of an intent that the motorhome was not purchased for use in California. Therefore, under these circumstances, use tax would not apply. This analysis would apply regardless of whether the motorhome is registered in California. 8/12/96. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0082 Out-of-State Lease of Vessel. A cruise company purchases a vessel from an out-of-state ship builder. The cruise company enters into a bareboat charter agreement with the shipbuilder, whereby the cruise company leases the vessel back to the shipbuilder for at least 91 days. The cruise company would receive a percentage of the revenues generated by the use of the vessel during the charter period.

The shipbuilder will host no charge parties to exhibit the vessel to generate future business for both the shipbuilder and the cruise company. Profit making charters would also be made. All of this use will occur outside California. After expiration of the charter, the vessel would be brought to California for use in California waters by the cruise company.

The vessel is mobile transportation equipment. The use by the lessee (the shipbuilder) is therefore attributed to the lessor (the cruise company). Since the vessel was used outside California for more than 90 days before entering California, it is presumed that it was not purchased for use in California and no tax applies. 8/30/91. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0083 Out-of-State Repairs. A company contracts with California hospitals to repair their medical equipment. The company's independent sales representatives pack up the equipment and send it to one of the company's out-of-state vendors to perform repairs. After repair, the equipment is shipped back to the hospitals by common carrier.

The repair parts were sold outside the state; thus sales tax does not apply. However, the company has independent sales representatives in California, and is thus a retailer engaged in business in this state. It is required to collect use tax on repair parts from its customers and to remit the tax to the Board. 2/10/95.

325.0088 Place of Sale—Sales vs. Use Tax. In determining the place of sale, you must first determine if there is a title clause. Unless such a title clause passes title sooner, title passes and the sale occurs when the seller completes its duties with respect to physical delivery of the property (Cal UCC 2401.) When delivery is by the seller's own facilities, the seller completes its duties with respect to physical delivery upon tender of the property to the purchaser. When delivery is by common carrier and the contract states "F.O.B. destination," the seller does not complete its duties with respect to physical delivery until the property is delivered at destination. Under such a contract, the sale occurs at destination unless the contract specifically states that title passes sooner. If the contract does not have an F.O.B. destination provision and delivery is by common carrier, the sale occurs upon the seller's tender of the property to the common carrier, unless the contract specifically passes title sooner.

If the sale takes place out of state, the only tax that can apply is use tax and the participation of an in-state sales office is irrelevant. On goods shipped to California by common carrier F.O.B. Destination (with no specific title passage clause), the sale takes place in California. Thus, the question of the participation by an in-state sales office needs to be resolved to determine if sales or use tax applies. 9/18/95.

325.0089 Platinum Catalyst—Out-of-State Use. When a refiner uses fresh platinum catalyst at one of its out-of-state refineries for six months and then ships this catalyst to a California refinery where it will be used for two more years, the catalyst and platinum content are not subject to use tax even if it was the refiner's intention to follow this procedure when it first purchased the catalyst.

If the situation was reversed and the fresh catalyst was first used in California for six months and then shipped to an out-of-state refinery where it would be used for two more years, the tax would apply when the refiner first purchased the catalyst. 4/12/71.

[325.0090](#) **Promotional Material.** An out-of-state printer/mailer asked for application of tax to the following transactions.

(1) Printer/mailer produces and mails in Pennsylvania direct mail promotional material for customer based on customer's mailing list at no cost to the recipients. Printer/mailer and customer both have nexus in California.

Title passes at the time promotional material is deposited in the mail in Pennsylvania. Accordingly, use of the property by the customer occurs outside of California, and the use tax does not apply.

(2) Printer produces catalog insert pieces in Pennsylvania for customer and drop ships them via common carrier to a bindery/mailing house in California contracted for by customer. The printer has nexus in California. The printed pieces will be incorporated into a catalog by the bindery/mailing house and will be mailed based on customer's mailing list at no cost to the ultimate recipients. Some pieces will be mailed to recipients within California; others will be mailed to recipients outside of California.

Customer is considered to be making use of the catalog insert pieces in California by sending the printed material to recipients. Use tax applies to such use of the property including the material shipped to recipients outside of California. It is immaterial whether or not the customer is engaged in business in California. However, if the catalog qualifies as a printed sales message and meets the requirements of Sales and Use Tax Regulation 1541.5(b)(1)(2)(3), the transaction would be exempt from sales and use tax.

(3) Printer/mailer produces in Pennsylvania direct mail promotional material for customer and ships material via common carrier to a post office in California for mailing to recipients both within California and out of California. Printer/mailer has nexus in California and customer may or may not have nexus in California.

Answer is the same as response to transaction 2 above. 11/21/91.

[325.0094](#) **Purchase of Motor Home.** A California resident purchased a large motor home with about 10,000 miles from a dealer in Oregon on or about April 15, 1996. Since the purchase, the motor home has been stored in Oregon when not in use. The California resident claims he has taken two trips to date in the motor home, one for 1,500 miles in May 1996 and the other for 1,200 miles in June 1996, all outside California. He plans to use the vehicle in August 1996 to go to Canada, expects to put another 2,500 miles on it, and then bring it into California. The vehicle carries enough fuel for more than 2,000 miles so that owner claims he cannot provide fuel or maintenance receipts establishing the date or itinerary of any of the use.

It is necessary for a purchaser who claims that he did not purchase the property for use in this State to overcome the presumption in section 6248 that it was purchased for use in California. It is difficult for a purchaser to overcome the presumption that the vehicle was purchased for use in California solely upon declarations and odometer readings. It is reasonable to expect that the purchaser would have some documentation to support his contention that he used the vehicle outside California for more than 90 days. [See note below.] The type of documents that could be used to support the purchaser's contention are receipts for purchases made out of state for groceries to provision the vehicle, dining out and entertainment receipts or ticket stubs from movies, receipts for maintenance such as oil changes or other repairs to the vehicle, receipts for registration at parks or other facilities used during travel, receipts for dumping of waste, and telephone bills showing calls made from places outside the State. 9/27/96. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its

purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0100 Rail Freight Cars. Section 6368.5 of the Sales and Use Tax Law exempts from sales and use taxes any leased rail freight cars which are used chiefly in interstate transportation, whether the lessee is a shipper or a railroad, and without regard to when the car first enters the state of California, or the number of days the car spends in California. 3/12/64.

325.0100.500 Rail Freight Cars—Repair Parts. Parts installed onto rail freight cars outside California and first entering California as part of the rail freight cars are regarded as rail freight cars for purposes of the section 6368.5 exemption. (*Pan American World Airways, Inc. v. State Board of Equalization* (1955) 131 Cal.App.2d 638). As such, no tax applies to the use of such parts in California if the rail freight cars are thereafter used in interstate or foreign commerce. However, tax does apply with respect to parts first entering California as parts (rather than already installed onto rail freight cars), even though they are thereafter installed onto rail freight cars, because section 6368.5 does not exempt the sale or use of parts. 8/30/96.

325.0103 Repair Is Use. A California resident purchased and took possession of a vehicle in Europe. He used the vehicle in Europe for about a month at which time the vehicle was involved in an accident and was damaged. He returned to California about 60 days after he purchased the vehicle. Repairs to the vehicle took an additional 60 days. The vehicle was then shipped to the buyer in California.

Repair of the vehicle was an exercise of a right of ownership by the buyer. In determining whether the vehicle was used outside California for 90 days or more, the time required for repair should be included. 12/8/87. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0104 Repairman as Shipper. A purchaser of machinery hired a person to modify the machine located at the seller’s premises. After modification, the person shipped the modified machine by common carrier to the purchaser at an out-of-state location. In this situation, sales tax applies since the machine was delivered to the purchaser’s agent in this state as set forth under Regulation 1620(a)(3)(a). Once the person entered the seller’s premises for the purpose of performing the modification, it took delivery of the machine as an agent for the purchaser. 6/14/91.

325.0105 Sale on Approval. For purposes of applying Regulation 1620, a contract to sell on approval is equivalent to a “contract of sale” when the buyer is located inside the state and the seller is located outside the state. Sales tax rather than use tax would apply only if there is participation by a representative of the buyer located in the state. 6/23/77.

325.0106 Sales on Approval. A taxpayer receives property in California from an out-of-state retailer pursuant to a sale-on-approval arrangement. The seller has no office or personnel located in California. The taxpayer examines the property and decides to buy the property. The property is located in California. Thus, the sale takes place in California. Nevertheless, use tax rather than sales tax applies because there is no participation in the transaction by a local office of the seller. 5/20/94.

325.0107 Sale on Approval Transaction. Sale on approval transactions are properly subject to use tax under Regulation 1620(a)(2)(B) where there is no participation by any branch, office, outlet, or other place of business, or any agent having a connection with such branch, office, outlet, or other place of business. While sales tax may be applied to sales of goods after they “have come to rest” in this state, a transaction retains its characteristics as an interstate transaction even though title may pass to the purchaser in this state, if the title transfer is an integral part of a transaction involving an order sent by the purchaser directly to a retailer at a point outside this state and involving direct shipment to the purchaser across a state

boundary. In other words, “the goods that have come to rest” in this state are not within the constitutional meaning of that phrase when the title transfer to be taxed is part of a continuous transaction involving interstate transmission of orders and transit of goods. 5/13/77.

325.0108 Sale of Tanker Trucks to Out-of-State Customer. A taxpayer is a manufacturer and retailer of tanker trucks. The taxpayer acquires a truck cab and chassis from a truck manufacturer and then acquires a tank from a tank manufacturer. The taxpayer installs the tank and accessories onto the truck chassis. After completion of manufacture, the taxpayer sells the complete truck package to California customers and to out-of-state customers. Currently, when the taxpayer sells a tanker truck to an out-of-state customer, the taxpayer delivers the truck to the customer outside California. However, the taxpayer would like to begin delivering the trucks to its out-of-state customers at its California business location. The taxpayer asks, assuming its customers meet the documentation and time requirements of section 6388 and 6388.5, whether these transactions would qualify for exemption from tax under these provisions.

Since section 6388.5 only applies to trailers and semi-trailers, the exemption provided by this section is not available with respect to tanker trucks constituting a single unit. [Vehicle Code section 410 (motor truck).]

The exemption provided by section 6388 is applicable to the sale of a new or remanufactured vehicles which have an unladen weight of 6,000 pounds or more. This section applies to trucks. However, one of the conditions for the application of this exemption is that the vehicle is purchased from a dealer outside California. Since the taxpayer is a California dealer, the sales also would not qualify for the section 6388 exemption. 2/6/92.

325.0110 Sales Tax v. Use Tax. Company A mails its purchase order to Company B which is located in New Jersey. The property is shipped to California by common carrier from Illinois. Payment is remitted to Company B’s California office.

Since title passed upon delivery to the carrier in Illinois, the transaction is not subject to sales tax, but rather use tax. The fact that payment was made to the California office is irrelevant under these circumstances. 8/23/91.

325.0115 Samples—Carpet. An out-of-state carpet manufacturer makes a taxable use of carpet samples in California when the manufacturer addresses the samples to retailers but ships the samples to the manufacturer’s California employees who then forward the samples at no charge to the retailers.

Until the employees in California forward the samples to the retailers, the manufacturer has not relinquished ownership of the samples. Therefore, the taxable use, i.e., the giving of the samples to the retailers, occurs in California. 8/17/87.

325.0130 Software Delivered in California. An out-of-state taxpayer who develops and sells clinical medical software entered into a license agreement with a medical institution (customer) on June 29, 1990, whereby the customer acquired the right to use certain computer software at ten of its clinical reference laboratory sites located throughout the country. The sales agreement tentatively identified eight of the ten sites. However, the customer retained the right to substitute equivalent size facilities for any site. The agreement identified the customer’s Texas laboratory as being the first laboratory site for installation of the software. The sales agreement permitted the customer to make copies of the software to fulfill the ten site requirement, eliminating the need for the taxpayer to ship more than one copy of the tape containing the software. The agreement did not specify a purchase price for each site. The agreement merely listed all of the software licensed for ten sites and indicated a total price of \$2,500,000. Terms for payment linked payment to the earlier of the conversion of various sites or specified dates. Full payment was due by December 15, 1992, or after the conversion on the seventh site.

On June 20 and July 6, 1990, the taxpayer shipped tapes containing the licensed software to the customer’s California headquarters. The software was shipped prior to the contract signing due to the short time frame contemplated for the ten-site installation.

The customer's employees created an appropriate environment on computer hardware located at the California headquarters and installed the licensed software. The software was also tested to insure that it was functioning correctly. In August 1990, a copy of the software and database was transferred from the customer's California headquarters to the Texas site where it was installed and the database completed. Although the software media was delivered in June and July of 1990, the first invoice was not issued until November 1990.

The software has remained installed at the California headquarters since the date of the original installation in July 1990. The headquarters was also a licensed site.

Under these facts, the customer purchased tangible personal property from a retailer for use in this state. When the customer installed the software in its computer in California, it made a use of the software in this state. The sales agreement permitted the customer to make the copy of the software in California, and the customer did, in fact, make the copies in this state rather than the taxpayer shipping copies to other sites from its out-of-state location. Under these circumstances, use tax applied to customer's use of the software in this state measured by the total sales price of \$2,500,000. As a retailer engaged in business in California, taxpayer was required to collect the use tax from the customer. 3/29/94.

325.0140 Storage in State of Property Usable Only at an Out-of-State Point. A taxpayer with facilities both inside and outside California purchased custom equipment outside the state for use in a facility being constructed outside California. Construction of the facility was delayed such that the fabrication of the custom equipment was completed before the facility was prepared to receive it. Accordingly, the equipment was shipped to the taxpayer in California for storage pending delivery for installation at the out-of-state facility. It was in fact ultimately shipped to the out-of-state facility and permanently installed there. The equipment was specifically designed and intended for use at the out-of-state facility. The taxpayer had no facility inside California that could utilize the equipment or that was sufficiently compatible with the equipment as to permit testing of the equipment or training of personnel to operate the equipment.

The storage of the equipment is excluded from the use tax under section 6009.1 of the Revenue and Taxation Code. 9/2/76.

325.0160 Testing as Only Use in State. An out-of-state bank has subsidiaries in California and other states. It institutes a plan to upgrade the computer systems used in the branches of all of its subsidiaries. It purchases the equipment which it will resell to the subsidiaries. It arranges for all of the equipment which it buys for the upgrade plan to be shipped to a service center in California which is owned and operated by another party. The other party unpacks the hardware, loads software and arranges packages as they will be used at specific branches in order to test the system. Once tested, equipment is repackaged by the other party and shipped at the bank's direction to specific branches inside and outside California. The equipment will not be functionally used until it is installed at the individual branch.

Tax will apply to the equipment sold to and used by California branches. Tax does not apply to equipment sold and shipped to and used by out-of-state branches. 2/24/94.

325.0165 Time Aircraft Is Refurbished Out of State. A California resident accepted delivery of and took title to an aircraft out of state. The aircraft, carrying a passenger, was flown into California. The aircraft was subsequently delivered to a company in Florida to complete a major refurbishing of the aircraft.

At the time the aircraft was purchased, a jet engine was also purchased. At the time of purchase, the jet engine was located out of state where it underwent maintenance. After the maintenance was completed, the jet engine was shipped to Florida and attached to the aircraft.

Since the aircraft was first functionally used outside California and entered California within 90 days of purchase, the principal use test applies to determine if the aircraft was purchased for use in California. [See note below.] The time the aircraft was being refurbished out of state is considered storage or use outside of California. (Section 6008.) Therefore, if the time for refurbishment added to any other storage and/or use

taking place outside of California equals or exceeds one-half of the six-month test period immediately following the aircraft's initial entry into California, use tax will not be due on the purchase price of the aircraft.

With respect to the jet engine, if the time of repairs and attachment was in excess of 90 days from the date of purchase to the date of entry in California, it will be presumed that the jet engine was not purchased for use in California. On the other hand, the time which the engine was shipped to California or stored for shipment is not counted towards prior out-of-state use in excess of 90 days. If the time of actual use outside California (i.e., repairs) exceeded 90 days, excluding the time of shipment and storage for shipment to California, use tax will not be due on the purchase price of the jet engine. 5/15/95. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0167 Title Passage in State. An out-of-state vendor ships property to California customers by common carrier with title passing during the interstate delivery or at the destination. The vendor has no presence in this state. Since sales tax cannot apply unless there is some participation in the transaction by a California office or agent of the vendor pursuant to Regulation 1620(a)(2), the California sales tax is inapplicable, but the use tax is applicable. 3/10/75.

325.0168 Title Passing to the Purchaser at an Out-of-State Point. A manufacturer has a manufacturing facility located out of state and a sales/distribution warehouse in California. It manufactured equipment to the customer's order at its out-of-state facility and shipped the equipment to the manufacturer's California warehouse for storage. When equipment is needed at the wellsite, which is located in federal waters outside California, either the customer will pick up the equipment at the warehouse, or the manufacturer will deliver it to the wellsite by its facilities or by common carrier.

The manufacturer proposes to include a title clause in its acknowledgment to the customer's purchase order. The clause will notify the customer that title will pass to the customer at the out-of-state manufacturing point so that the transaction will not be subject to the sales tax as set forth under Regulation 1620(a)(1).

To be effective, the title clause must be part of the sale contract between the manufacturer and the customer. A unilateral title clause is not acceptable. A recommended procedure is that the title clause be included in the customer's purchase order and acknowledged by the manufacturer before the equipment is delivered in California. If the customer submits a verbal order, or a written order which does not include a title clause, the manufacturer may include the title clause in the acknowledgment of the order. In that case, however, the manufacturer should ensure that the customer accepts the title clause by signing a copy of the acknowledgment, and returning the signed copy to the manufacturer, before the equipment is delivered in California.

The manufacturer should also be careful to avoid any actions inconsistent with the prior passage of title to the customer. For example, any time the property is shipped, the bill of lading should show the customer as the shipper, or should at least indicate that the manufacturer is acting as the shipper on behalf of the customer. Similarly, any insurance forms or other document relating to the storage in California should not state or imply that the manufacturer has title in the equipment.

