



STATE BOARD OF EQUALIZATION

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July 3, 1995

BURTON W. OLIVER
Executive Director

Mr. D--- C---
 Purchasing Coordinator
 A--- A---
 A--- D--- M---, S.A. De C.V.
 XXXX Avenida ----, Suite XXX
 --- ---, CA XXXXX

Re: Exports

Dear Mr. C---:

Your letter dated May 10, 1995, to Mr. Travis Fullwood, Professional Advisor to Board Member Ernest J. Dronenburg, Jr., was sent to the Board of Equalization's Legal Staff for response.

You ask how sales tax applies to purchases made in California for export to Mexico. You describe your operations at A---'s Otay Mesa Office located in California as follows:

"We are exclusively set up to receive both our internal incoming and outgoing freight. The freight will be received at our Freight Forwarders premises on behalf of A---. We in turn will file Mexican paperwork to import it into Mexico, have the Freight Forwarder file the Shippers Export Declaration and coordinate the actual shipping of said freight."

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempted by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Retailers may collect sales tax reimbursement from the purchaser if the contract of sale provides for the reimbursement. (Civ. Code § 1656.1.)

In responding to your inquiry it will be assumed that the incoming freight which is received at your freight forwarder's premises represents purchases made from California

retailers. This being the case, your purchases are retail sales subject to tax unless the sale is subject to an exemption. Sales and Use Tax Regulation 1620(a)(3)(C)2 (copy enclosed) provides that sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to the foreign country. The provisions in this regulation are based in part upon Revenue and Taxation Code section 6352 which exempts transactions that the U.S. Constitution prohibits the states from taxing and in part upon Revenue and Taxation Code section 6387 which reads:

"Delivery to export packers. There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property purchased for use solely outside this State and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof."

To be exempt under Regulation 1620(a)(3)(C)2 (the export exemption), a sale must meet the following three requirements:

1. The property must be intended for a destination in a foreign country;
2. The property must be irrevocably committed to the exportation process at the time of sale; and
3. The property must actually be delivered to the foreign country prior to any use of the property.

Assuming (1) that the supplier ships the property by a carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export or arranging for its export, (2) that possession of the property does not pass to the foreign purchaser prior to the time the property is delivered by the supplier to the carrier, forwarding agent etc., and (3) that the property is shipped directly to the foreign country by the supplier prior to any use of the property, the sale is exempt as an export.

I am concerned, however, with your statement that A---, at its Otay Mesa office, is "exclusively set up to receive both our internal and outgoing freight." This statement raises implications that A---, itself, might be accepting delivery of the goods prior to their entrance into the exportation process. If this is the case, then the sales tax would apply to the purchases made by A--- in California even if A--- makes no use of the goods in this state. This is explained in Regulation 1620(a)(3)(C)1 which provides that:

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"[S]ales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation."

If the property is delivered to A---'s freight forwarder, who then delivers these goods to a port outside the continental limits of the United States without A---'s taking possession of such property prior to the delivery outside the United States, then sales to A--- will qualify for the export exemption.

If you have any further question, please feel free to write directly to this office.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

Enclosure

cc: Mr. Travis Fullwood
 San Diego District Administrator