



STATE BOARD OF EQUALIZATION

September 3, 1964

Dear --- ---:

We have reviewed your client's petition for redetermination of sales and use tax in the light of information obtained at the preliminary hearing on this matter. It is our opinion that no legal basis exists for adjustment to the measure of tax originally determined.

As was indicated to you at the preliminary hearing, the determinative issue is whether the property in question was in the process of export at the time title to the property was obtained.

We have concluded that title to the property passed your client no later than the date of the deliveries in Natomas, California. The incidence of the tax occurred at this time. After transshipment, the property was held by your client for indefinite periods prior to shipments to Peru. During this period, the property had not begun its export journey nor was it irrevocably committed to export. While the surrounding facts and circumstances indicate that the property was intended for export and, indeed, was subsequently exported, this is not sufficient to classify the property as being in the process of export. The prospect of export, no matter how bright, does not constitute a part of the exportation (Empress Siderurgica v. County of Merced, 337 U.S. 154 [and Flying Tiger Line, Inc., v. State Board of Equalization, 157 Cal. App. 2d 85].)

We have also concluded that the penalty for failure to file was properly applied. Under the provisions of § 6421, a purchaser in the circumstances of your client, is liable for the payment of sales tax....” Since there was an obligation to pay sales tax as a retailer imposed by the statute, the duty to file returns and declare this tax also attaches. Since no returns were filed, the penalty provisions of § 6511 of the Revenue and Taxation Code (failure to file) apply.

This matter will now be scheduled for predetermination and your client will receive notice of predetermination in due course.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

cc: --- --- District Administrator

Attached are two copies of hearing officer's report dated 8-19-64, which has been approved. This hearing was held in San Francisco on June 10, 1964. (Both have been lost per David Levine, 12/4/97).