If the sale contract includes a clause under which title in the equipment passes to the customer outside California, then sales tax will not apply, with one limited exception. The exception is where the contract is not performed as written. For example, if the equipment is delivered to the California warehouse, but the customer rejects or otherwise refuses to receive or retain the equipment, title in the property will revert to the manufacturer by operation of law under California Commercial Code section 2401. If the manufacturer

then cures the defect and delivers the equipment to the customer in California, title will pass in this state and sales tax will apply.

Since the equipment is to be used in federal waters outside California, and not for storage use or other consumption in this state, the equipment will not be subject to the use tax pursuant to the exclusion provided by section 6009.1. The manufacturer will be relieved from the duty to collect the use tax if an appropriate certificate is received in good faith from the customer. This certificate must be in writing and must be signed by the customer or his authorized representative before or at the time of physical delivery to the customer. It must state that the equipment is purchased for use solely outside California at a named point or points outside this state. 9/3/85.

325.0170 Turbine Engine Repair. Company A's repair facility, located outside of California, is primarily engaged in the repair and overhaul of turbine engines for commercial airlines. Company B's repair facilities located both inside and outside California, is engaged in the same business primarily for charter and private business aircraft. An engine to be repaired is removed from the aircraft at its regular maintenance location and shipped to Company A's or B's repair facilities. When the repairs are completed, the engine is shipped FOB the shipping point to Company A's customer or to Company B's customer in California or another state. The application of sales and use tax to the following various repairs was requested:

(1) Does California law provide a sales and use tax exemption for repairs of general aviation and business aircraft or for commercial aircraft.

The Revenue and Taxation Code provides an exemption for certain sales of aircraft. However, these exemptions are for aircraft and not aircraft parts. Parts used in the repair of the aircraft engines that are sent to California do not qualify for any exemption and are subject to tax.

(2) Special Process—A flat rate charge for labor, materials, an overhead used in the performance of special functions such as x-rays for internal engine cracks or plasma spray. The billings for special process activities are lump sum.

Assuming that the materials used in the performance of the special process are actually consumed by the repairer during the special process and are not furnished and installed on the engine, no tax applies to the charge for the labor, and the repairer is regarded as consuming the property used in performing this special process.

(3) A handling fee charged to the customer when the customer provides parts for either Company A or B to use in a repair service.

Assuming that neither Company A or B performs any fabrication labor, but merely installs the parts, the handling fee is not subject to tax.

(4) A fee, calculated as a percentage of the part's list price, to expedite the customer's work, is paid by customers who use parts from Company A or B's rotatable inventory, which is an inventory of reconditioned parts.

When property is sold, or purchased for use, in California, tax applies to this fee.

(5) A fee for the use of Company A or B's test cell which is a special facility used to test engines against the original manufacturer's standards for power, vibration, and heat. The test cell is located and used outside California for Company A and inside California for Company B.

When either company repairs an engine and then charges a separate fee for testing that repaired engine, no sales or use tax applies to the charge for testing regardless of whether the testing is conducted inside or outside California.

(6) A charge passed through to the customer for fuel and oil used in testing customer engines. All fuel is consumed at the repair facility or removed from the engine prior to shipment to the customer. The charge is for costs plus a mark-up by product line of approximately 5–25%.

The repairer is the consumer of this fuel and oil. With respect to fuel an oil consumed at the California facilities, sales tax applies to the sale of the fuel and oil to the repairer or use tax applies to the repairers use of the fuel in California measured by the purchase price. The fact that the overhead expense of the fuel and oil is passed on as an itemized charge does not change the repairer's status as a consumer unless the contract specifically provides that title passes to the property prior to use by the repairer. 12/20/91; 8/20/92.

325.0180 Unused Property Returned to California Company from Out of State. A California company provides sales invoices with various advertisements printed on the bottom to out-of-state recipients free of charge. The invoices are shipped by a California printer directly to the out-of-state recipients. These invoices must be used by recipients during a specific period as the advertisements are valid for a limited time period and contain an expiration date. The recipients are required to return all unused invoices to the California company.

Tax applies to the sales price of the invoices returned to the California company from the out-of-state recipients. The California company's use for purposes such as tracking the number of unused invoices, recycling, destruction, modification and reissuance, etc. is considered functional use in this state since the returned invoices are used for a purpose suitable for outdated sales invoices. The 90-day rule provided in Regulation 1620 applies where there is a first functional use of the property outside California. In this case, the returned invoices are never functionally used outside California and the 90-day rule does not apply. 2/23/98. (M99–2).

325.0185 Use or Storage for Purposes of the Six-Month Test. An aircraft purchased from a retailer outside California was first functionally used outside this state and brought into California within 90 days after its purchase. [See note below.] To determine whether the property was used or stored outside California one-half or more of the time during the six-month period immediately following its entry into this state, both the use and the storage of the property during that six-month period are important and relevant. During this six-month test period, the aircraft could be both stored and used or only stored or only used. For this test, the particular type of use or storage, such as flight time or repair time or hangar time, is irrelevant. The type of use or storage may become relevant if the aircraft fails the test to determine whether it was purchased for use in California, and the purchaser then seeks an exemption from use tax under sections 6366 or 6366.1. 9/9/99. (2000–2). (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0190 Use Tax Exclusion. An out-of-state retailer, engaged in business in California, sold aircraft parts which were delivered to airline common carriers in California. Since the sales occurred outside California, use tax on the parts is due, unless an exemption or exclusion from tax applies. In this case, the seller accepted exemption certificates from the carriers, under Regulation 1621, and did not collect the use tax on the parts. However, those certificates are valid only with respect to the exemption from the sales tax as provided by section 6385. Therefore, since the seller did not take a certificate, from the carriers, claiming the storage and use exclusion provided by section 6009.1, it still owes the use tax it was required to collect. This applies unless it establishes that the parts' presence in California is excluded from "use" as provided by section 6009.1. 9/26/89.

325.0192 Use Tax Exclusion—Intermodal Cargo Containers' Component Parts. The exclusion from use tax provided for the use of intermodal cargo containers (ICCs) by Regulation 1620(b)(2)(B)2. does not apply to the use of component parts of such containers when the component parts are first functionally used in this State. Generators are purchased outside California and delivered to the purchaser at a facility in California. The generators are temporarily attached to the ICCs at the point of delivery in California and

then the generators are first functionally used. Even though the generators, once installed, are considered as component parts of the ICCs, the use of the generators cannot qualify for exemption because the first functional use of the generators was in California. 2/28/02.

325.0193 Use Tax—Investment. A California resident purchased unfinished diamonds for investment purposes from an out-of-state retailer. The diamonds were sent to a trust company located in another state. The purchaser had ownership, dominion, or control over the diamonds. The diamonds were held by the trust company for a period of over 90 days before being shipped to the California purchaser.

Since the property was used/stored outside the state for more than ninety days, use tax does not apply. 12/24/87.

325.0198 Vessel Purchased Out of State. A taxpayer is purchasing a yacht from a manufacturer in the State of Florida. The taxpayer will pay for the yacht in Florida, and the seller will deliver the yacht to the taxpayer in Florida. After the purchase, the taxpayer may use the yacht in Florida for a short period of time, possibly as little as 14–21 days. The taxpayer will then have the vessel broken down in Florida and shipped by a licensed carrier to California. Upon arrival in California, a third party will, for a fee paid by the taxpayer, reassemble the yacht. Upon that reassembly, the taxpayer will have the yacht placed into the ocean at San Diego, California, and the yacht will then be voyaged to Mexico for a minimum of four to five months of continuous usage in Mexican territorial waters.

Since the yacht enters California within 90 days of purchase, it is presumed to have been purchased for use in California. [See note below.] Tax applies unless the taxpayer overcomes that presumption. The presumption can be overcome by showing that the vessel will be used outside of California one-half or more of the time during the six-month period immediately following its entry into California. Assuming that the yacht will be in California no more than one month prior to departing California waters for Mexico, the yacht will be used outside California for at least four months during the six months immediately following its entry into California. As such, the taxpayer will overcome the presumption that he purchased the yacht for use in California and use tax will not apply.

On the other hand, if the taxpayer does not use the yacht in Florida and the vessel is first functionally used in California, the yacht would be considered to have been purchased for use in California and will be subject to use tax measured by the sales price of the yacht. 10/21/96. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0210 Warranty Repairs on Aircraft—90-Day Rule. When an aircraft's first functional use occurs outside of this state and the aircraft is subsequently brought into California within 90 days after delivery solely for the purpose of having warranty repairs at an authorized factory service center, the aircraft shall not be deemed to be acquired for storage, use, or other consumption in this state under certain conditions set forth in Regulation 1620(b)(5)(B)2. 6/7/91. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0220 Yacht Moved to California for Repairs. Taxpayer purchased a yacht in South Carolina on October 28, 1994, with the intent to travel outside U.S. waters. The vessel was stored in South Carolina until it was determined that a refit was necessary to make the boat seaworthy and safe for extended sea voyages. The vessel moved to Long Beach, California for the major refit because it was in proximity to Arizona where the owner resides. The vessel arrived in California on February 7, 1995—102 days after the

purchase of the vessel. On February 13, 1995, the vessel suffered \$45,000 in fire damage when the boat next to it burned to the waterline. The refit could not be performed and the vessel could not leave U.S. waters.

The taxpayer is required to establish that the vessel was used outside California for more than 90 days prior to its entry into California, **exclusive of time of shipment and time of storage** for shipment to California. [See note below.] If the vessel was not used outside California more than 90 days prior to its entry into this state, the taxpayer will be presumed to have purchased the vessel for use in this state and will owe use tax, unless the taxpayer can establish that the vessel was used or stored for one-half or more of the time during the six-month period immediately following its entry into this state (which was February 7, 1995). [See Regulation 1620 (b)(3).] In this case, the vessel was outside the state for ninety days, but there is no evidence of functional use. Lacking such evidence, it will be regarded as purchased for use in California since it was located here for one-half or more of the time during the six-month period following its entry into California. The fact that the vessel was here longer than anticipated because of the fire is not relevant in determining whether the vessel was purchased for use in California. 7/2/96. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

(b) IMPORTS

325.0232 Ad Valorem Tariffs. An ad valorem tariff is imposed by the U.S. government on certain wood products including shakes and shingles imported from Canada. The identity of the person legally responsible for paying the tariff under federal law is the critical factor in determining whether sales or use tax applies to the amount of the tariff. The consignee of the imported wood products is the person legally responsible for payment of the tariff and the consignee is the importer of the record of the imported wood products for purposes of the tariff laws. Thus, the consignee is legally responsible for payment of the tariff to the United States. Therefore, if the seller is the consignee (importer) and passes the amount of the tariff on to the customer, it is a part of the sale price, and the amount of the tariff must be included in the taxable measure. On the other hand, if the customer is the consignee (importer), the tariff is not part of the taxable sale price.

Additionally, if a broker is involved in the transaction, the rules discussed above continue to apply. If the broker is the consignee under federal law, the taxable result would depend on whose behalf the broker acts as agent. If the broker is the seller's agent, the amount of the tariff is subject to tax. If the broker is the customer's agent, the amount of the tariff is not subject to tax. 4/8/87.

(c) SHIPMENTS FROM CALIFORNIA TO POINTS OUTSIDE STATE

(1) GENERALLY

325.0236 Imported Property Installed and Used in a Foreign Trade Zone. Shipping containers equipped with refrigeration units were purchased in Japan by a California corporation. Because of anticipated difference in the voltage systems in various places of use, it was decided to equip each container with a transformer, which the corporation purchased in Belgium. The containers, without transformers, were first used to transport property from Japan to San Francisco. The transformers were shipped to the Foreign Trade Zone in San Francisco and they were delivered under supervision of U.S. Customs to the pier at which the containers were located. They were installed on the containers at that time. The containers were then loaded with cargo and were shipped to a foreign destination.

The transformers ceased to be an import at the time that they were unpacked for attachment to the shipping containers. The attachment is purely a local activity to which use tax applies. Further, section 6009.1 of the Revenue and Taxation Code does not apply because the transformers were used in a revenue producing operation in this state. 12/17/75.

325.0250 **Annual Reports.** An organization prints 14,000 annual reports in California, shipping from within this state 10,000 reports to New York and 4,000 reports to California. Assuming the 10,000 shipped to New York would be used out of California and were shipped in accordance with Regulation 1620, the sale of these reports would be exempt from the sales tax. The sales tax applies to the sale of the 4,000 reports shipped to the customer in California.

In a second situation, the organization has annual reports printed outside California and also shipped from the out-of-state point. As a retailer engaged in business in this state, the organization is required to collect the use tax from the purchaser and report and pay it to this Board. Accordingly, the organization is required to collect and report and pay use tax on the sales price of the 4,000 annual reports shipped to the purchaser in this state. 3/8/93.

325.0255 **Artwork Shipped Outside the State.** An artist sells and leases her artwork to persons who reproduce it on prints, posters and jigsaw puzzles. Typically, a copy of the original artwork in the form of a photograph or transparency is furnished to the buyer. The buyers are all located outside California. The artist is required to ship the photographs or transparencies to the buyer at the buyer's out-of-state location.

While the sale of the artwork would be taxable if delivery were made to the buyer in California, these sales are exempt sales in interstate or foreign commerce. 2/24/94.

[325.0257](#) **“As Is, Where Is” Sales.** “As is, where is” sales are not exempt sales in interstate commerce even if a common carrier is used to transport the property out of the state. Regulation 1620 requires the shipment be “pursuant to the contract of sale.” The phrase “as is, where is” implies no such contract. Additionally, the evidence presented indicates that the particulars as to who is to ship the property is negotiated after the sale. 8/29/75.

325.0259 **Auction Sales of Horses Ultimately Shipped Outside this State.** An auctioneer sends notices to prospective out-of-state purchasers regarding sales tax regulations together with a notice of intention to bid form to be completed by prospective purchasers of animals to be shipped in interstate commerce. The notice requires the bidder to “. . . register his intention to bid prior to sale by completing the notice of intent to bid form. If it is desired that any horse purchased be shipped in interstate commerce such instructions must be given in writing before the sale starts. Only in this way may the transportation be made pursuant to the contract of sale.” There appears to be little question that there is at least an attempt to handle the sales in such a way that they would be nontaxable as interstate sales.

It has been concluded that if the prospective out-of-state purchaser complied with the conditions of the “notice,” the purchaser's submission of the written notice of intention to bid to the auctioneer/seller (fully filled out and prior to the auction/sale) is regarded as a “pre-existing agreement” between the auctioneer and the bidder which required the auctioneer to deliver the horse to a point outside the state. Since the pre-existing agreement was intended to be a term or condition of the entire contract of sale, it would appear that the auctioneer/seller was contractually obligated to provide for delivery of the horse to a point outside this state pursuant to the contract of sale. Since the customer has made a reasonable attempt to comply with the conditions of ruling 55(A)(1)(c), (Regulation 1620), these sales should be considered exempt from sales tax. 5/20/66.

325.0259.250 **Auctioneer Sales.** An auctioneer sells horses to an out-of-state buyer. Prior to purchase, the buyer furnishes the auctioneer with a document requiring that any horses purchased be shipped out of state. The bill of lading shows the buyer as the consignor and the carrier is paid by the buyer. Tax does not apply because the auctioneer is required to ship the horses out of the state as a condition of the transaction. 5/20/66; 5/24/66.

[325.0260](#) **Aviation Gasoline** delivered in state, tax applies to sale of, even though not all is consumed in state. 6/7/50.

[325.0280](#) **Bill of Lading.** The conditions specified for exemption do not include the requirement that the bill of lading show the vendor rather than the purchaser as the consignor. Even though the purchaser is

shown as consignor, we will not regard the tax as applicable provided it can be established that the vendor, pursuant to the contract of sale, delivered the goods to a carrier for shipment to a point outside this state and the goods were so delivered and shipped. However, if the goods come into possession and control of the purchaser in this state rather than being delivered to the carrier by the seller, we would regard the tax as being applicable. 8/20/51.

[325.0292](#) **California Base Plate with Prorate License.** In California, a vehicle (or trailer) used in interstate transportation may be “base titled” in California if a prorated license and registration fee is paid to those states where the vehicle is operated and those other states maintain Uniform Vehicle Registration Proration and Reciprocity agreements with California. Thus, where an interstate vehicle is base titled in California, copies of a California base plate with a prorate license (along with a complete section 6388.5 affidavit signed by the purchaser) will be accepted as part of the proof necessary to establish the exemption from sales tax set forth in section 6388.5 situations. This means that if the retailer of the trailer (unladen weight in excess of 6,000 pounds) takes, in good faith, from its customer a timely, completed, and signed section 6388.5 affidavit with written evidence of a California base plate with prorate licenses, sales tax does not apply on the retailer’s sales of the trailer to the customer. 6/14/95.

[325.0300](#) **Cargo Carried.** The sale of a truck to an out-of-state purchaser is taxable if it carries a cargo from a point in this state to the out-of-state destination, although driven by an employee of the retailer. 9/8/50.

[325.0320](#) **Carrier.** The word “carrier” as used in the regulation is defined as a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. 3/30/54.

[325.0330](#) **Carrier.** The delivery of a yacht from a point in California to a buyer located in the state of Oregon by a skipper who was licensed by the Coast Guard constituted a tax-exempt transaction because the skipper was within the code definition of a “contract carrier” making a delivery to a point outside this state. 6/17/77.

[325.0331](#) **Carrier.** A person may be regularly engaged in business as a carrier even though he does so illegally by not being registered with the Interstate Commerce Commission or any other governing agency. 6/28/83.

[325.0340](#) **Carrier.** A trucker operating by leasing the tractor but not the trailer of his truck from an out-of-state buyer and entering a loose employment relationship in order to avoid Interstate Commerce Commission regulations is not a carrier, and sales made to the out-of-state buyer with delivery by the trucker’s facilities are taxable as intrastate sales to an agent of the buyer. 9/3/64.

[325.0341](#) **CD-ROM Manufacture.** A taxpayer enters into contracts to produce CD-ROMs for customers. It does not manufacture the disks itself, but subcontracts with out-of-state manufacturers. Molds and silk screens are used in the manufacturing process but do not become a part of the finished product. The out-of-state manufacturer charges a separately stated “mastering fee” for the fabrication of molds and silk screens, but it retains title to them. In turn, the taxpayer generally charges its customer a separately stated “mastering fee.” However, in some cases, a customer may be quoted a lump-sum price for the “mastering fee” and disks.

