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**STATE BOARD OF EQUALIZATION**

December 22, 1969

Dear

Your letter of November 28, 1969, addressed to --- regarding the taxability of certain sales made to foreign governments has been referred to me for reply.

From your letter and our phone conversation of December 12, 1969, it is my understanding that the following facts exist:

The transactions in question involve special security equipment sales to friendly foreign governments. Due to the various security regulations, both domestic and foreign, this special equipment must be hand delivered at your factory in California to government agents of a foreign government such as military attaches or consulate officials.

Because of the highly technical and confidential nature of this equipment, it can only be purchased by the official government purchasing division of the foreign government, and the United States Government must be informed of such purchases in order to make sure the property is actually exported by the foreign government. The foreign government employee, in a sense, acts as transportation courier in that the equipment they pick up goes directly to the consulate where it goes into the diplomatic pouch for carriage outside the country. In addition, because of the special nature of this equipment, it cannot legally be used by the government in this state or the United States; nor can it be resold by them. It must be exported.

You ask whether the sales of such specialty items are subject to tax.

Generally speaking, retail sales to foreign consular officers and employees are not exempt from California sales tax. The only possible exemption that could relieve the sales tax liability in this case is that the sale is exempt as one of export.

The facts of this special situation are similar to the case of Montrose Chemical Corp. of California v. County of Los Angeles, 243 Cal. App. 2d 300. As was true in the Montrose case, the items presently under consideration cannot legally be used in the United States nor resold by the purchaser. In fact, to make sure they are exported, the United States Government keeps careful watch of the items and the purchasers have to prove they are actually exported. In view of all the circumstances, it is our opinion that at the time of purchase, the items are committed to export and cannot legally be diverted.

Accordingly, the sales of such items will be exempt provided proper export documents are maintained.

Very truly yours,

Glenn L. Rigby  
Tax Counsel

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