

Mailed

AUG 26 1988

This decision will be printed for general distribution. The attached copy should be completed by inserting the decision number on the first page and on appendix and tariff pages, the effective date on tariff pages, and by inserting the place, date and names of signing Commissioners on the last page of the order. The insertion information is as follows:

Decision 88-08-068 Application 88-04-001

Signed at San Francisco, California, August 24, 1988

Effective date for tariff pages September 23, 1988

Signed by:

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weiss

Victor Weiss, Executive Director

so

AUG 26 1988

Decision 88 08 068 AUG 24 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Competitive Home Delivery Service,)
Inc., seeking exemption from rate)
regulation of furniture, household)
appliances and other home)
furnishings, leased or rented, or)
for a declaratory order that such)
commodities are included in the)
current exemption applying to such)
commodities which have been sold at)
retail by a retail merchant.)

Application 88-04-001
(Filed April 1, 1988)

OPINION

Applicant, Competitive Home Delivery Service, Inc., (CHDS) a California corporation requests the Commission to add to its list of "Commodities and Geographic Areas Exempt from rate regulation" (Exempt List) an additional provision to the exemption relating to the transportation of furniture, household appliances, and other home furnishings as follows:

"Furniture, household appliances, and other home furnishings which have been leased or rented by the company engaged in the leasing and renting of such commodities, transported from lessor or renter stores or their warehouses. The exemption applies only when the distance between point of origin and destination does not exceed 35 constructive miles, computed in accordance with the Commission's Distance Table 8. This mileage restriction does not apply for transportation within the East Bay drayage area and San Diego drayage area as described in Section 5 and the City and County of San Francisco."

As an alternative to this request, applicant requests that the Commission declare that the current exemption pertaining to furniture, household appliances and other home furnishings

applies to leased or rented furniture, household appliances and other home furnishings.

Applicant is a highway carrier specializing in the transportation of furniture, household appliances and other home furnishings (hereinafter referred to as furniture and other related items). Applicant's shippers engage in the business of renting or leasing said commodities, as well as retail of said commodities.

Applicant alleges that approximately 90% of all shipments transported by it are rented or leased furniture and related items under a contract which provides the lessee consumer an option for ownership to pass upon completion of the monthly installments. Ten percent of the shipments transported by applicant are sold at retail by the same stores which lease or rent the furniture and related items. Applicant points out that the method of transporting the furniture and related items, whether sold at retail or under a lease/rental agreement, is exactly the same. Applicant picks up the shipment at either the shipper's place of business, i.e., store, or its warehouse, and makes delivery directly to the customer, whether it be a retail sale or a lease/rental. Applicant alleges that furniture, household appliances and other home furnishings are sold at retail by retail stores including department, discount and furniture stores. Payment for the purchase of these items is made by cash purchase or several different methods of financing, such as credit card, conditional sales contract, installment sale, et cetera. Many of these same stores that engage in retail sales also offer their customers a lease (rent) option, as another method of financing the purchase. Applicant also points out that in addition to the retail stores, there are stores which primarily engage in the leasing or renting of furniture and related items which give the consumer an option to purchase those commodities upon making all of the rental

payments as provided in the lease/rental agreement. Many of the stores which lease or rent furniture also sell the same products at retail.

It is applicant's contention given the similar transportation characteristics of those companies who sell at retail and those who rent or lease with an option to purchase, that this dual regulatory treatment is unreasonable. The proposed exemption would therefore apply equally to both the retail seller and the renter of furniture and related items. The language of the current exemption, by limiting exempt status to the carriers who transport these products sold at "retail" unduly discriminates against carriers, such as applicant, who wish to engage in the transportation of leased or rented furniture.

Applicant seeks an order declaring that the current exemption applying to the transportation of furniture, household appliances, and other home furnishings, as set forth in its Exempt List, also applies to such commodities leased or rented with option to purchase; or as an alternative, the applicant requests that the Commission add to its Exempt List an additional provision as stated at the outset of this decision.

By Decision (D.) 46062 [51 Cal. PUC 41 (1952)], the Commission issued Highway Carriers' Tariff No. 11, which provided minimum rates applicable to the transportation of uncrated new furniture. In that decision we found that the proposed minimum rates should not apply to shipments transported from or returned to retail stores. In that decision we recognized that transportation conditions affecting delivery from retail stores was materially different from those under consideration in the investigation which preceded D.46062.

Prior to the effective date of the tariff, we granted rehearing of D.46062 and suspended the tariff in D.46160 issued September 4, 1951. In D.50144 dated June 1, 1954, the Commission created a new tariff, Minimum Rate Tariff (MRT) 11-A, which

superseded Highway Carriers' Tariff No. 11 which was cancelled by companion D.50115 dated June 1, 1954. MRT 11-A was cancelled effective April 30, 1980 and was redesignated and superseded by Transition Tariff (TT) 11-A, in D.90663 and D.90816, effective April 30, 1980.

In D.86-04-045 dated April 16, 1986, we adopted a program for the cancellation of transition tariffs, including TT 11-A. On December 22, 1986 we issued D.86-12-102 in which we adopted the Exempt List. As it presently appears in the Exempt List, the furniture, household, and other home furnishing exemptions reads as follows:

"Furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported from retail stores or retail store warehouses, or transported from retail customers to retail stores or retail store warehouses. The exemption applies only when the distance between point of origin and destination does not exceed 35 constructive miles, computed in accordance with the Commission's Distance Table No. 8. This mileage restriction does not apply for transportation within the East Bay Drayage Area and San Diego Drayage Area as described in Section 5 and the City and County of San Francisco."

