



STATE BOARD OF EQUALIZATION

February 13, 1969

Mr. K. C. C---
XXX E. XXth Avenue
---, XX, B.C.
Canada

SC --- XX XXXXXX
A--- R--- T---
Co. Inc.

SY -- XX XXXXXX
W--- F--- F---
Inc.

This is in response to your letter of January 15, 1969, regarding the application of tax to a television set purchased by you in --- ---, California, and shipped to Canada by way of common carrier (A--- R--- T--- Co., Inc.) along with your other household goods.

Enclosed with your letter is a copy of sales invoice number 498431 prepared on December 26, 1968, by W--- F--- D--- store number 228, covering a cash sale to K. C. C---, XXX East XXth Avenue, ---, B.C. of one Motorola T.V. Sales tax of \$28.00 was charged on the transaction. The invoice contains no shipping or special instructions.

A copy of "Household goods descriptive inventory" form prepared by A--- R--- T--- Co., Inc., on December 27, 1968, also attached to your letter, lists numerous items of household goods the final entry of which is, "Color T.V.P.U. at W--- F--- Whse., --- ---, Calif." The destination address shown on the form is "---, Canada, B.C."

From the above facts as we understand them, you purchased the T.V. from a California retailer presumably with the intent that it be shipped along with your other household goods to a Canadian address. The invoice of sale contains no shipping or special instructions, even though a space is provided thereon for such instructions. We can only assume that none were given at the time of sale.

Sales in interstate and foreign commerce are exempt from tax provided the transaction complies with the provisions of the enclosed ruling 55. In order for the exemption to apply, the goods must have been committed to foreign commerce at the time of sale. The exemption of exports does not depend on the intent of the purchaser but depends upon whether at the time of the transaction which is sought to be taxed, the goods are within the stream of foreign commerce. (Empressa Siderurgica v. County of Merced, 337 U.S. 1954.)

If the transaction was intended to be an exempt sale 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 thereby permitting the initiation of the proper procedure by the seller to cause the exemption from the tax to apply in accordance with the requirements of the ruling. The copy of the invoice and agreement submitted by you does not contain information nor instructions appropriate to effectuate the above required procedure.

While the moving company (A--- R--- T--- Co.) noted on its "Household goods descriptive inventory" form that a T.V. was to be picked up at the W--- F--- warehouse, for shipment to Canada, this alone is not sufficient to constitute compliance with the requirement of ruling 55. Documentary evidence that the T.V. was in fact delivered to the shipper by the seller and that it was in fact carried outside the continental limits of the United States without interruption must be secured and retained by the seller, since exemption from the tax must be claimed and supported by the seller.

If you are in possession of additional sufficient facts surrounding the transaction, which you feel constitutes compliance with the exemption requirements, we suggest you correspond with the seller for a determination of its policy concerning your particular transaction. If the seller has complied with the provisions of the ruling in a manner sufficient to cause the sale to be exempt and has secured and retained the necessary documentation, tax would not apply to the transaction.

While the matter of a refund of tax to the customer is a contraction agreement between the seller and the customer, the law does provide that where tax reimbursement is in fact excessive, the amount of the excessive reimbursement must either be refunded to the customer or remitted to the State. (See ruling 80(c), copy enclosed.)

The information available from your letter and attached documents is inadequate to enable us to express a definite opinion regarding the taxable status of the transaction involved.

Mr. K. C. C---
(SC --- XX XXXXXX &
SY -- XX XXXXXX)

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February 13, 1969
585.0280

We are returning the copies of the sales invoice and household goods descriptive inventory to you.

Very truly yours,

T. P. Putnam
Tax Counsel

BY _____
Joseph Manarolla

JM:smb
Enclosures