



STATE BOARD OF EQUALIZATION

October 1, 1982

Attention: --- ---

Dear --- ---:

Your letter of August 12, 1982, to Mr. Don Hennessy has been referred to the undersigned for reply. Your inquiry concerned the significance of a foreign trade zone on the application of the California Sales and Use Tax Law.

Foreign trade zones were established by an Act of Congress (48 U.S. Stats. at L., Ch. 590) in 1934 for the purpose of allowing foreign and domestic merchandise into a zone without the payment of duties or the furnishing of a bond for further processing or manipulation. The merchandise is subject to custom's duties only when it actually enters the United States. The statutes providing for the foreign trade zones are found in section 81 a et seq., of Title 19 of the United States Code.

We have broken down the subject matter into several questions, our answers to which follow.

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 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.

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.

3. Does use tax apply to tangible personal property:
- a. delivered from outside [the] 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. Arguably, there might be some support for the contrary view on basis that in establishing the foreign trade zone Congress has preempted this entire area from state control and that any action on the part of the State of California which would lessen the competitive advantage conferred by Congress would be prohibited. See National distillers Products Corp. v. San Francisco Co., 141 Cal.App.2d 651 (1956).

We do note that 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.

We trust that the above will answer your questions concerning the correct application of the sales and use tax to transactions involving foreign trade zones. If you have further questions please write this office.

Very truly yours,

Mary C. Armstrong
Staff Counsel

MCA:jlc