The “mastering fee” whether separately stated or not is part of the charge for the taxpayer’s retail sale of the disks. It is immaterial that the molds or silk screens are stored or used outside the state.

The taxpayer also fabricates films from customer furnished artwork. The films are shipped to out-of-state vendors who use them in preparing silk screens and printing plates for disk manufacture and package printing. The customers retain ownership of the films, but generally do not take possession of them. If the taxpayer delivers the films to the customer in California, tax applies to the gross receipts. If the taxpayer ships the films out of state at the customer’s direction and the California customer certifies that the films will not be used in California, no tax is due. 4/10/95.

[325.0341.500](#) **Customer Survey Program.** A taxpayer contracts with a client who manufactures and sells products to gather data regarding customers' satisfaction of the products the client sells. The client provides the taxpayer with a computer disk of the names and addresses of its customers. The taxpayer creates a customer letter and address label, prints a customer survey card and envelope, and imprints a pen with the client's logo to be enclosed in the survey mailing (in order to motivate responses). The printing and assembly is all done in California. The taxpayer mails the survey cards, pen, and personalized letter to the client's customers all over the country via the U.S. Mail. Upon receiving the responses to the survey, the taxpayer analyzes the data and provides a written report to the client summarizing this information.

Two invoices are sent to the client for this transaction. The first invoice is generated upon the mailing of the survey form, etc., and it includes charges for material and printing cost (plus a small mark up) and for out-going postage. The second invoice is generated when the taxpayer submits its written report to the client and includes the charges for the balance of the contract amount.

Sales tax does not apply to the gross receipts from the sale of pens and printed materials which, pursuant to the contract of sale, the taxpayer ships to persons outside this state by U.S. Mail provided neither the client nor its agent obtains possession of the property inside this state. Tax does apply, however, to the gross receipts the taxpayer receives from its sales to the client of printed material and pens that are shipped to the client's customers inside this state. Tax does not apply to the taxpayer's charges for postage for shipping the pens and printed material provided its charges for transportation are separately set forth in its contract of sale to the client and the amount deducted represents only the amount for shipment (and not "handling") of the property.

The transfer of the original unique report which is specifically collected, created, compiled, and customized for this specific client on a custom basis is incidental to the providing of a nontaxable service. The taxpayer is the consumer of any such property transferred. The taxpayer is the retailer, however, of any additional copies of the report transferred to the client. 4/10/96.

[325.0342](#) **Space Flight Properties.** The sale of a satellite while it is in orbit to the entity for whom it was built is not subject to sales tax since the sale does not occur in California. The purchase of the component parts of the satellite are not subject to use tax since the removal of the satellite from the state by the launch vehicle is not a use of the satellite. The purchase of the component parts of the launch vehicle is subject to either sales or use tax as the functional use of the vehicle begins at the time it is placed on the launch pad or the time the satellite is connected to it. Even if the functional use was deemed to commence at the time of blast-off, the nature of the use in California is sufficient to offset the short period of use in this state. 4/9/93.

[325.0345](#) **Supporting Documentation Needed by Contract Carrier.** With respect to operations involving the transportation by boat of property purchased by oil companies from points in California to oil drilling locations in waters outside of California, the following persons qualify as "carriers" within the meaning of section 6396 of the Revenue and Taxation Code: (1) independent boat operators, other than drilling contractors, who contract with the oil company, either directly or through a drilling contractor, to transport the property regularly for compensation and (2) boat operators who are also drilling contractors, who contract with the oil company to transport the property regularly for compensation, even though the contract may be for a lump sum, including compensation for transportation and drilling, where 15-20 percent of the total compensation is allocable to the transportation.

The following documentation is acceptable in support of the exemption under section 6396:

(1) A blanket or individual purchase order given the vendor solely covering sales with delivery to Outer Continental Shelf locations wherein a statement is made substantially as follows:

All property purchased under this order shall be shipped by carrier to those specific locations situated in the Outer Continental Shelf beyond the territorial waters of the State of California as designated to the vendor by the purchaser. Should any property purchased hereunder not be so shipped to a location outside the State of California in the exempt manner prescribed under section 6396 of the Revenue and Taxation Code,

purchaser agrees to pay any applicable state and local sales or use taxes that might be imposed with respect to the purchase of such property.

(2) The vendor issues an invoice which makes reference to the blanket purchase order and indicates thereon the point at which the goods are to be delivered by the vendor and the drilling site to which the property is to be taken by the carrier.

(3) The vendor obtains a receipt, or a receipted invoice, from the carrier to whom the property is delivered. The receipt is to be retained by the vendor. 9/21/71.

325.0380 Display Material. Display material purchased from a California vendor and delivered to the purchaser in California for inclusion in out-of-state shipments by him are not exempt sales in interstate commerce since the exemption is only available if the delivery of the goods is to a carrier for shipment outside the state. Thus, the sale of the display material is subject to tax even though it is subsequently shipped to a point outside this state. 9/23/69.

325.0400 Dealers in Other States—Resales. Sales in interstate commerce to out-of-state dealers need not be supported by resale certificates if properly supported by bills of lading. 1/27/50.

325.0410 Delivery of Boat Outside California. The seller of a pleasure boat agrees to have a broker deliver the boat to the purchaser outside the California waters with the purchaser aboard the boat during its trip out of state. There is no agreement to pass title before delivery and title in fact does not transfer to the purchaser before physical delivery of the boat out of state, such as would be the case if there were, e.g., a close of escrow in which the bill of sale were delivered to the purchaser before the delivery of the boat.

Even if the broker represented the seller in negotiating the sale of the boat, if the purchaser is the party who arranges with the broker to deliver the boat, the broker would be acting as the purchaser's agent or representative in taking the boat from California to a point outside of California. Accordingly, the seller's delivery of the boat in California to the broker as the purchaser's representative would be subject to tax.

If the seller hires the broker to deliver the boat and, as the seller's agent, the broker had possession and control of the boat in taking the vessel outside of California, and only gave possession or control of the boat to the purchaser outside of California, the vessel would be regarded as delivered to the purchaser outside California. This is true even if the purchaser was on board the boat on the trip from California to the out-of-state point, as long as the purchaser does nothing that could be construed as controlling the boat, e.g., steering the vessel or acting in any way other than as a mere passenger with no possession or control. 11/19/99. (2000-3).

325.0425 Delivery of Property in State for Out-of-State Use. A firm purchases component parts for its manufacturing equipment from a foreign manufacturer's sales office in California. The California sales office accepts the order, arranges for delivery from the foreign plant, and handles processing through customs. Title passes to the purchaser at the sales office in California. Pursuant to the purchaser's instructions, the sales office ships the property to a third party in California to incorporate into other equipment. The third party then ships the equipment to the purchaser's location outside of California for use by the purchaser outside California. Under these facts, where the sale of the property is made through the foreign manufacturer's California sales office and title passes (and thus the sale occurs) in California, the applicable tax, if any, is sales tax. Since the section 6009.1 exclusion applies only to use tax, it does not apply here. The manufacturer owes sales tax on his sales.

If title to the property passes to the firm outside California, the sales tax would not apply; rather any applicable tax would be the use tax. If the storage or use of the parts in California is for the purpose of incorporating them into equipment that will be transported outside this state for use solely outside this state, such storage or use comes within the section 6009.1 exclusion and the purchaser would not owe use tax on such storage or use. 06/19/96.

325.0428 Documentation Supporting Out-of-State Delivery of Vessel. When the delivery of a vessel and transfer of title is made at a point outside of California territorial waters by a California boat dealer to a California resident, the following documentation should be retained to substantiate the out-of-state delivery and that the vessel was not purchased for use in California:

(1) The seller should prepare a bill of sale which states the terms of delivery of the vessel and transfer of title and which is signed by both the person making the delivery and the purchaser. The purchaser should sign the bill of sale at the time at which transfer takes place and note on the document the date and place of transfer.

(2) The seller should obtain and retain copies of the ship's log showing the trip.

(3) The seller should obtain and retain a statement signed under penalty of perjury by the purchaser stating that the vessel is not being purchased for use in California and that if the vessel enters California within 90 days of purchase (excluding time of shipment and storage for shipment), it will be used outside of California for more than one-half of the six-month period immediately following its entry into this state. [See note below.]

(4) The purchaser should keep adequate records to document the location of principal use of the vessel for the six months immediately following its entry into California after purchase, e.g., complete ship's logs of date and periods that vessel is in and out of California, receipts of payment for berthing, and any other receipts or documents supporting out-of-state use and location of vessel. 6/23/97. (Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0430 Donations. A person who donates property is the consumer of that property for purposes of the application of sales and use tax. Consumption occurs when title passes from the donor to the donee. Thus, if a donor transfers property to a carrier in California or places it in the mail in California, the donor has made a use of the property in California and he/she is liable for use tax if he/she had purchased the property extax under resale certificate or outside California. The destination of the property, whether in California or outside California has no significance. If delivered in California there is no exception on account of a subsequent shipment of property outside California. Conversely, if the property was shipped by common carrier from outside California or placed in the mail outside California, the donor is regarded as having consumed the property outside California. No tax is due from donees receiving and using the property in California since the donees did not purchase the property. 1/8/92.

325.0440 Drilling Platform Beyond State Boundaries. Sale of fuel, lubricating oils and greases, delivered to offshore drilling platform outside the boundaries of state by means of ship chartered by seller is exempt from sales tax as the property is delivered to the purchaser at a point outside the state by facilities operated by the seller. 9/1/64.

325.0450 Electrical Components Added before Shipment. A taxpayer fabricated a custom metal exhibit for an out-of-state customer, which was to be shipped directly to the customer outside the state when completed. However, the customer later requested that the taxpayer ship the unit to an electrical company in California for the purpose of adding electrical components to the unit. The electrical company then shipped the unit out of state.

Since the unit was delivered in California per customer's instructions, the sale took place in California and was subject to sales tax. 11/15/90.

325.0460 Express Office. Where, pursuant to contract, seller delivers property to an air express office consigned to an out-of-state destination, the requirements of the regulation are met and the sales tax does

not apply. If, on the other hand, the seller delivers such property to an employee of the buyer in this state and the latter delivers the property to the express office, there is a delivery in this state and the tax applies. 8/30/56.

[325.0480](#) **F.O.B. Sales.** A sale by a California retailer is exempt whether the f.o.b. point is within or without this state if the contract provides for out-of-state shipment, the goods are so shipped, and the retailer delivers the goods to the carrier. 12/18/52.

[325.0485](#) **Gifts.** A California retailer sells gifts by mail order. Gifts are shipped directly to the recipients by the retailer's suppliers who are located both inside and outside California. Customers and recipients are also located both inside and outside California. Tax applies as follows:

<i>Customer Location</i>	<i>Recipient Location</i>	<i>Supplier Location</i>	<i>Applicable Tax</i>	<i>Explanation</i>
California	California	California	Sales Tax	Retail sale in California
California	Out of State	California	None	Sale in interstate commerce
California	California	Out of State	None	(1)
California	Out of State	Out of State	None	Property never comes into this state
Out of State	California	California	Sales Tax	Retail sale in California
Out of State	Out of State	California	None	Sale in interstate commerce
Out of State	California	Out of State	None	(1)
Out of State	Out of State	Out of State	None	Property never comes into this state

(1) Title to property would pass outside California when the supplier delivers the item to the shipper. Therefore, no sales tax would apply because the sale would not take place in California. Use tax would not apply because the purchaser would not be consuming the item in California.

The retailer is liable for sales tax if the tax applies to a particular transaction. 7/7/87.

[325.0490](#) **Helicopter Repair.** A helicopter company that repairs helicopters, some of which are owned by out-of-state customers, raised the following questions:

In one transaction, the company contracts with a pilot, whereby the pilot agrees to fly a specified route and deliver the aircraft to the owner outside the State of California. The pilot is neither the owner of the aircraft nor an employee of the company and also is not an employee of the aircraft owner. If the contract required delivery out-of-state in this manner, the sale would be an exempt sale in interstate commerce.

In the second type of transaction, the pilot is furnished by the aircraft owner, as permitted by the terms of the contract, and is paid by that owner. The fact that the contract provides that the pilot "shall remain under the direction and control of the company at all times until aircraft leaves California" does not make the delivery a "delivery by the facilities of the seller." Since the pilot is hired by the aircraft owner, the delivery is not by facilities of the company. This sale would not be an exempt sale in interstate commerce. 8/14/92.

[325.0493](#) **Imported Cargo Containers.** Importation in and of itself is not a use in interstate or foreign commerce. Therefore, new empty cargo containers were not in foreign commerce use when they were en

route to California. They were “used” in California when they were readied and stored in stand-by awaiting cargo for an outbound trip and thereby are subject to use tax. 8/10/71.

325.0495 Interstate Commerce. An out-of-state consumer contracts with a California fabricator to design and construct a trade show booth. The fabricator refers the consumer to another firm to make the components of the booth, and then deliver the components to the fabricator for assembly. After assembly, the modules are shipped out of California. The charges for the work performed by the firm making the components are subject to California sales tax. The contract between the consumer and the firm did not require interstate shipment, and in fact that company did not ship anything out of state, but rather delivered it to the California fabricator of the trade show booth. The California fabricator does not qualify as a “forwarding agent.” 1/16/91.

325.0520 Mailing Services. Where a mail-order house places an order with a local printer for the printing of advertising booklets and delivery thereof is made to a mailing concern as the agent of the mail-order house, delivery is effected in California and printer’s charges are subject to sales tax, irrespective of the fact that the mailing concern will subsequently mail some of such booklets out-of-state. 10/30/56.

325.0560 Mistake. The sales tax applies to sales of goods erroneously shipped by the seller to the customer’s in-state location even though an employee of the customer who accepted delivery reshipped the goods to the customer’s out-of-state location. The fact that a mistake was made is not legally sufficient to excuse payment of the sales tax on a transaction actually handled in such a manner as to be taxable under the law. 4/9/59.

325.0570 Negative Retouching. Charges for retouching new photographs constitutes taxable fabrication labor.

If the retouched negatives are merely shipped to an out-of-state location prior to making any use of them in this state, on behalf of the purchaser, the sale is exempt from sales tax pursuant to section 6396.

However, if the customer’s retouched negatives are used in this state to make prints, the sale of retouching is a retail sale in this state and subject to sales tax. 8/27/93.

325.0570.280 Out-of-State Delivery to California Resident. When property is delivered out of state to a person who is not known by the retailer to be a California resident, the seller is not required to collect use tax. 4/30/87.

325.0570.300 Ownership and Possession Transferred Outside California. A yacht berthed in California is to be purchased by an out-of-state corporation. The purchase, which is to be documented by the United States Coast Guard, will take place outside the offshore limits of California. The yacht will return to California for the purpose of refit, provisioning and sea trials to ensure its sea worthiness and safety for long range cruising. The period of time the yacht is in California will not exceed 90 days. [See note below.] Thereafter, the yacht will be involved in extensive world cruising for several years. There will be no plans to return to California.

If ownership of the yacht transfers outside the territorial limits of the state of California, neither sales tax nor use tax will apply to the purchase of the yacht based on the above facts. For sales and use tax purposes, a sale occurs at the place the property is located at the time ownership (title transfers) occurs. The parties to the agreement should retain written documentation that the sale (1) occurred outside this state, (2) the yacht was first functionally used outside this state, and (3) it was outside California one half or more the time during the first six months following its entry into California. 1/3/96. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

[325.0570.600](#) **Proof of Exemption.** A taxpayer who fails to obtain a bill of lading to support a claimed exemption for a sale in interstate or foreign commerce may establish that the exemption applies through the use of other documentation. However, the taxpayer bears the burden of proof by establishing to the satisfaction of the Board the facts that support the claim for exemption.

The setting forth of a series of assertions of facts together with a statement that unless the taxpayer hears otherwise from the Board, it will then assume the Board agrees with the assertions is not an acceptable method of meeting the burden of proof. 11/16/93.

[325.0571.850](#) **Sales by Auctioneers.** At the time of sale, the auctioneer did not have proof of a condition or requirement to ship or deliver the property to an out-of-state location. In instances where the auctioneer has a bill of lading showing the property was shipped from the auction site, or other place where the auctioneer had control of the property, directly to an out-of-state point by common contract carrier, the documents (bill of lading) confirming the out-of-state shipment will be accepted as evidence of meeting the “pursuant to the contract of sale” requirement of Regulation 1620(a)(3)(B). 6/8/88; 5/20/96.

[325.0571.870](#) **Sale of Computer Tapes Shipped to Oregon.** A company sells computer tapes and delivers the tapes to a California resident in Oregon. The buyer has the tapes duplicated and returns the duplicates to California for use here. The originals stay in Oregon and ultimately will be destroyed. No tax applies to the sale of the tapes. Use tax applies to the cost of blank tapes and the duplication charge on the tapes returned to California. 7/16/93.

325.0572 **Sale of Satellite.** A satellite builder agrees to build and launch a satellite and check out the functional capability on each satellite prior to passing title to the satellite. The builder subcontracts the launching to a firm who agrees to pay for the satellite if it does not achieve the prescribed orbit.

Assuming that the launching firm would take title to any satellite that fails to achieve the proper orbit, the sale by the builder is an exempt sale since it does not occur in California, regardless of the satellite’s location in orbit at the time title passes. Title passes while the satellite is in orbit to either the original customer or the launching firm. 11/7/91.

[325.0574](#) **Section 6247 Statement Not Taken in a Timely Manner.** A section 6247 statement that is not taken timely does not automatically overcome the section 6247 presumption that the retailer sold the property for use in California. A retailer who does not take a section 6247 statement at the time of sale is responsible to collect the use tax. Once the time for the retailer to have collected the use tax has passed, the section 6247 statement can no longer be considered timely and will not protect the retailer from its debt for having failed to collect and remit use tax, unless the Board concludes that the claim that the property was not purchased for use in California is accurate. That is, such a late statement is equivalent to an XYZ letter trying to establish a sale was for resale. 9/12/97. (M98–3).