Applicant believes that the current exemption applying to furniture and related items sold at retail also applies to those same commodities rented or leased with an option to purchase. Applicant points out that not only are the transportation characteristics the same, but the characteristics of the retail sale or lease/rental of these commodities are essentially the same. In either case, a consumer is either by sale or lease purchasing the furniture or related items.

The Transportation Division staff has reviewed the application and believes it is one which, in the absence of protest, should be granted by ex parte order. Staff prefers the

first alternative requested by applicant (shown "in the application") which would add the phrase "leased or transported from lessor or renter stores or their warehouses" to the definition of furniture in the Exempt List. Additionally, staff recommends that the definition should apply only to new furniture, and that transportation of used furniture, such as return shipments of rental furniture, would require household goods carrier authority.

We concur with the recommendation of the staff, but we will decline to require that the return shipments be made under a household goods carrier authority. The return shipments are identical in all respects to the delivery which we are exempting. The staff argues that furniture which is returned to the shipper is used furniture. However, the furniture would not have been sold at retail, and, therefore, ownership would remain with the shipper. Even if we considered the furniture to be used household goods, this carriage would be exempt from rate regulation under MRT 4-C, Item 12. Applicant presently holds a highway contract carrier permit and following today's decision will be carrying commodities which will be exempt from rates under either type of authority. No purpose would be served by requiring an additional authority for that portion of the applicant's business involving returns.

The same may not be true of an intrastate carrier who wishes to offer this type of service and who does not possess either a general freight or a household goods carrier authority.

We will revise Section 2, Page 4 of the Commission's Exempt List as it pertains to furniture so as to exempt new furniture leased or rented by the company engaged in the leasing or renting of such commodities transported from lessor or renter stores or warehouses.

Findings of Fact

1. Applicant is a corporation duly recognized and existing under and by virtue of the laws of the State of California.
2. Applicant has been issued a permit dated August 11, 1983, to operate as a highway contract carrier for the transportation of general commodities in intrastate commerce between points in California in File No. T-139,740.
3. Applicant is a highway carrier specializing in the transportation of furniture, household appliances and other home furnishings. Applicant's shippers engage in the business of renting or leasing the said commodities, as well as the retail sale of said commodities.
4. Approximately 90% of all shipments transported by applicant are rented or leased furniture and related items under contract which provides the lessee consumer an option for ownership upon completion of the monthly installments.
5. The commodity for which exemption is sought is similar to commodities for which we have previously granted exemptions from rate regulation.

Conclusions of Law

1. The application should be granted.
2. The Exempt List should be amended as set forth in the ensuing order.
3. A public hearing is not necessary.

ORDER

IT IS ORDERED that:

1. The document "Commodities and Geographic Areas Exempt from Rate Regulation" is amended by incorporating Fourth Revised Page 4, attached, to become effective 30 days after today.

2. The Executive Director shall mail a copy of the revision to the list of "Commodities and Geographic Areas Exempt from Rate Regulation to each highway contract carrier and each highway common carrier.

This order is effective today.

Dated _____, at San Francisco, California.

COMMODITIES AND GEOGRAPHIC AREAS EXEMPT FROM RATE REGULATION

SECTION 2--LIST OF COMMODITIES EXEMPT FROM RATE REGULATION (continued)

Directories, telephone, new, distributed to subscribers, and old, picked up from subscribers, Note -- applies only within East Bay Drayage Area as described in Section 4 and within the City and County of San Francisco.

Eggs (Subject to Note 6).

Farina (Subject to Notes 12 and 13).

Feed, animal or poultry, as described in Note 14 (Subject to Notes 11, 12, and 13).

Fertilizers, as described in Note 8 (Subject to Notes 1, 2, and 3).

Film, motion picture (Subject to Note 1).

Fodder, bean, cane, corn or pea, in machine pressed bales (Subject to Note 11).

Fruit, dried, unmanufactured and unprocessed (Subject to Note 10).

Fruit, fresh or green, including dates, fresh, not cold pack nor frozen.

Fruit, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled fruit.

Fuel, power plant - wood, plant fiber, or biomass residues from manufacturing facilities, forests, solid waste dumps and other locations, including wood scrap, pieces, chips, sawdust or bark, and agricultural wastes that are to be used as fuel (Subject to Note 17).

Fungicides, agricultural (Subject to Notes 1, 2, and 3).

Furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported from retail stores or retail store warehouses, or transported from retail customers to retail stores or retail store warehouses. *Also included is new furniture leased or rented by a company engaged in the leasing or renting of such commodities. The exemption applies only when the distance between point of origin and destination does not exceed 35 constructive miles, computed in accordance with the Commission's Distance Table 8. This mileage restriction does not apply for transportation within the East Bay Drayage Area and San Diego Drayage Area as described in Section 5 and the City and County of San Francisco.

Furniture, uncrated, new, of state, county or municipal governments, or transported under an agreement whereby the governments contracted for carrier's services (Subject to Notes 1, 2, and 3).

g Change) Decision
* Addition)

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EFFECTIVE

Correction

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
SAN FRANCISCO, CALIFORNIA.

payments as provided in the lease/rental agreement. Many of the stores which lease or rent furniture also sell the same products at retail.

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