[325.0575](#) **Shipments of Warehoused Merchandise.** Taxpayer has offices in Sonoma and Contra Costa Counties. A customer located in Santa Clara County sends a purchase order for products which contain its logo to the taxpayer. Taxpayer bills the customer and holds the goods in its Sonoma County warehouse. At customer’s direction, taxpayer sends the products to customer’s offices located throughout the world. Once a month the customer is billed for fulfillment and shipping costs. The products shipped are intended as gifts to new employees.

Assuming that title passed to customer upon delivery to the taxpayer’s Sonoma County warehouse, sales tax would apply to the products purchased unless the contract specifically required the property to be shipped outside California. Since shipments are made based on future instructions, it appears that the contract does not require shipment outside of California or to any other county. Consequently, the tax rate in Sonoma County (including the $\frac{1}{4}$ percent district tax) is the applicable rate since subsequent shipments are not made pursuant to the contract of sale. However, shipments to other counties are also subject to the destination county’s district tax (if any). Since taxpayer ships the property to the customer in the destination county, and the customer makes the gift in that county, the use occurs in the destination county.

Taxpayer is required to collect the district tax in any district in which it is engaged in business (e.g., sales persons operating in the destination county such as in its Contra Costa County office would be required to collect the BART District Tax and two Contra Costa transit authority taxes). Credit for the Sonoma County district tax is applicable against another district tax when the taxpayer is required to collect. Also, the purchaser is entitled to a credit against and district use tax, not required to be collected by the seller, for the district sales tax reimbursement paid to the seller. (See Regulation 1823.) 1/13/93.

[325.0578](#) **Testing by Purchaser with Title Passage.** The temporary transfer of a mold to the purchaser or to an extruder hired by the purchaser for testing purposes in itself does not necessarily disqualify the transaction from qualifying as an interstate sale or an export sale. Neither is the passage of title to the purchaser in this state fatal to the exemptions.

When the mold maker (seller) delivers the mold to an export packer tax does not apply.

When the extruder delivers the mold to an export packer, tax applies because the delivery is to the purchaser's representative (extruder) in this state, notwithstanding that the purchaser's representative subsequently delivers it to an export packer for delivery.

When the mold is returned by the extruder to the mold maker and then it is shipped by the mold maker pursuant to the contract of sale in interstate commerce, tax does not apply.

If the extruder delivers it to the carrier for interstate shipment or it is shipped interstate by the mold maker, but not pursuant to the contract of sale, tax applies. In the case of shipment by the extruder, the goods would have been delivered to the purchaser's representative in this state. In the case of shipment by the mold maker but not pursuant to the contract of sale the initial delivery to the extruder was delivery to the purchaser's representative in this state and, thus, taxable notwithstanding the subsequent shipment outside the state. 8/15/77.

[325.0580](#) **Title Agreements.** An out-of-state manufacturer purchased tooling from a California retailer pursuant to a purchase order which provided that the purchaser would take delivery from the retailer in California and would transport the tooling out-of-state, with title to pass to the purchaser after final acceptance at the out-of-state manufacturing plant.

Since the tooling was delivered by the seller to the purchaser in this state, the sale was made in this state and was subject to sales tax. The agreement that title was to pass subsequent to in-state delivery at a point outside this state was limited in effect to a reservation by the seller of a security interest in the goods sold and did not have the effect of rendering the transaction a sale at the out-of-state destination. 9/6/66.

[325.0597](#) **Use in Interstate Commerce.** Sales and Use Tax Law sections 6368, 6368.1, and 6368.5 create exemptions for watercraft and rail freight cars when they are for use in interstate or foreign commerce, even if the use is entirely within this state in connection with interstate or foreign commerce activities. This exemption does not extend to other modes of transportation entering California in interstate or foreign commerce and then operating entirely between termini in this state, even though the transportation is in connection with interstate or foreign commerce. 3/11/81; 7/10/96.

[325.0600](#) **Use on Out-of-State Project.** The sale of tools and equipment delivered in California are subject to sales tax irrespective of the fact that the purchaser contemplates transporting such property out-of-state for use on a construction project in such state. 3/3/53.

[325.0602](#) **Vehicle Deliveries Outside California.** It is the responsibility of the dealer to demonstrate that a vehicle was delivered to the buyer at an out-of-state point. One method of demonstrating out-of-state delivery is to have both the buyer and the driver execute a certificate of out-of-state delivery before a Notary Public at the out-of-state location where the delivery occurs. The Notary's certification should indicate that both persons were present to sign the certificate. The certificate will normally be accepted not as the truth of the facts stated in the certificate but as documentation that both persons were actually present

at the location on the date of delivery. The driver should also obtain receipts for gasoline, hotel rooms and return transportation. 9/26/88.

325.0602.600 Vessel Delivered Outside California Waters. Taxpayer is purchasing a new vessel from a California manufacturer and seller (seller). The taxpayer has paid progress installments to the seller for work completed on the vessel. Under the terms of the contract of sale, the taxpayer will make final payment for the vessel after final inspection and delivery of the vessel at a point more than three nautical miles from California. The taxpayer will take a separate transport vessel to meet the vessel for final inspection and approval. After final inspection and approval, the taxpayer will give the final payment to the seller and the seller will give the taxpayer a bill of sale. Title to the vessel will pass from the seller to the taxpayer at that time.

After taxpayer obtains possession and control of the vessel, the taxpayer will pleasure sail the vessel for the day and return the vessel to a California harbor. The vessel will remain in this state for less than 90 days. While in California, it will be prepared for shipment via common carrier to Florida. In Florida, the vessel will be reassembled and sailed in international waters, and then to its final destination at a point in the Mediterranean Sea.

The first functional use of the vessel after its transfer to the taxpayer will occur outside of California when it is used for pleasure sailing. However, since the vessel will reenter California within 90 days of its completed delivery and purchase, it is presumed to have been purchased for use in California. [See note below.] If the purchaser establishes that the vessel is used or stored outside of California one-half or more of the time during the six-month period after it enters California, the vessel will not be considered purchased for use in California and its use will not be subject to use tax. 5/30/97. (Am. 2001-3; Am. 2006-1; Am. 2008-1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)

325.0603 Vessels Delivered Outside California Waters. Vessels which are delivered by the seller to the buyer at a point outside California waters are not subject to sales tax. The seller may be required to collect use tax if it knew or should have known that the buyer was a California resident, unless the seller takes a statement from the buyer that the buyer intends to use the vessel at a specific out-of-state point. 10/31/74.

325.0606 Proper Documentation Essential for Exemption. If a transaction is intended to be exempt in foreign commerce, it is necessary that the terms of the sales agreement be so constructed as to indicate the contemplation of a sale in foreign commerce. The failure to include any shipping or special instructions on the sales invoice for a TV set, even though a space is provided thereon for such instructions, creates the assumption that none were given at the time of sale. The fact that the TV was picked up at the retailer's place of business by a household goods carrier for inclusion with the buyer's other possessions being moved to Canada does not cure the defect in the documentation. The exemption for exports does not depend on the intent of the purchaser but depends upon whether at the time of the transaction the goods are within the stream of foreign commerce. 2/13/69.

325.0607 Qualifying as a "Carrier." Company A, an owner and operator of offshore oil drilling platforms located in waters outside California state boundaries, purchases goods for the platforms from California vendors who deliver the goods to a port in California. The goods are accepted by B, an independent contractor, under an agreement with A to perform the service of consolidating and loading the goods onto a ship. The ship is chartered by A from C, the owner of the ship, under a "bareboat" charter agreement. At the same time, A enters into an "operating agreement" with D, an "operator" who agrees to man, operate, victual, navigate and supply the vessel.

D, the operator, qualifies as a "carrier" under section 6396 and the requirements of that section are met when the goods are delivered by D to A's offshore facilities. The operating agreement is in essence a

subcharter agreement under which A bareboats the vessel to D, who in turn agrees to carry goods for A. 10/14/75.

325.0610 Satellite in Orbit. Sale of a satellite with title passing to the customer while the satellite is in earth orbit is not subject to the sales tax since the satellite while in orbit is outside the state's taxing jurisdiction. Furthermore, the seller's use of the satellite through its ground communication stations located in California will not be subject to use tax. Such use will occur while the satellite is in orbit and physically outside the state. 12/23/83.

325.0611 Printed Matter Mailed Out of State. An advertising agency which contracts to sell printed letters and mailers and directly mails them to out-of-state addresses is exempt from sales tax on such sales if the customer requires the agency to ship or mail them to the out-of-state addresses.

On the other hand, if an agency's agreement with the customer provides that the advertising agency is purchasing the printed matter as an agent for the customer, tax applies to the printer's charge since the printer would be making a retail sale of the printing in California. This is true whether or not the agency subsequently mailed the printed material out of state. 6/1/83.

(2) DELIVERY TO PURCHASER IN STATE

See also Exports, (5) below.

325.0612 Aircraft Engine Sold to a Foreign Air Carrier. A jet aircraft engine was sold to a foreign air carrier. The sales invoice provided the following information: the engine was shipped FOB to Redwood City, California by a drayage company, the engine was to be shipped by the purchasing air carrier to a European city on an air freight waybill, "payment due upon completion of test cell acceptance," and payment of \$625,000 was to be made by a bank to bank transfer (which was done at a later date).

The purchase order from the purchasing air carrier indicates FOB Redwood City for shipment by the purchaser to the European city and it states: "Engine unused and in same condition since previously received from the purchaser.

Acceptance of engine after inspection and test cell run in accordance to the PWA overhaul manual at the European city. In case test run negative, purchaser will pay for transportation cost back to owner. Payment terms: cash after successful inspection and test run."

Under the above circumstances, the sale of the engine occurred in Redwood City and not in the European city after the tests performed by the purchaser. For purposes of Sales and Use Tax Law, a sale is any transfer of title or possession, conditional or otherwise, for a consideration. The consideration the seller received for the transfer of possession was the purchaser's obligation to test the engine and pay the seller \$625,000 if the engine conformed to the contract.

The only condition to that transfer was that the purchaser pay the sales price or return the engine if it did not conform to the contract. Therefore, the seller sold the engine in Redwood City, when it transferred possession to the purchaser. The purchase order and sales invoice do not provide for passage of title, but even if they did, a retention of title by the seller would be limited in effect to security interest.

The contract in this situation is also not a "sale on approval." If a contract between a seller and a purchaser was a sale on approval, the sale might not be subject to the tax depending on where the sale is determined to have occurred. Commercial Code section 2336 specifically states that "if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is (a)" "sale on approval" if the goods are delivered primarily for use . . ." The contract in this situation does not permit the purchaser to return the engine regardless of its conformance to the contract. The sales invoice and the purchase order discloses a good faith duty by the purchaser to test the engine and pay the sales price if the engine conforms to the contract. This is not a sale on approval.

Since the sale in this situation occurred in California, it is subject to sales tax unless it conforms to the exemption provided by Regulation 1621. 1/26/87.

325.0613 **Auctioneer Sales.** An auctioneer sells horses to an out-of-state buyer. Prior to purchase, the buyer furnishes the auctioneer with a document requiring that any horses purchased be shipped out of state. The bill of lading shows the buyer as the consignor and the carrier is paid by the buyer. Tax does not apply because the auctioneer is required to ship the horses out of the state as a condition of the transaction and the animals are so shipped. 5/24/66; 5/29/96.

[325.0614](#) **Bus Leased Not a Common Carrier.** A lessor is engaged in the business of renting tax-paid film and lighting equipment including vans or busses to house and transport the equipment to film production locations. The equipment that houses and transports the filming and lighting equipment consist of greyhound-like busses described as mobile filming studios which contain technical equipment including a self-contained power source. The lessor always requires a trained driver-technician to operate the equipment every time the unit is leased. These driver-technicians are trained by the lessor but are not on the lessor's payroll for labor union reasons. Lessees must have a driver-technician trained by the lessor and may select anyone they wish, otherwise the lessor designates a driver. The drivers are paid by the lessees of the equipment as independent contractors. The lessor has no control over the driver or the equipment. Custody of everything on the bus is in the driver until the bus reaches its out-of-state destination.

In addition to leasing the bus and equipment, the lessor sells filming supplies which are purchased and consumed by the lessee-producers who lease the equipment. The supplies needed are estimated by the lessee-producers, placed on board the bus before it leaves the lessor's place of business, and transported to the out-of-state destination where filming is done. The supplies are used as needed during the filming operations and when the equipment is returned to the lessor, an accounting for the supplies is made and the lessee-producer is billed for everything not accounted for and returned.

The arguments that the supplies are consigned goods and that there is no sale until the supplies are withdrawn from the bus and consumed at the out-of-state destinations are not valid.

The above transaction does not involve a consignment because the sale of the supplies is not a sale for resale to the lessee-producer. The transaction is a retail sale to the lessee producer who is the consumer of the supplies. Also, a sale is not dependent on when or where the property is consumed physically.

The sales of filming supplies are not exempt from the sales tax under Regulation 1620(a)(3)(B) since none of the requirements are met. First, the bus is under lease to the lessee-producer, and the driver is being paid by the lessee-producer. Therefore, the lessor is not using his facilities or his employee to transport the property out of state. Second, the bus is not a common carrier. Also, the transaction is subject to sales tax under subsection (a)(3)(A) which states in part that "sales tax applies when the property is delivered to the purchaser or his representative in this State." 7/14/81.

[325.0616](#) **Common Carrier as "Carriers."** A common carrier is not a "carrier" of goods pursuant to Regulation 1620(a)(3)(B)(2) if at the time of shipment the common carrier owned the goods and, therefore, was not transporting personal property owned by other persons. Thus, if the common carrier does not qualify for the exemption provided by section 6385, it cannot claim an exemption under Regulation 1620(a)(3)(B)(2) for goods which are subsequently shipped out of state. 8/20/85.

[325.0617](#) **Contract Carrier.** A taxpayer sells property to a corporation, one division of which is an authorized contract carrier. The property sold is delivered in California to the contract carrier division of the buyer. The property is transported to Florida by the contract carrier division for use by another division.

The sale is not an exempt sale in interstate commerce because the property was delivered to the buyer in this state. Further, section 6385 of the Revenue and Taxation Code is inapplicable because it exempts only sales to common carriers. 5/4/90.

[325.0620](#) **Carrier Furnished by Purchaser.** None of the Court decisions are authority for the proposition that the sales tax does not apply where the goods are delivered to the purchaser in this state, even though the purchaser may subsequently transport the goods outside the state. The case of *Richfield Oil Company v. State Board of Equalization*, 329 U.S. 69, stands for the proposition that where the goods are delivered by

the vendor into an exporting carrier sent to this country for the express purpose of receiving the goods and carrying them abroad, title to the goods passing to the buyer upon delivery into the exporting carrier, the sale was exempt upon the grounds that at the same time title passed the goods became exports. 10/30/50.

[325.0640](#) **Carrier Furnished by Purchaser.** The tax does not apply where, pursuant to the purchase order, the goods or the shipping case in which they are packed for export, are marked showing the foreign destination, and the goods or cases are delivered to a carrier provided by the purchaser for the purpose of receiving the same for shipment abroad without further packaging or processing. 1/6/53.

[325.0660](#) **Carrier Furnished by Purchaser.** The sale of dredging equipment to a purchaser for use in operations in Japan, was a sale in foreign commerce, where the equipment was delivered to a barge owned by an agent of the purchaser and transported thereon to the purchaser's job site in Japan. 11/19/64.

[325.0662](#) **Carrier Furnished by Purchaser—Leased Rail Cars.** A California taxpayer is selling asphalt to a customer based in Utah. The customer has a valid seller's permit for Utah which is on file in the taxpayer's office. The purchaser does not have a customer base in California and intends to resell the asphalt in Utah. A letter to that effect is also on file in the taxpayer's office. The transportation of the asphalt was arranged by the Utah customer through the leasing of rail cars. The product is loaded into the rail cars leased by the customer at the refinery located in California. Ownership of the product becomes the customer's at that time.

The property is not delivered to a carrier hired by the purchaser but is instead delivered into rail cars leased by the purchaser, that is, the property is delivered to the purchaser. That delivery takes place in this state. Therefore, the sale does not qualify for the interstate commerce exemption under Regulation 1620.

However, if the purchaser intends to resell the asphalt, the California retailer may accept a valid resale certificate from a purchaser for property delivered in California which is purchased for resale out of state. The certificate must contain the elements required by Regulation 1668(b). If the purchaser does not have a California seller's permit number, the out-of-state permit number must be noted on the certificate. 7/21/95.

[325.0663](#) **Common Carrier Hired by Customer.** An auctioneer makes sales to customers who hire common carriers to transport the property sold to points outside California. The bill-of-lading shows the customer as both the shipper and the receiver. The common carrier picks up the property at the auctioneer's location and delivers it to the customer's out-of-state location. The customer does not take physical possession of the property in this state.

If the contract of sale requires the property to be shipped out of the state, and if the customer is not known by the auctioneer to be a California resident, the auctioneer is not liable for sales tax or for collecting use tax from the customer. 5/12/94.

[325.0664](#) **Carrier Hired by Purchaser.** An in-state retailer will ship merchandise from a location within California. The purchaser will choose the carrier, who will pick up the merchandise and deliver it to the purchaser's location in another state.

For purposes of this opinion, it is assumed that neither the purchaser nor its agent or representative will take possession or control of the merchandise in this state. It also is assumed the purchaser will hire a common carrier to take delivery of the merchandise in California, the purchaser is not a resident of California, and the merchandise is purchased for use outside California. The two requirements of the interstate exemption are: the contract of sale must require shipment outside of California, and the property must be shipped outside of California without the purchaser or its agent or representative taking possession or control of the property in California. When a common carrier transports the property outside California, either party can hire the carrier. Accordingly, if the transaction satisfies these conditions of the exemption, the sale would be exempt from sales tax. 11/2/95.

[325.0664.150](#) **Delivery to Foreign Purchaser in California.** An aircraft firm contracted with the United States to convert four piston aircraft to prop jet aircraft. The aircraft were delivered and allowed as an exempt sale to the United States.

One of the aircraft caught fire in Canada, but essential parts including the engine and props were salvaged. The Canadian government contracted directly with the aircraft firm to convert another piston aircraft into a prop jet aircraft using the salvaged parts. The converted plane was delivered to the Canadian government in California and flown to Canada.

The second contract is not an extension of the initial contract with the United States. The sale by the aircraft firm to the Canadian government is subject to tax. The fact that the parts furnished by the repairer were removed from the state does not make the transaction exempt as a sale in interstate or foreign commerce. The exemption for property sold for delivery to a ship or airplane for transportation out of the country does not extend to the removal of the very items sold when that removal is accomplished under the property's own power. 5/28/68.

[325.0664.200](#) **Delivery in State to Out-of-State Retailers.** An Oregon lumber wholesaler purchases lumber from a California mill, and sells it to an Arizona customer, FOB mill. The Arizona manufacturer has a common carrier pick up the lumber with title passing at the mill. The Arizona customer does not have a California seller's permit, and alleges it does not need one since it makes no retail sales in California.

Under these facts, the sale does not qualify as a sale in interstate commerce because there is no contractual requirement between the wholesaler and its customer that the property be shipped to a point out of state. This sale would qualify if the contract required that the lumber be shipped out of state by common carrier, even though the carrier was engaged by the customer.

With respect to the need for a seller's permit, the Arizona customer would need one if it makes any sales in California, even if none of them are at retail. However, if the customer is purchasing the lumber for resale at an out-of-state location, it may issue a valid resale certificate specifying that a permit is not required because no sales are made in California. If such a certificate can be taken in good faith by the seller/wholesaler, the sale is not subject to sales tax, even if the property was picked up at the mill by the customer. 3/15/89.

[325.0667](#) **Instate Delivery to Purchaser.** A printer located in California prints brochures for a customer who is also located in California. The customer notifies the printer that the customer will be shipping half of the brochures to Germany (the brochures are being printed in German). All of the brochures are delivered to the purchaser in California.

Sales tax applies when the property is delivered to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country. In this case, the brochures are delivered to the purchaser in California. The sale is complete at that time, before the entry of the brochures into the stream of export. Therefore, sales tax applies. 8/8/96.

[325.0670](#) **Lease of Trailer by Bank.** A California bank purchases a trailer chassis from a California manufacturer with delivery in California. The bank is acquiring title for purposes of security. The bank will immediately lease the chassis to a corporation which will sublease it to an affiliate. The chassis will have an unladen weight of 6,000 pounds or more, will be registered out of state, and will be used exclusively outside California or exclusively in interstate or foreign commerce, or both, and will be moved, loaded with cargo, from California to a point outside the state within 75 days after delivery by the manufacturer. The bank will provide affidavits pursuant to section 6388.5 to the manufacturer.

Based on the above circumstances, questions relating to the above transaction and its corresponding answer follows:

(1) Since the bank is making the purchase solely of security, will the exemption available under section 6388.5 apply to the purchase and immediate lease of the chassis by the bank?

The above lease by the bank is a lease of mobile transportation equipment and, accordingly, is not a sale. Either the sale of the equipment to the lessor or its use in this state may be subject to tax. In this situation, the exemption provided by section 6388.5 applies even though the sale is to a lessor and the mobile transportation equipment is delivered to and is thereafter used by the lessee.

The same result follows with use by the sublessee. Since it is the intention of the lessor to immediately sublease the chassis to an affiliate, the use in interstate or foreign commerce, or both, by the sublessee would be imputed to the lessee/sublessor which would in turn be imputed to the bank and the exemption of section 6388.5 would apply to the sale by the manufacturer.

(2) Will the exemption provided by section 6388.5 be applicable if the chassis carries a load on their initial movement out of California?

The chassis may carry a payload out of the state without loss of the exemption provided it is a payload in interstate or foreign commerce, or both.

(3) Can the chassis, if purchased within the exemption of section 6388.5 and used exclusively in interstate or foreign commerce, be assigned to a California depot?

The chassis may return to California and may be assigned to a California depot, without loss of exemption, provided, however, that the use of the chassis is exclusively the carriage of interstate or foreign commerce goods, or both. After leaving the state, the chassis may return to California, and even remain in California, as long as they are exclusively carrying interstate or foreign commerce goods, or both. However, if so much as one carton is for intrastate commerce, the exemption will be lost. 4/19/85.

[325.0677](#) **Mother Ship.** A “mother ship” of a cooperative association resupplies a fleet of fishing vessels belonging to its members. Fuel is purchased for the association’s ship and also to resell to the members. The association also transports supplies and ship stores which are purchased in the members’ names and are transported to a prearranged rendezvous area.

The fuel which the association resells to its members on the high seas may be purchased for resale. The fuel which is used by the mother ship is subject to tax. The exemption provided for in section 6385 is not available. The “mother ship” is not engaged in transporting persons or property in interstate or foreign commerce as required by section 6385(a). Also, the “mother ship” is not engaged in fishing operations which would entitle it to the exemption provided by section 6368.2. Its income is not from fishing operations but rather from transporting cargo and selling fuel.

The “mother ship” is a carrier for the purposes of Regulation 1620(a)(3)(B). Thus, the sales of ship stores and supplies to the members transported out of state pursuant to the contract of sale will be exempt. 7/23/85.

[325.0678](#) **Photographic Sales and Supplies.** A company is considering operating a photographic processing mini lab and film store on board cruise ships that pick up passengers at California ports. The company will purchase photographic supplies from California retailers to be delivered to a freight forwarder in California for subsequent loading onto the cruise ship. The company will take delivery (possession) of the supplies once they have been brought on board the ship. The company will have no offices or employees in California and the supplies purchased by the company will either be for resale or for its use in developing film and printing photographs on board the ship. All of the sales will be made in international waters to passengers on the cruise ship and the usage of the supplies by the company will also occur in international waters.

With regard to the company’s purchase of supplies which it intends to resell on board the cruise ship, the company can provide its California vendors with a resale certificate and purchase those items ex-tax. The

sale of those photographic supplies purchased by the company from California vendors for the company's own use are taxable since the company takes possession of the supplies when they are delivered to the company on board the ship in California. Property purchased in California under a resale certificate and subsequently used outside of California, which at the time of purchase was contemplated to be resold, is excluded from tax. However, if at the time of purchase, the purchaser knew that the property purchased for resale was not to be resold, the purchaser is liable for tax. 10/7/86; 7/11/88.

325.0679 Sales to Foreign Naval Vessels. Sales tax applies to sales to foreign naval vessels in California even though deliveries were made directly to the vessels, unless title passed within, and delivery was made out of a foreign trade zone, in which case neither sales nor use tax would apply. 2/15/74.

325.0680 Servicemen. There is no basis for exemption from sales tax of sales to servicemen to take delivery of an automobile in California but drive it from California on a driveaway permit and registers it in another state. When the vehicle is delivered to the purchaser in this state the sale is completed insofar as the sales tax is concerned. 5/23/57.

325.0685 Storage in California by Buyer. A corporation purchases children's clothing from California manufacturers. The clothing is shipped to the corporation's warehouse in California and is not being held for resale. The clothing is repackaged at the warehouse and shipped by the corporation to its out-of-state location. The clothing is not resold.

Because delivery is made to the buyer in California, the exemption for sales in interstate commerce does not apply. The sale is subject to tax. 8/4/94.

325.0690 Time of Sale. A horse was located in California on the date that a purchase and sale agreement was executed. Pursuant to the agreement title was to pass upon the purchaser receiving a warranty bill of sale, the JockeyClub registration certificate and confirmation that the interest being sold was free of liens. However, the right to possession and control of the horse passed to the buyer upon execution of the agreements.

The horse was removed from California six days after the agreement was signed and approximately two weeks later the two documents were delivered. The sale of the horse occurred in California because:

Possession and control passed in California as evidenced by the fact that the day following the agreement the horse raced under the purchaser's personal colors rather than the seller's personal colors.

Title, ownership and possession of the horse passed in California when the seller completed its performance with respect to physical delivery of the horse. The reservation of any title was a security interest. 7/23/92.

325.0696 Delivery of Fuel into Pipeline. An oil company made a sale of diesel fuel to a customer at its refinery for delivery into a pipeline. The terms of the sale were FOB at the pipeline receiving meter, with title and risk of loss passing to the purchaser at the meter, and volumes based on meter readings.

Because the oil company delivers the product into the pipeline, the meter ticket will show the oil company as the shipper. The term "shipper" means the supplier of the product, who may or may not be the owner of the product moving in the pipeline. The pipeline receiving ticket does not show the ultimate destination but does show to whom the batch belongs. The customer, purchaser, became the owner of the product when title passed at the pipeline receiving meter. Consequently, the customer (purchaser) was the actual shipper and the movement of the product in the pipeline was subject to its control. Accordingly, when a tender is made into a pipeline, one or more destinations are nominated. However, it is possible for the shipper (purchaser) to direct all or part of the volumes without the knowledge of the supplier (oil company).

Under this scenario, the sale is not exempt as a sale in interstate commerce. The contract between the oil company and the customer does not require that the fuel be shipped out of state. The contract merely provides for delivery of the fuel to a carrier or directly to the purchaser in this state. This does not satisfy

the requirements of the exemption that property be required by contract to be shipped out of state. Therefore, the oil company's sale to the customer is subject to tax. The transaction could be structured to satisfy the requirements of the exemption. First, the contract would have to require that the fuel be delivered to a carrier for shipment out of state. Second, the fuel must actually be shipped out of state. The oil company must retain documents to establish that fuel was delivered to the carrier and actually shipped out of state. 10/14/87.

(3) INSTALLATION IN STATE GENERALLY

[325.0698.200](#) **Delivery of Aircraft.** A firm engaged in the maintenance, modification, and servicing of aircraft entered into an agreement with a leasing company with no offices in California to modify an aircraft for the leasing company. The work was to be done in California but the firm was required to deliver the aircraft outside California and the leasing company certified that the aircraft modification was purchased for use outside California. The aircraft was to be delivered by December 20, 1979. Completion of the work was delayed and, on December 20, 1980, agents of the leasing company surreptitiously removed the aircraft from the firm's facilities and flew it to New York. After an arbitration decision issued May 6, 1982, the aircraft was returned by the leasing company to the firm in California on July 23, 1982. A final checkout and test flight was conducted on that date and the aircraft was delivered to the leasing company outside this state on the next day. The firm believes that the taking of the aircraft by the leasing company's agents did not constitute delivery by the firm because the transfer was not voluntary, that delivery actually took place on July 24, 1982, outside of California, and therefore, that the sale was a nontaxable sale in interstate commerce.

The concept of "delivery" comprises elements of participation, agreement, or voluntary action and could also include permissiveness if not action. The taking of the aircraft by the leasing company's agents involved none of these elements. Therefore, the company did not deliver the airplane to the leasing company in California on December 20, 1980, but did deliver the aircraft out of state on July 24, 1982. The sale qualifies as a nontaxable sale in interstate commerce. 8/22/83.

[325.0700](#) **Overhauled Aircraft Engines.** The sale and installation in California of overhauled aircraft engines in the following situations are not exempt:

- (a) Engine is sold to customer in Canada with installation in California.
- (b) Canadian customer purchases new aircraft (minus engines) in California and orders overhauled engines to be delivered to aircraft company for installation in California after which plane will be flown to Canada.
- (c) Out-of-state American customer has overhauled engine delivered to point in California for installation. Subsequently, plane is flown out-of-state. 4/30/57.

[325.0720](#) **Overhauled Aircraft Engines.** An out-of-state owner of an aircraft engine and mount assembly enters into contracts with a mount repairman and an engine overhauler for repair of both units. The engine, with mount, is sent by common carrier to the mount repairman in California, who removes the engine and repairs the mount. The engine overhauler obtains the engine from the mount repairman, overhauls the engine, and returns it to the mount repairman who remounts the engine and returns the completed assembly by common carrier to the out-of-state owner. Since the mount repairman takes delivery of the overhauled engine in California as representative of the owner, the parts used by the overhauler to repair the engine are regarded as having been sold and delivered in this state and sales tax applies as indicated in the regulation. 7/1/65.

[325.0760](#) **Replacement Part Installation.** The sale to out-of-state customers of replacement parts which are attached to repaired cameras is exempt from sales tax. Although title to the replacement parts may pass when installed in the camera, under the theory of accession, the transaction comes within the terms of the regulation. The exempt status of the replacement parts depends on the fact that delivery to the customer is made out-of-state, pursuant to the terms of the repair contract. 7/16/57.

[325.0780](#) **Repair or Modification.** Sales of repair parts or materials used in repairing of engines, modification of aircraft, etc., are exempt interstate sales where the contract requires the party doing the repair or modification work to ship the repaired articles or modified aircraft to which the repair parts and materials are attached, to a point outside this state by its own facilities or by a carrier. It is immaterial that the repair parts or materials used in modification may be installed upon or attached to engines, aircraft or other property in this state belonging to the customer prior to the time the repaired or modified items are actually shipped or delivered to a carrier for shipment. 4/23/58.

[325.0782](#) **Sale of Slide-In Camper to Foreign Purchaser.** A Canadian purchased a slide-in camper from a retailer in this state which was installed on the purchaser's truck. The purchaser then returned with the camper to Canada.

There are two notable exemptions from tax for sales of property to persons for use outside this state:

Section 6396 provides an exemption from sales tax from sale of tangible personal property when the contract of sales requires the retailer to ship the property to a point outside this state, and the retailer does ship the property to the out-of-state point by the retailer's facilities or by delivery to a carrier for that shipment. Since the retailer of the camper did not ship the property to an out-of-state point, the exemption does not apply to this sale.

Section 6366.2 provides for an exemption from tax for the sale and use of a new motor vehicle sold to a purchaser who is a resident of a foreign country and who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the United States if the following conditions are met. First, the purchaser must obtain an in-transit permit pursuant to California Vehicle Code section 6700.1. Second, before the in-transit permit expires, the retailer must ship or drive the motor vehicle to a point outside the United States. Since the slide-in camper is not a new motor vehicle, its sale could not qualify for exemption under section 6366.2. 2/27/97.

(4) DELAYED SHIPMENT; USE PRIOR TO SHIPMENT; "BAILEE CLAUSES"

[325.0800](#) **"Bailee Clause" Inoperative.** "A" corporation located out-of-state but wholly owned by "B" corporation in California purchases a truck chassis from a California manufacturer with instructions to deliver it to "C" Corporation in California for the installation of body and tanks. Order contains a "bailee clause," stating that "C" corporation acts as bailee for the seller. Subsequently, the truck is delivered to "B" corporation in California for painting and following this operation the truck is delivered out-of-state to "A" corporation.

The so-called "bailee clause" is, under the circumstances, inoperative to create a nontaxable interstate sale. The initial delivery in this State to the buyer's representatives and the substantial work performed on the truck by such representatives are inconsistent with the retention of ownership by the seller. 11/23/53.

[325.0820](#) **Body-Chassis Assembly Before Shipment.** Pursuant to an out-of-state customer's purchase order with "bailee clause" a retailer is required to deliver a truck chassis to a body works for installation of a body purchased by the out-of-state customer and thereafter deliver the completed unit to a common carrier for shipment to the out-of-state customer. In such case an exempt interstate sale of the chassis results. 1/21/59.

[325.0840](#) **Body-Chassis Assembly Before Shipment.** Truck chassis delivered by manufacturer to consumer's agent in California who, pursuant to buyer's instructions, was to install a special body thereon, is a retail sale in this state by person making delivery, notwithstanding the fact that the dealer and buyer are located out of state. 9/1/53.

[325.0860](#) **Body-Chassis Assembly Before Shipment.** Sales of truck chassis made out-of-state with delivery to California corporation for the purpose of installing tanks thereon with subsequent shipment of completed trucks out of state to ultimate consumers are interstate sales exempt from tax. The installation of the tanks in such instances was not a taxable use in California. 2/10/53.

[325.0880](#) **Body-Chassis Assembly Before Shipment.** Pursuant to a customer's purchase orders, both the body builder and the chassis builder are required to ship or deliver the property sold by them to an out-of-state point. Before shipment, the body will be installed upon the chassis and the complete vehicle shipped as a unit by the chassis builder. Where the body builder enters into an agency agreement with the chassis builder authorizing the latter to act as the body builder's agent in carrying out the delivery requirement, both the sale of the chassis and the sale of the body are exempt interstate sales. 4/17/67.

[325.0882](#) **Delayed Out-of-State Shipment.** An auctioneer sold a horse in California to a purchaser who had his agent haul the horse in her van to a ranch in Arcadia, California. The horse was shipped to Kentucky one month after purchase. The purchaser's agent was not an interstate hauler nor freight forwarder. The purchaser was shown as both shipper and consignee on the shipment to Kentucky. He stated that the delay was caused because he could not obtain rail space for the horse any sooner. Under these conditions, the exemption for sales in interstate commerce is inapplicable since the seller delivered the horse to the buyer in California.

The auctioneer also sold 16 horses over a period of three days to a rancher from Laredo, Texas, and delivered them to a ranch in Lancaster, California, via a van line company. The auctioneer was shown as the shipper. After about a month in Lancaster, pending the availability of vans going to Texas, the horses were picked up by the van line for shipment to Texas. The Lancaster ranch was shown as shipper. If the ranch held the horses on behalf of the van lines (because they had to be grazed and watered while waiting for transport to Texas), the sale is exempt as a sale in interstate commerce notwithstanding the delay in shipment. If the ranch held the horses on behalf of the out-of-state purchaser, the exemption is not applicable because delivery was made to the purchaser's agent in California. 2/24/69.

325.0884 **Delayed Shipment.** A firm sells a horse for shipment out of state. Responsibility for board and expenses rests with the buyer upon execution of the sales agreement. Under the installment contract, title and registration remains with the seller until the final payment is made which may be as long as five years after the sale. The horse may be insured by the buyer or seller but the buyer usually is required to maintain insurance equal to the balance due on the contract.

On occasion the delivery to the buyer may be delayed because (1) the horse is in foal, or (2) until the buyer arranges to rendezvous with the seller at an out-of-state exhibition, or (3) for some other economic or practical reason. During the delay, the horse is not bred or used for any business purpose. Ultimately the horse is shipped out of state pursuant to the contract of sale.

The sale is exempt from tax pursuant to section 6396. The delay in delivery for the reasons described above will not cause the transaction to lose its exempt status. 8/1/84.

[325.0886](#) **Delivery to Purchaser's Representative.** The sale of tangible personal property in California to an out-of-state customer, delivered by the seller to an in-state fabricator designated by the purchaser for further processing, is a taxable sale even though the fabricator may subsequently ship the property out of state pursuant to its contract with the customer. The fabricator is the representative or agent of the customer and delivery to it in California precludes the application of the interstate commerce exemption. If the fabricator had been contracted by the seller rather than the buyer, if payment was due from the seller, and if the seller was liable to the customer for any losses or damages, the subsequent out-of-state shipment by the sub-contractor/fabricator (pursuant to the seller's contract with the customer) would be a sale in interstate commerce. 10/6/92.

[325.0900](#) **Inspection by Purchaser.** Although such items as prints may be delivered to a purchaser's representative in California for inspection and returned to the vendor for out-of-state shipment without preventing the seller from validly claiming exemption as an interstate sale, where the purchaser makes use of the property, such as positive editing, the delivery in this state to the purchaser for such purpose prevents the seller from subsequently validly claiming the interstate exemption. 6/3/57.

[325.0920](#) **Inspection by Purchaser.** If the contract of sale requires the seller to ship the goods sold to an out-of-state point and in fulfillment of the contract the seller, in fact, so ships the property, a prior temporary transfer of possession to the buyer for visual inspection or testing will not deprive the seller of the interstate commerce exemption, provided the property is returned to the seller for out-of-state shipment in accordance with the contract of sale. 11/16/64.

[325.0925](#) **Manufactured Goods Held for Subsequent Shipment Out of State.** A manufacturer contracts to manufacture certain goods, store them, and subsequently ship them to Florida when the customer's facilities there are completed. Title to the goods will transfer to the customer when the manufacturing process is completed.

The sale would be exempt from tax provided (1) that the contract specifies that the goods are to be manufactured in advance and held for later out-of-state shipment, (2) that the goods are in fact shipped out of state within a reasonable time, and (3) that the goods are shipped in accordance with the requirements of section 6396. 4/26/91.

[325.0928](#) **Matching of Fit.** An out-of-state buyer orders a piece of custom manufactured equipment from a California seller. The seller is instructed to deliver the equipment to a second California manufacturer who is manufacturing a related piece of equipment for the buyer. The second seller checks to assure a precise matching of the two pieces of equipment, and then ships both items to the buyer's out-of-state location. Tax applies to the first sale because there was delivery to an agent of the buyer in this state. Section 6396 restricts the exemption to shipments out of the state by the retailer. 9/13/89.

[325.0935](#) **Obligation Under Contract.** One of the requirements that qualifies a sale to be exempt as a sale in interstate commerce under Regulation 1620 (a)(3)(B) is that shipment by the retailer is required under the contract of sale. This requirement is satisfied in a situation where there is storage prior to shipment and the contract of sale has a provision as follows: "Title to the stored product will remain with the retailer until delivery by the retailer to the transportation company when removed from storage for shipment."

While title passes to the customer upon shipment from the storage facility to the customer at an out-of-state location, it is not the transfer of title provision which indicates that the retailer has complied with the shipment requirements of the Regulation. Rather, the contract provision appears to be at least minimally adequate to meet the requirement that there be a provision in the contract of sale which requires the retailer to ship the property sold to the customer at an out-of-state location. Although the contract provision does not expressly require the retailer to ship the property out of state, it does provide that title will not pass until the retailer does ship the property out of state. In this delayed shipment, regardless of when title or risk of loss passes, the retailer has obligated itself to ship the property sold to the customer out of state. 3/28/90.

[325.0960](#) **Parts Produced from Molds.** Out-of-state customer contracted with a California manufacturer for the production of certain molds which were to be retained by the manufacturer for use in producing parts, title to such molds to vest in the customer upon completion of their manufacture. No parts were ever produced in California and subsequently the molds were shipped to the out-of-state customer.

Contract obviously intended that possession of the molds was to remain with the California manufacturer for subsequent use in making parts and there is no basis for holding such sale exempt as an interstate transaction. 8/6/53.

[325.0980](#) **Prints.** A seller makes prints from a customer's negative film. The prints are delivered to the customer in California. Subsequently from within a few days to as long as two or three weeks later the customer returns the print to seller and requests seller to ship it out-of-state for his account and credit him for the sales tax reimbursement which seller charged when the customer originally picked up the print at seller's plant. Under these circumstances there has been a completed sale of the print in this state to customer and that the fact that he subsequently returns the print to seller, requesting him to ship it outside the state, does not prevent the sales tax from applying. It is only when the seller in fulfillment of the sales agreement delivers the goods to the purchaser at a point outside this state or to a carrier for shipment to the

purchaser at a point outside this state that the tax is rendered inapplicable on the basis that the sale is one in interstate commerce. The delivery to the out-of-state point or to the carrier consigned to the out-of-state point must be the act that completes the sale transaction and not an act that occurs subsequent to the completion of the sale. 11/19/51.

325.1000 Proofs Made from Engravings Shipped Out-of-State. An engraver makes photoengravings for advertising agencies in California for delivery to out-of-state publishers. Prior to shipment, the engraver furnishes the advertising agencies with progressive and finished proofs and Scotchprints pulled from the engravings. The proofs are furnished for inspection and approval and the Scotchprints as insurance prints from which duplicate plates could be made if the original plates were lost or mutilated. The pulling of the progressive and finished proofs and Scotchprints does not constitute a taxable use of the engravings prior to shipment. If a separately stated charge is made for such proofs and prints, the engraver is the retailer thereof. 7/7/66.

325.1020 Shipping Instructions—Delayed. Sale is exempt notwithstanding shipment to out-of-state point is deferred for reasonable time pending receipt of shipping instructions pursuant to contract of sale. 8/17/50.

325.1040 Storage Prior to Shipment. California manufacturer produced property under a contract which provided that the goods were to be “manufactured in advance, and held for future withdrawals”. Upon completion of manufacture the goods were paid for in full, including the amount for sales tax. Upon subsequently receiving shipping orders, the manufacturer shipped some of the goods to out-of-state points. The sales tax does not apply to sales wherein the goods were eventually shipped to out-of-state points. The manufacturer was obligated under the contract to ship the goods and such obligation was not completed until shipment was made. 5/28/53.

325.1060 Tapes. The charge for editing magnetic tapes for an out-of-state customer is not an exempt interstate transaction if the editing company delivers the tapes to a record pressing company in the state designated by the out-of-state customer. The edited tapes must be shipped to the out-of-state customer at a point outside this state for the editing charge to be exempt as an interstate transaction. 9/28/59.

325.1070 Tooling Held by Manufacturer. If payment is made in full, but tooling is held by the manufacturer on behalf of the customer without a contractual duty by the manufacturer to deliver or ship it to a foreign destination, the sale of the tooling is fully taxable as a sale which takes place in California.

On the other hand, if the contract provides for the export of the tooling, and the export meets the requirements of Regulation 1620 and there is no functional use of the property in this state, the export exemption will apply. If the manufacturer only tests the tooling, it will not be considered a functional use and will not in and of itself disqualify the sale of the tooling from the export exemption. 12/16/93.

325.1075 Use by Customer Before Shipment. An out-of-state customer contracts with Vendor A and Vendor B, who are both located in California, for the manufacturing of components which will be used in the customer’s out-of-state plant. Separate purchase orders are placed with each vendor which requires the vendor to ship the property to the customer’s plant located outside of California. The customer will furnish the common carrier for each out-of-state shipment.

Vendor A’s product must be used with Vendor B’s product. Vendor B’s product must be integrated and tested with A’s product at Vendor B’s site. Vendor A, being required to ship the property to the customer outside California is also required to ship the property to Vendor B with final shipment to follow after Vendor B has completed its integration and testing.

Upon completion of Vendor B’s work, Vendor A will go to Vendor B’s site and arrange for delivery of the property outside California. There will be two separate shipments with separate shipping documents. However, both shipments may go out on the same truck at the same time. The shipping terms are F.O.B. origin with title to pass to the customer upon delivery of the property to the common carrier.

Based on information provided, there is more than visual inspection or testing that will occur at Vendor B's premises of Vendor A's product. If more than testing occurs at Vendor B's premises, the nature of the customer's possession is more than the limited and temporary possession of visual inspection or testing of vendor of Vendor A's product. Rather, the customer would be regarded as taking delivery of Vendor A's product in California and the sales tax exemption for purchases in interstate commerce will not apply. 6/19/95.

(5) EXPORTS

[325.1080](#) **APO.** The sale of tangible personal property which is mailed by the seller pursuant to the contract of sale to the purchaser, an employee of the United States Embassy in Bangkok, Thailand, is a sale in foreign commerce notwithstanding the fact that the property is addressed to the Army Post Office in San Francisco and forwarded to the purchaser in Bangkok. 9/28/64.

[325.1095](#) **Certificate of Purchase for Export.** A taxpayer receives a certificate from a purchaser-customer certifying that the property sold will be exported from the United States. Since the property is delivered to the customer in California, the sale is not an exempt sale in foreign or interstate commerce. Since the certificate does not state that the property will be resold in the regular course of business, it is not acceptable as a resale certificate. The purchaser's possession of the product in California defeats the export allegation. 2/27/95.

[325.1097](#) **Continuous Journey.** In *McDonnell Douglas v. SBE* (1992) 10 Cal.App.4th 1413, the goods were shipped to an export packer. However, the buyer's employees actually prepared the property for export at the packer's location. The court apparently found the distinction to be immaterial in ruling that the goods had entered the export stream. In the case of the *Rice Growers Association of California v. Yolo County* (1971) 17 Cal.App.3d 227, Cert. Din., 404 U.S. 941, the court held that shipment of property to a collection point of the buyer did not constitute the entering of the property into a continuous journey to a foreign destination.

When goods are sold and shipped to a water carrier which consolidates the property for later shipment for its own use at a foreign destination, the property has not entered the stream of foreign commerce. While the fact that buyer's employees did the packing may be immaterial, the Rice Growers Case, rather than the McDonnell Douglas case, is applicable. The shipment of property to a collection point does not begin a continuous journey to a foreign destination. 6/7/94.

[325.1100](#) **Customization of Motorcycles.** An out-of-state company purchases motorcycles which are customized in California. After the customization is complete, a freight forwarder picks up the motorcycles in California and exports them to a foreign buyer in Japan or Europe. When the out-of-state company will resell the motorcycles prior to any functional use, the customization does not result in a taxable use of the motorcycle.

Since the only transactions by the out-of-state company involve sales in foreign commerce, it is not required to hold a seller's permit. It may issue resale certificates to its suppliers noting thereon that it is not required to hold a seller's permit (See Regulation 1668). 4/23/92.

[325.1120](#) **Delivery at Airport.** Sales tax does not apply if the retailer delivers the goods aboard an aircraft departing for a foreign destination. Sales tax applies if the retailer delivers the goods at any point short of the departing aircraft, e.g., at the ticket desk or in the waiting area, for redelivery aboard the departing aircraft. The above rules apply whether delivery is to the purchaser or to an airline employee. The rules assume that the goods are personal items (e.g., jewelry, cameras, fur coats) which the airlines do not specifically contract to carry by bill of lading. 4/7/53; 11/15/83.

[325.1142](#) **Delivery to Foreign Purchaser's Agent.** A delivery to an agent of a foreign purchaser in California is regarded as shipment to the purchaser. Under these circumstances, there is no irrevocable commitment to the exportation process at the time of sale and therefore no exemption. The supplier is the retailer and must pay sales tax on the sale. If the property is shipped by the supplier directly to a freight

forwarder and the agent does not obtain possession of the property, the export exemption will apply if all other requirements under Regulation 1620(a)(3) are met. 4/28/93.

325.1145 Delivery in State for Subsequent Export. The delivery in this state of a mold to a foreign purchaser who then shipped it out of the country was a taxable sale even though the mold was never used in this state or country. The seller did not “irrevocably commit the property into the process of exportation.” (Regulation 1620(a)(3)(C)(1).)

Had the mold been used in the production of parts before it was sold to the customer, tax would have been due on cost of the mold as well as on the subsequent sale in this state. 5/18/90.

325.1150 Delivery of Molds to Extruder for Testing Prior to Shipment. The delivery of molds to an extruder hired by the purchaser for the limited purpose of testing the molds with title passing at the time of such delivery does not preclude an exemption under Revenue and Taxation Code section 6387 if the molds are subsequently redelivered by the retailer to an export packer for shipment to an out-of-state location for use solely outside California.

When an extruder hired by the purchaser returns a mold to the taxpayer because of defects revealed during testing, sales tax does not apply if pursuant to the contract of sale the taxpayer then delivers the mold to a carrier for shipment to an out-of-state point.

Sales tax applies when the taxpayer delivers the molds to an extruder hired by the purchaser and the extruder delivers the mold to an export packer or to a carrier for interstate shipment. 10/19/78.

325.1160 Delivery to Common Carrier. Delivery of property by a vendor to common carrier with export markings thereon are exempt as export sales where the common carrier does nothing further with the goods than to hold them pending arrival of export vessel, and then places the property aboard the export carrier, 1/17/55.

325.1180 Exemption Certificates. A Japanese moving company proposes that its customers who have booked a move with the company to Japan be able, with appropriate documentation, to purchase merchandise tax exempt, and have the items shipped to Japan. Included in the proposed documentation was a California Blanket Sales Tax Exemption form.

Since the export exemption depends on actions for which the retailer is held responsible, and not the purchaser, an exemption certificate issued by the purchaser is not adequate proof of exemption. Instead, each retailer can use an agreement providing that the merchandise would be shipped abroad. The agreement should provide that the purchased items will be shipped via a specific “carrier, forwarding agent, export packer, customs broker or other person in the business of preparing property for export, or arranging for its export”, as well as other terms such as which party will pay the shipping costs. The retailer is responsible for insuring that the property is actually delivered to the foreign country, and for obtaining and retaining a bill of lading or other valid documentation as proof of exemption. 9/28/93.

325.1186 Exports of Donated Medical Equipment. A nonprofit organization purchases medical supplies and equipment which it donates to hospitals in foreign countries. Since possession of the medical supplies and equipment purchased by the organization passes to the organization prior to an irrevocable commitment of the property to the exportation process, the sales of the medical supplies and equipment to the organization are subject to sales or use tax. It is immaterial that the intention of the organization is to ship or deliver the medical supplies and equipment to hospitals in foreign countries. 1/18/96.

325.1190 Exports of Structural Steel. A company, which fabricates structural steel and acts as a construction contractor throughout the United States, is planning to sell its structural steel to other construction contractors. Some of the steel produced will be sold for export to foreign countries. When the steel is sold for export, it will be delivered to a customs broker or common carrier FOB California. Documentary evidence will be obtained showing the destination of the steel.

The purchases of steel and other raw materials combined during the fabrication process and sold for export as structural steel, will not be subject to sales or use tax in California. The property that is incorporated into the finished structural steel without prior use, may be purchased ex-tax for resale. If some of the raw materials, such as chemicals used as catalysts, are used to produce a chemical or physical reaction during the manufacturing process, those items may not be purchased for resale even if some of the chemicals are incidentally incorporated into the finished product. For example, if flux is used as a cleaning agent or as a means of reducing oxidation, it is considered consumed in the manufacturing process; however, if the flux is primarily used for transmitting desirable alloys, from the flux, into the metal, it may be purchased for resale.

Sales of structural steel for export, will not be subject to the sales tax in California, provided documentary evidence in the form of bills of lading and marine insurance policies are obtained. This applies whether or not the company is responsible for making the arrangements to transport the steel out-of-state. As such, if the sale satisfies the requirements of section 6396, the exemption applies even though title to the steel is transferred in California. However, if the purchaser obtains possession of the property within the state, the exemption is eliminated. This includes any transfer to a third person, except a common carrier, customs broker, export packer etc. . . . , for subsequent shipment outside the state. For example, if the property was transferred to a third person for storage prior to shipment, the sale occurs in California and does not qualify as a sale in interstate or foreign commerce. 1/7/91; 1/17/91.

[325.1196](#) **Federal Republic of Germany.** A company has several contracts with the Federal Republic of Germany Ministry of Defense (BWB). BWB's representative within the U. S. A., the German Military Representative (GMR), operates a transportation warehouse and shipping facility in this state. The GMR claims that its shipping facility is operated in such a manner that shipments from within the state of California to the facility are exempt from California sales tax.

The requirements of section 6387 are not met under the above facts. Although the effect of GMR's operation in California may be similar to the operations of a forwarding agent, delivery to a purchasing entity in California will in all cases render the exemption found in section 6387 inapplicable. It is the position of this Board that sales of tangible personal property to the Federal Republic of Germany's Ministry of Defense which are delivered to the Ministry's representative in California, the GMR, for later export to Germany, are subject to sales tax. 3/4/81.

[325.1200](#) **"Foreign Countries."** An automobile purchased in California by a resident of the Philippines and delivered to a steamship company by the seller pursuant to contract of sale for shipment to the Philippines is an exempt export sale. 4/19/54.

[325.1220](#) **"Foreign Countries."** Property transported to Puerto Rico is regarded as exported. 1/4/54.

[325.1240](#) **"Foreign Countries."** Shipments to Wake Island and Canal Zone are considered exports and sale of goods so shipped is exempt if requirements of the regulation are met. 6/29/50.

[325.1250](#) **Foreign Government Purchases.** Certain equipment can only be sold to foreign governments for use outside the country. The federal government monitors these sales to assure that the property is in fact exported. The property is regarded as being committed to export at the time of sale even though it is delivered to an agent of the buyer in this state because the property cannot legally be diverted. 12/22/69.

[325.1260](#) **Foreign Naval Vessel.** A foreign government purchased an anchor chain from the California retailer for use as part of the running gear of a vessel of its navy. The chain was delivered to the vessel at a California port. It was contended that since the vessel flies the Chilean flag, delivery to the vessel constituted delivery to foreign territory, and for this reason the sale was exempt from sales tax as a sale in foreign commerce. The California Supreme Court, however, in *Shell Oil Co. v. State Board of Equalization*, 64. A.C. 773, has stated that "An article delivered to a vessel which flies a foreign flag cannot, for that reason alone, be deemed to have been received at a foreign country or destination and thus to have become an 'export,' ". The sale of the anchor chain, delivered to the ship in this state, was a taxable retail sale. 8/23/66.

325.1266 Foreign Seller and Purchaser of Tanker. A foreign corporation is not engaged in business in California nor anywhere else in the United States. The corporation sells an oil tanker to another foreign corporation also not doing business in California. At the time of the sale, the tanker is situated in a California harbor. The sale of the tanker is not subject to sales nor use tax if, immediately upon the change of the ship's registry, the ship sails for a foreign destination without returning to the United States. A sale under these circumstances is an exempt export sale.

If there is a delay in sailing due to the need for minimal repairs necessary for the tanker to sail, the sale would be subject to sales tax because the repairs would be an interruption of the export journey for a purpose independent of the transportation of the goods. 3/16/76.

325.1270 Foreign Trade Zones.

What Are Foreign Trade Zones?

Foreign Trade Zones are areas in ports of entry wherein goods in foreign commerce are stored within boundaries of the United States or its territories without payment of custom duties, until and unless any of such goods pass from that zone into customs territory of the United States. The purpose of authorizing the creation of foreign trade zones was to encourage and facilitate foreign commerce.

In general, merchandise may be brought into a foreign trade zone without being subject to the customs laws of the United States. Merchandise may generally be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated in a foreign trade zone, or be manufactured in a foreign trade zone, without being subject to U.S. customs laws, and it may then be exported or destroyed without being subject to U.S. customs laws. This exemption does not apply to machinery and equipment that is imported for use (for manufacturing or the like) within a foreign trade zone.

When foreign merchandise moves from a foreign trade zone into customs territory of the United States it is subject to the laws and regulations of the United States affecting imported merchandise.

Where Are the Foreign Trade Zones in California?

There are, to date, four foreign trade zones in California. One in San Francisco, one in San Jose, one in Long Beach, and one in Oakland. At the present time, there are applications pending with the U.S. Government to approve two additional zones in California.

Each zone is divided into "subzones." Effective March 25, 1987, the Long Beach foreign trade zone was expanded to include an area of the city of Santa Ana as a subzone.

How Does Tax Apply in Foreign Trade Zones?

19 USCA 810(e) reads as follows:

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local *ad valorem taxation* (emphasis added).

Since the business taxes that the State Board of Equalization administers are not *ad valorem* taxes, but rather taxes on sales price or volume, depending on the specific business tax, the Board administered business taxes apply in foreign trade zones to the same extent that they apply elsewhere in California.

The application of the sales and use tax to transactions involving foreign trade zones have been broken down into the following questions and answers:

Question 1.

Does tax apply to sales of tangible personal property made from inside of a foreign trade zone?

- a. and delivered to a purchaser in California?
- B . and delivered to a purchaser outside California?

Answer:

- a. A sale made from a retailer inside a foreign trade zone to a purchaser in California would be subject to tax in the same manner as other sales of tangible personal property delivered to California purchasers.
- b. A sale made from inside the foreign trade zone and shipped to a point outside California by means of facilities hired by the retailer or by delivery by the retailer to a carrier, customs broker, or forwarding agent would not be subject to tax. Such a sale would be treated like any other sale in interstate or foreign commerce.

Question 2.

Does sales tax apply to sales of tangible personal property by a California retailer delivered into a foreign trade zone in California?

Answer:

Sales tax would apply to sales of tangible personal property delivered into a foreign trade zone located in California, unless otherwise exempt.

Question 3.

Does use tax apply to tangible personal property:

- a. delivered from outside United States to a foreign trade zone in California or
- b. to tangible personal property delivered from another state into a foreign trade zone in California

and used inside the foreign trade zone?

Answer:

There is no provision under the California Sales and Use Tax Law which would exempt the use of tangible personal property inside a foreign trade zone from the imposition of use tax. We are aware of no authority under federal law which would prohibit the imposition of the California Use Tax in such an instance. We are, therefore, of the opinion that tax would apply to the use of tangible personal property within a foreign trade zone.

However, it should be noted that, of course, under Revenue and Taxation Code section 6009.1, use tax would not apply to tangible personal property which is brought into the foreign trade zone for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property to be transported outside the State and thereafter used solely outside the State. 10/1/82

[325.1280](#) **Fuel Sales to Foreign Governments.** Sales tax applies to sales of bunker fuel to the Mexican Government for purposes of refueling its vessels, same to be consumed in this state or on the high seas, and which fuel is not unloaded or discharged at any foreign port. 2/10/53.

[325.1300](#) **Fuel Sold to Mexican Fishing Boats.** Sales of fuel oil to Mexican fishing boat operators for refueling their vessels while engaged in fishing operations are not exempt from the sales tax as export cargo, even though the fishermen transport the fuel outside the state and use it in their fishing operations outside U.S. territorial waters. 5/19/66.

[325.1320](#) **Fuel Used in Fishing Operations.** A sale of diesel fuel within the state to a foreign fishing boat operator who uses the fuel in his fishing operations is not exempt from tax as a sale in foreign commerce because the fuel is not furnished to the purchaser for the purpose of carrying it abroad. Even though the foreign purchaser transports the fuel outside the state and uses the fuel in fishing operations outside the United States territorial waters, a sale for the purpose of refueling a fishing vessel is not a sale of export cargo. 7/26/67.

[325.1325](#) **Imports Re-exported from U.S. Customs Bonded Warehouse.** Imports stored in a U.S. Customs bonded warehouse and re-exported are within the exclusion from use tax provided by section 6009.1. Thus, a foreign air carrier that imports inflight supplies which are stored in a U.S. customs warehouse prior to exportation on its aircraft are not subject to the use tax if these supplies are not otherwise used or consumed in this state. 6/15/84.

[325.1330](#) **Interruption in Export Journey.** Once an export journey is begun it is not terminated by a delay in transit unless the delay is for a purpose independent of the transportation of the property. An indefinite delay in transportation for the purpose of collecting other goods for shipment would represent such an independent purpose. An export journey is not terminated if the delay in shipment was for the purpose of consolidating the goods for shipment with other goods already collected and was not for an indefinite period. 5/7/70.

325.1340 **Mexican Nationals Driving Cars to Border.** Cars sold to Mexican nationals and to a United States Consul in Tijuana cannot be considered as exempt export items to foreign consumers because the cars were delivered to the purchasers in California who subsequently drove the cars to Mexico. Despite the evidence showing that the cars crossed the border and were in fact registered in Mexico, the transactions are not sales in foreign commerce because the driving of the cars in California to the Mexican border by the purchasers is considered a local use of the cars making the sale taxable. 10/24/69.

[325.1360](#) **Mexican Resident—Crossing Border to Pick Up Goods.** The fact that merchandise may actually be taken across the border by the purchaser and an export declaration issued does not in itself determine that there shall be no sales tax imposed with respect to the sale.

The Court in the Richfield case (*Richfield Oil Company v. State Board of Equalization*, 329 U.S. 69) said “Delivery was made into the hold of the vessel from vendor’s tanks located at the docks. That delivery marks the commencement of the movement of the oil abroad.” It would thus appear that the vendor could not claim exemption merely because “there is an intent to export, or a plan which contemplates exportation, or an integrated series of events which will end with it.” (*Empressa Siderurgica v. County of Merced*, 337 U.S. 154.) It seems that under the facts there is an intent or plan to export but it does not appear that the goods “have been shipped or entered with a common carrier for transportation to another state or have started upon such transportation in a continuous route or journey.” (*Coe v. Errol*, 116 U.S. 517.) 12/12/50.

325.1371 **Power of Attorney from Purchaser.** An importer/exporter in California was contracted by a Costa Rican company for assistance in purchasing a refrigerated truck for use in Costa Rica. A power of attorney was executed by the importer/exporter and a representative of the Costa Rican company empowered the importer/exporter “to purchase, transport and or conduct all functions” on behalf of the Costa Rican company. The importer/exporter purchased the vehicle as an agent for the Costa Rican firm.

The importer/exporter was to facilitate and prepare the vehicle for export to Costa Rica. The vehicle left California the day after purchase on a continuous non-stop journey to Costa Rica.

The fact that the importer/exporter was empowered with the power of attorney “to purchase, transport and or conduct all functions” on behalf of the purchaser supports a conclusion that the importer/exporter was acting as the Costa Rican firm’s representative when it took delivery of the vehicle. California law clearly provides that an attorney in fact is an agent acting under a written grant of authority. *Delos v. Farmers Ins. Group Inc.* (1979) 93 Cal.App.3d 642; 155 Cal.Rptr. 843. Thus, pursuant to Regulation 1620(a)(3)(C)1, since the importer/exporter, as an agent for the purchaser, took delivery of the vehicle in California, sales tax applies regardless of the intention that the vehicle would be and actually was transported to a foreign country. 10/3/95.

325.1375 Property Committed to Export Process. Property was purchased from a California retailer for export to Mexico. The property was loaded onto trucks provided by the purchaser. The purchaser delivered the property to a forwarding agent who made delivery to destination in Mexico.

Since the purchaser had possession and control from initial delivery until the property was delivered to the forwarding agent, there was not an irrevocable commitment of the property into the process of exportation. Therefore, the sale does not qualify as a sale in foreign commerce (Sales and Use Tax Regulation 1620 (a)(3)(C)(1).) 7/7/93.

325.1377 Property for Export. A foreign company purchases property for export from various California vendors but the property is delivered prior to its ultimate removal from this state to a California company for the purpose of being consolidated for shipment with other property similarly purchased by the foreign company for export. Nearly all the items ordered by the foreign company are shipped to the California company for the purpose of being repacked into more economical units to save air freight fees. There is minimum freight charge up to 60 lbs., and the California company consolidates merchandise to exceed the minimum weight. The property is owned by the foreign company while it is in the possession of the California company. From the California company, the repacked goods are taken by a delivery service to the airport where an air carrier carries the goods by air from California to the foreign destination. Each item is purchased by the foreign company with the intent that the item will be removed from California and each item is in fact ultimately exported to the foreign destination.

The movement of the goods from the various vendors to the California company for consolidation relating to the transportation of the goods to a foreign destination is not independent of the journey in foreign commerce where all parties know and contemplate that the shipment is to go to a foreign destination. The packing and consolidation done by the California company is only “. . . an incidental part of the total export journey” (*Gough Industries v. State Board of Equalization* 51 Cal.2d 746, p. 749). Accordingly, the sales are nontaxable as sales for export. 5/26/69.

325.1379 Property Not Functionally Usable in California. The sale of appliances in this State to foreign residents is not exempt from tax merely because the appliances were not compatible with electric systems in the United States. The fact that there was reasonable certainty that property sold could not be used in California without modifications is insufficient to exempt the sale as an export under Regulation 1620, subdivision (a)(3)(C). The principal criterion for exemption is that there is an irrevocable commitment to the exportation process at the time of sale. 4/21/92.

325.1385 Purchaser Listed as Shipper on a Bill of Lading. A seller has sold tangible personal property for export, but cannot be listed as the shipper on the bill of lading. In this situation, provided the seller follows the following procedures, the property will be considered “irrevocably committed” to the exportation process, within the meaning of Regulation 1620(a)(3)(C)2.

(1) The seller should deliver the property directly to the shipper, freight forwarder or export packing company.

(2) The seller should provide written instructions that the property is to be delivered to the foreign designation and the purchaser is not to have the ability to divert or cancel the shipment. The seller should obtain written confirmation from the shipper, freight forwarder or export packing company that it will comply with these instructions.

(3) The seller should obtain a copy of the bill of lading indicating that the property was actually shipped to the foreign destination. 11/18/92.

325.1390 Sale of Vessel to Foreign Purchaser. A vessel designed to carry lumber was sold to a foreign purchaser who has never conducted any business in this state. All of the necessary paperwork and approvals were obtained from the Maritime Administration and the Collector of Customs, including the surrender of the ship's Certificate of Enrollment and License. The seller also filed a Customs Declaration listing the vessel as an export and showing a foreign port as the place and country of ultimate destination. After a foreign crew was placed aboard, the vessel was moved to a repair facility in California where it was determined that repairs would be too costly. The vessel was taken to a salvage yard in California.

In *Matson Navigation Co. v. SBE*, 136 Cal.App.2d 577, the court held that the sale and delivery of a steam ship of American registry to a nonresident alien buyer never having done business in this state commits the ship irrevocably to foreign trade, in view of 46 U.S. Code 883, which prohibits such a ship from thereafter engaging in domestic trade. The court held that the act of sale itself constitutes exportation. While the vessel did not leave port, this is an incident of foreign rather than domestic commerce. The sale to the foreign purchaser is exempt as an export. Should the vessel be scrapped or sold to a California customer for some other purpose, the transaction should be classed as an import. 4/10/68.

325.1393 Sale for Resale to Related Entity. A firm purchases lumber under a resale certificate which is consigned to a related entity located in Mexico. The possession of the lumber by the firm prior to its exportation is not "possession" by the Mexican entity within the meaning of Regulation 1620 and would not, in itself, preclude exemption by reason of export. Although the invoice from the supplier shows the Mexican entity as the purchaser, it appears that the goods were resold to its related entity by the California firm. 2/10/93.

325.1396 Shipping Containers Sold for Export. A taxpayer sells shipping containers to a Canadian company. The customer takes delivery of the containers in California and then transports them outside California for loading of property for export. The sale of the containers do not qualify for the export exemption because the purchaser took possession of the containers prior to commitment of the containers into the process of exportation. Also, the sale does not qualify for the interstate commerce exemption since the purchaser took possession of the containers in California. Therefore, the sale of the containers is subject to sales tax. 06/27/96.

325.1400 Storage Before Export. Property purchased from a California retailer and stored by the purchaser in California at facilities of its related corporation for an indefinite time prior to shipment was not using such storage, in the process of export. The sale of the property was not, accordingly, exempt as a sale in foreign commerce. 9/3/64.

325.1420 "Stream of Commerce." The test to be applied to a transaction alleged to be an export sale is whether or not at the time of sale the property involved was sufficiently "within the stream of foreign commerce" so as to partake of the Constitutional exemption.

Where several vessels are sold and delivered to a foreign government at a point in California and thereafter towed to another point in California for refitting, the sale has been completed in California and the vessels have not entered "within the stream of foreign commerce," and the sales tax applies. 5/26/53.

325.1440 Title—Time of Transfer. Where vendors, pursuant to contract of sale, deliver property previously prepared by them for export, to a carrier or forwarding agent for shipment to a foreign government, no liability for either sales or use tax is created. This is predicated, of course, on the fact that

the vendor retains title to the goods until such delivery and that title does not pass at an earlier time. 1/10/55.

[325.1460](#) **Use Before Export.** Delivery in California of tanks designed for use as containers for transoceanic shipment of products to a purchaser who in turn leased them to governmental agencies and also fills them with products constitutes a taxable sale. Foreign commerce does not commence until after delivery and the aforesaid use by the purchaser in California. 3/31/53.

(6) EXPORT PACKERS AND FORWARDING AGENTS

[325.1475](#) **Consolidation Prior to Export.** Property sold and delivered to the purchaser's representative and held for consolidation prior to export is not an export under Regulation 1620(a)(3)(C)2. To be an export under the Regulation, the property is required to be irrevocably committed to export at the time of sale and it must move in a continuous journey to the foreign destination. In this situation, when the property is being held for consolidation, the export journey to the foreign destination had not begun. Therefore, the property has not entered into the "stream of foreign commerce." 12/30/91.

[325.1486](#) **Delivery to Freight Forwarder.** A foreign airline purchases goods for its own use from California vendors for export to a foreign country. The goods are received at its freight forwarder's premises. The airline (purchaser) will file the foreign country's paperwork to import the goods to the foreign country and it will have the freight forwarder file the shipper's export declaration and coordinate the actual shipping of the freight. The airline's office and the freight forwarder are located on the same premise.

If the property is delivered to the airline's freight forwarder who then delivers the goods to a port outside the continental limits of the United States without the airline taking possession of such property prior to the delivery outside the United States, sales to the airline will qualify for the export exemption. 7/3/95.

[325.1500](#) **Export Packer Also a Purchaser.** Sales of trucks to be exported by the purchaser who is also an export packer and who takes delivery of the trucks in the state for the sole purpose of packing and crating the trucks for shipment overseas are not exempt from tax by virtue of section 6387. 9/27/68.

[325.1510](#) **Export Packers.** Sales to a foreign purchaser, where delivery is made in California to a separate legal entity set up by the foreign purchaser to act as an export packer, will qualify as exempt within section 6387, provided the other requirements of that section are satisfied. To be considered an export packer within section 6387 and Regulation 1620 (a) (3) (C) (1) (b), it is not necessary for a firm to hold itself out to the public as an export packer. It is sufficient if the purchaser and the packer are separate legal entities and the packer is engaged in the business of export packing for the purchaser.

A vendor qualifies as an export packer within section 6387 if the vendor regularly packs and exports, not only goods he has sold to the foreign purchaser, but also goods sold to the foreign purchaser by other vendors. 8/24/72.

[325.1512](#) **Export Packers.** Goods sold to a foreign government are delivered to a department of the foreign government who will act as the export packer. The transaction does not qualify for the exemption under section 6387. In order for the sale to qualify for the exemption provided by section 6387, the export packer must be a separate legal entity, must be regularly engaged in the business of preparing property for export for hire and must perform these services indiscriminately to the public. 10/24/90.

[325.1530](#) **Forwarding Agent.** For purposes of section 6396, a common carrier qualifies as a "forwarding agent" when it consolidates merchandise for reloading aboard another common carrier hired by the purchaser. Accordingly, the delivery of goods to the common carrier acting as a forwarding agent meets the requirements of the exemption if the goods are shipped to an out-of-state point. 1/7/76.

[325.1531](#) **Forwarding Agent.** A "forwarding agent" for purposes of the Sales and Use Tax Law is not required to be licensed by the Interstate Commerce Commission or anyone else in order to satisfy the

requirements of section 6396. Regulation 1620, which in part interprets section 6396, does not refer to any licensing requirement. Rather, it simply requires that the person or firm be engaged in the business of preparing property for shipment or arranging for its shipment. 7/10/84.

[325.1536](#) **Freight Forwarder.** A shipment of tangible personal property by a California retailer from its Arizona location to a California freight forwarder, for further shipment to a consumer in Hawaii, is an exempt sale in interstate commerce. The sale did not occur in California and the purchaser did not take possession of the property in California. The shipment to the freight forwarder is a continuation of the interstate journey of the property sold. 7/3/90.

[325.1537](#) **Freight Forwarder.** There are no specific licensing requirements for a person to be identified as a ground transportation freight forwarder except for household goods freight forwarders. Therefore, it is a person's or firm's activities which would determine whether they qualify as a freight forwarder under Regulation 1620. A person or firm that is in the business of consolidating shipments into carload lots and performing other services in connection with the shipment of goods for delivery to a port outside the continental limits of the United States without the customer taking possession of such property prior to the delivery outside the United States would be considered as operating as a freight forwarder. 6/14/95.

[325.1560](#) **Mailing Agency as Forwarding Agent.** A mailing agency may be a "forwarding agent." Thus, if the seller acting under his contract with the buyer delivers property to a mailing agency for shipment to an out-of-state point, the sale is an exempt interstate sale. If, however, the seller simply delivers the goods sold to a mailing agency which thereafter upon receipt of instructions from the buyer ships some or all of the goods outside the state, the sale is not exempt because the seller was not a party to a contract calling for out-of-state shipment. His obligation was complete upon delivery to the mailing agency where such delivery was unaccompanied by any instructions for out-of-state shipment. Such instructions may, however, be given following delivery to the agency pursuant to subsequent instructions received by the seller from the buyer by way of supplement to the original purchase order which contemplated that shipping instructions would follow. 10/30/64.

(7) SHIPS' STORES AND SUPPLIES—BONDED GOODS

[325.1580](#) **Alcohol in Bond.** Alcoholic beverages delivered out of bond to vessels engaged in foreign trade are not subject to tax, since by Sec. 1309 of Title 19, U.S.C.A., Congress has pre-empted this field of commerce and taxation. 11/12/63.

[325.1584](#) **Alcohol and Cigarettes in Bond.** A taxpayer withdraws alcoholic beverages and cigarettes from bond for sale to a foreign naval vessel. Neither are subject to Federal Excise Taxes or custom duties. The sales of the cigarettes and the alcoholic beverages are not subject to sales and use tax. Federal law preempts this field of commerce from sales taxation by the state. 6/6/77.

[325.1600](#) **Bonded Bunker Fuel.** The sales tax does not apply to sales of bonded bunker fuel made under the following circumstances:

- (1) The fuel oil is brought to California from foreign countries and placed in bonded storage immediately upon arrival.
- (2) The fuel is delivered directly from bonded storage into vessels.
- (3) The fuel is delivered only to vessels engaged in international service and ships engaged in intercoastal trade which are eligible to buy bonded bunkers by reason of their transiting waters of other countries en route to United States ports of discharge. 12/8/59.

[325.1620](#) **Bonded Jet Fuel.** Since the combined effect of Sec. 1309 of Title 19 of the U.S.C.A. and the Regulations issued pursuant to the section would make California sales tax levied upon sales of bonded jet fuel free from customs duty and Internal Revenue taxes conflict with the Federal Government's regulation of foreign and interstate commerce, such sales are exempt under section 6352 of California Sales and Use

Tax Law, but since there are no federal constitutional or statutory prohibitions against California applying its sales tax to sales of non-bonded jet fuel, and as there is no exemption in the California Constitution or the California Revenue and Taxation Code for sales of non-bonded jet fuel, California will continue to collect sales tax on sales of non-bonded jet fuel. 4/11/62.

[325.1630](#) **Bonded Jet Fuel.** For purposes of exemption of bonded jet fuel from California taxes under section 1309 of Title 19 of the United States Code, an aircraft which stops at more than one city in the United States is nevertheless engaged in foreign commerce if its origin or destination is outside the United States. 3/8/77.

[325.1640](#) **Domestic Oil.** Domestically produced oil placed in customs-bonded storage is exempt from sales tax when it is withdrawn and sold for delivery to vessels and aircraft as supplies for use in foreign commerce. 5/15/64.

[325.1680](#) **Ships' Stores.** Sales of merchandise for use as ships' stores on an ocean-going vessel engaged in interstate and foreign commerce are not exempt from tax when the operator of the vessel takes possession of the merchandise in California. 10/27/53.

[325.1700](#) **Ships' Supplies.** Sales of ships' supplies, including gasoline, greases, ice, kerosene, lubricating oils, and medical supplies, to operators of steamships, constitute sales of personal property not exempt under the regulation. 11/2/53.

(8) USE TAX.

See also, Use of Property in State and Use Tax Generally

[325.1715](#) **Artwork Displayed Outside California.** A museum located in California purchased artwork from out-of-state sellers. The artwork was initially shipped to the museum so that the museum Board of Trustees could examine it prior to deciding whether to purchase. After purchase, the artwork was loaned to museums and galleries located outside the state for periods of three or more months prior to being returned to California for exhibition as part of the permanent collection of the museum.

The regulation establishes a presumption that property used outside the state for 90 days or more was not purchased for use in California. The presumption does not apply here because the artwork was in California at the time of its purchase by the museum. It is immaterial that payment was made after the artwork left the state. The museum is liable for use tax. 3/29/73.

(Note: Subsequent statutory change re art purchases for museums.)

[325.1722](#) **Commonwealth of Australia.** The Commonwealth of Australia is not a "person" as defined in section 6005. Therefore, the ship's stocks aboard vessels of the Commonwealth of Australia are not subject to use tax. 2/15/74.

[325.1724](#) **Ferry Flights.** Where an aircraft is specifically dispatched from a California airport on an interstate trip that includes a stop at another California airport to pick up passengers, the entire flight, including the flight between the California airports, is an interstate flight. On the other hand, where an aircraft is dispatched from one California airport to another California airport so that it can depart from there on short notice, that flight is not an interstate flight for purposes of Regulation 1620 even if, shortly after its arrival at the second California airport, it takes on passengers and is dispatched to a point outside California. 2/1/01. (2002-1).

[325.1727](#) **First Functional Use Test.** The first functional use of vehicles, vessels, and aircraft are as follows:

(1) The first functional use of a vehicle, vessel, or aircraft which is designed for commercial carriage, e.g., a bus, a tractor trailer, or a sightseeing boat, will be outside of California if passengers are boarded or cargo is loaded onto the vehicle, vessel, or aircraft outside of California. If such a vehicle, vessel, or aircraft is

deadheaded into California, the first functional use will be in California unless the vehicle, vessel, or aircraft is brought into California to fulfill an existing lease or charter or to pick up a specific load of cargo or group of passengers.

(2) As to vehicles, vessels, and aircraft designed for personal use, such as a passenger vehicle as defined in Vehicle Code section 465, a small boat, or a small plane, the first trip or flight into California is a functional use outside of California without regard to who drives or pilots the vehicle, vessel, or aircraft or to whether it is carrying passengers or cargo. Thus, if the first trip is outside of California, the first functional use does not occur in this state.

(3) Vehicles, vessels, and aircraft which are designed for commercial purposes are not functionally used until used for the commercial purposes for which they were designed. For example, a commercial fishing boat is not functionally used until it is used on waters for fishing.

(4) Regardless of what purposes the vehicles, vessels, or aircraft were designed for, the first functional use of such items will be in California if they were not brought into California under their own power and they have not otherwise been functionally used outside of California. 8/10/92.

325.1728 First Functional Use of Vessel Outside California. A vessel is first functionally used outside the State of California. It is subsequently transported to California for reassembly and is thereafter transported and used outside of California. The fact that the vessel was brought into California for reassembly for the purpose of subsequently transporting it outside the State for use thereafter outside the State does not support a conclusion that, for purposes of Regulation 1620(b)(3), it is “as if the vessel never came into California.” The Board does not ignore the fact that the property was brought into California. Section 6009.1 excludes property’s presence in this state from “use” when the purpose of entry into California was “. . . for (reassembly) and (it was) used thereafter *solely* outside the State.” Thus, if the vessel returns to California within six months, the time in California for reassembly is “use” within California and the tests set forth in Regulation 1620(b)(3) must be applied to determine the application of tax. 12/2/96.

325.1730 Making Samples as a Use. A packaging machine is delivered from Illinois to California where the machine is tested and sample packaging for a new product is made for a field trial. After 5 months the machine is shipped to an out-of-state plant for full production use. The making of sample packages by the packaging machine is a use under section 6201 and subject to use tax, notwithstanding the fact that the machine will later be moved out of state and placed in full production use there. 10/15/92.

325.1732 Material Burned or Buried as Waste. Use tax does not apply to that portion of the materials burned or buried as waste in the production of a catalyst. The exemption of section 6009.1 applies since the valuable and desired element of the raw material processed will be transported outside this state and will thereafter be used solely outside this state. 11/8/72.

325.1740 “Piggyback” Equipment. Drive-in trailers to be used as railroad “piggyback” equipment which were purchased and leased out-of-state for use in for-hire transportation of property in interstate commerce are exempt from use tax even though they may enter California in the course of their interstate movements. 9/2/69.

325.1762 Registration in California. When a person, resident or nonresident purchases a vehicle, vessel, or aircraft in California and registers that property in California showing a California address, it may be inferred from that registration that the purchaser will use the property in a manner not excluded from the definition thereof by section 6009.1. Use tax would apply unless the purchaser could establish that the property would be used in California only in a manner excluded from the definition of “use” by section 6009.1. 12/1/88.

325.1766 Repair Parts Shipped Out of State. A company enters into optional maintenance contracts with purchasers of its equipment. The customer sends the part to be repaired to the company. The company sends the part to an out-of-state repairer. The repairer returns the repaired parts to the company and the

company sends its technicians to the customer's location to install the parts. In some cases, the part may be sent by the company to the customer for installation by the customer. The out-of-state repairer sells parts to the company as part of the repairs. Since those sales occur outside California, sales tax does not apply. The tax, if applicable, is use tax. However, the storage of the parts in California for future use solely outside California is not subject to use tax. The installation of the parts by the company's technician is a taxable use. If the installation by the company occurs outside the state, tax does not apply. However, if the company ships refurbished parts to out-of-state customers for installation by the customer, tax applies at the time of shipment. This is because at the time of shipment, the company passes title to the part to the customer in California making a complete use of the part in meeting its obligation under the optional warranty. Such use does not come within the section 6009.1 exclusion. 12/6/93.

325.1768 Space Flight Property. Taxpayer will sell a spacecraft for delivery in a foreign country with title passing upon delivery in the foreign country. The spacecraft will be integrated with its payload in the foreign country and will then be returned to the taxpayer in California. The taxpayer will inspect the spacecraft for damage, install batteries, and ship it to Vandenberg Air Force Base (VAFB). At VAFB, the spacecraft will be assembled. The launch vehicle then will be attached to an airplane in "launch ready condition." The airplane will be flown to Florida for "reflecting and final checking out." Then, the airplane will be flown to a point over the Atlantic Ocean for launch.

Section 6380 provides an exemption from the sales and use tax for "qualified property" used in space flight originating at VAFB. In this case, the only flight that will originate from VAFB is not a space flight but, instead, a conventional flight from California to Florida. Thus, the spacecraft does not qualify for the exemption provided under section 6380. There are insufficient facts to determine whether section 6009.1 applies to the transaction. 6/7/94.

325.1770 Spare Parts—Optional Maintenance Contracts. A taxpayer purchased spare parts ex-tax from out-of-state vendors or from California vendors under a resale certificate. The parts were stored in the taxpayer's California facility pending need. The parts in question were subsequently used in performing repairs on optional maintenance contracts on leased equipment located out of state and were transferred to an out-of-state facility for storage or use there. The taxpayer claimed depreciation deduction on the parts held for use in performing maintenance contracts on its income tax return.

Property purchased in California under a resale certificate or from out-of-state vendors and subsequently shipped to a point outside the state without any use other than that outlined in section 6009.1 is not subject to use tax.

With respect to the taxpayer's income tax depreciation deductions on this property, there is no income tax rule which precludes a taxpayer from claiming depreciation deductions on such property merely because the holding of the property is excluded from "use" for sales and use tax purposes. Thus, the claiming of depreciation deductions does not preclude the taxpayer from obtaining the benefits of section 6009.1.

However, when the taxpayer is aware, at the time of purchase, that it will be a consumer of parts purchased for use on its optional maintenance contracts, it should not issue a resale certificate for this type of property. If it does issue resale certificates, it will be liable for tax under section 6094.5. 2/29/88.

325.1775 Sweepstakes Promotion. Company A is a California retailer with retail outlets in California and other states. Its warehouse is located in California. Company A enters into a contract with Company B to provide \$300,000 of merchandise for a sweepstakes promotion. Among other things, one of the purposes of the contract is to allow Company C, through its agent Company B, to obtain access to promotional opportunities afforded by Company A's mailing list and retail stores.

The prize fund for the sweepstakes is \$300,000 in cost of A's merchandise. B pays A the cost of property shipped each month plus 1.2% carrying cost on the value of the unshipped balance of the unawarded merchandise. Under these circumstances, A is the retailer of the merchandise. Tax applies to its cost price of the merchandise plus the 1.2% carrying cost.

As part of the contract, B pays A a portion of the cost of certain catalog costs. This reimbursement does not reduce the measure of tax on the purchase of the catalogs by A nor does it represent additional gross receipts from the sale of merchandise. It represents reimbursement for space in the catalog.

As part of the contract, Company C will issue merchandise certificates redeemable by A. These certificates are in lieu of discounts which A normally would provide to its customers. B, in turn, will pay A 85% of the face value of the merchandise certificates. The amount received by A are gross receipts from a sale. B is acting as C's agent in making payment to A. Deliveries of merchandise in California are subject to tax.

Another part of the contract provides that A will pay B a percentage of total sales made from a specific catalog. This payment is in consideration for C's advertising in the catalog. The payment is in the form of A's merchandise certificates. The distribution of the certificates is at B's discretion.

Under these circumstances, A is the consumer of any merchandise which it ships in redeeming the merchandise certificates. Tax applies to all withdrawals of merchandise from the California warehouse in redeeming these certificates even though some merchandise is shipped outside the state. The withdrawal from inventory for this purpose constitutes a "use" in this state. 8/20/89.

325.1780 Time Period Property Remains in California. There is no set time period for property to remain in California before section 6009.1 ceases to apply. Although time remaining in California may be evidence of taxable use, one must look to the reason for the property's presence in California and to the actual use of that property in California. If the reason the item remains in California is described by section 6009.1, tax does not apply. If the reason is not described by section 6009.1, tax does apply. 12/1/88.

325.1785 Tractor Dead-Headed to California. A carrier purchases tractors from a California truck dealer for use in hauling goods in interstate commerce. The tractors are delivered by the dealer in Las Vegas, Nevada, at the carrier's station in Nevada. Subsequently, a number of the tractors are used to haul loads from Las Vegas to Los Angeles. Others are driven empty from Las Vegas to Los Angeles where they picked up their first pay load. These tractors have been used thereafter continuously in interstate commerce.

When a vehicle is transported empty to pick up a load to be carried in interstate commerce, it is engaged in interstate commerce while traveling to pick up the specific load. Therefore, the trucks driven empty from Las Vegas to Los Angeles are not subject to the use tax since their first functional use occurs outside of California and they are then used continuously in interstate commerce both within and without California. 1/9/64.

325.2200 Vehicles, Vessels and Aircraft Not Passively Transported. If the active transportation of planes, vehicles, and vessels out of California is the sole use of the item in California, the transportation is excluded from the definition of "use" as set forth in section 6009.1. Thus, if a person who purchases a vehicle from a nondealer comes into California only for the purpose of picking up the vehicle and driving it directly out of California for use solely thereafter outside California, no use tax would be applicable. On the other hand, if the purchaser is in California for some independent reason other than taking delivery of the vehicle, the purchaser's driving of the vehicle would be regarded as a taxable use.

In removing vehicles, vessels, and aircraft from California, it is not required by section 6009.1 that the purchaser takes the fastest route out of California. Rather, the question is whether the time it takes to move the property out of California is an appropriate time for direct removal. If the time period appears to be a longer period than necessary to effect direct removal, it may indicate that the purchaser is using the property in California for some additional purposes. For example, the purchaser of a vessel may stop along the way for sport fishing or may dock at California ports on its route outside California. If so, this would support the conclusion that the purchaser is making a taxable use of the vessel. On the other hand, if the purchaser could show that all stops are merely for refueling and restocking, and not for tourist or other purposes, and that there is no interruption in departing from California waters for purposes such as fishing, section 6009.1 would remain applicable and no tax would be due. 12/1/88.

[325.2400](#) **Vessel Delivered Outside of California.** A California retailer of vessels enters into a contract with a California resident for the sale of a customized vessel and delivery at an “offshore delivery point.” Provisions of the contract of sale require several partial payment deposits with the final payment due and payable after Buyer’s final inspection and acceptance of the vessel at the “offshore delivery point.” Seller’s right to retain the deposits are contingent upon Buyer’s acceptance of the vessel after final inspection. The risk of loss remains with the Seller up to the “final inspection and delivery” to Buyer. Possession and control is to remain with Seller prior to delivery of the vessel to Buyer. No title clauses are expressed in the contract. Under Uniform Commercial Code section 2401 and Regulation 1628(b)(3)(D), absent a contractual provision that title passes prior to delivery, title passage occurs at the time seller completes its duties with respect to physical delivery of the property. Under these circumstances, the sale of the vessel occurs outside California and, thus, is not subject to sales tax.

As long as the vessel is delivered outside of California, is first functionally used outside of California, and is functionally used in excess of 90 days outside of California prior to any entry into California, the Buyer’s subsequent California use, if any, will not be subject to California’s use tax. [See note below.] If the vessel is delivered outside of California and enters California waters within 90 days after purchase, the Buyer will be subject to use tax unless the vessel is used or stored outside of California one-half or more of the time during the six months after the vessel entered California waters. 7/9/97. (Am. 2006–1; Am. 2008–1).

(Note: For the period October 2, 2004 through June 30, 2007, under certain conditions any vehicle, vessel, or aircraft purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax.) (Regulation 1620(b)(5).)