



STATE BOARD OF EQUALIZATION

April 28, 1993

Re:

Dear Mr.

This is in response to your letter received by the Board at the end of February, 1993 in which you state:

"WE ARE SETTING UP THE GROUND WORK TO EXPORT AIRCRAFT PARTS AND COMPONENTS TO COUNTRIES OF SOUTH EAST ASIA, WE WOULD LIKE YOUR RULING ON THE FOLLOWING TYPES OF TRANSACTIONS. LET US KNOW IF ANY OR ALL THESE TYPES OF TRANSACTIONS ARE 'SUBJECT TO OR EXEMPT FROM' TAXATION PER THE SALES AND USE TAX LAWS OF CALIFORNIA."

You describe four transactions and ask whether sales or use tax is due on any of those transactions.

A. Sales and Use Tax Law - Generally

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property occurring in California. The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. civ. Code § 1656.1.

Revenue and Taxation Code section 6201 imposes an excise tax, commonly referred to as the use tax, on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. The use tax complements the sales tax and is most frequently imposed upon in-state leases, out-of-state purchases of property for use in California, and use of property purchased with a resale certificate. The use tax is imposed upon the purchaser, but if a retailer is engaged in business in California and making sales of tangible personal property for storage, use, or consumption in this state, he or she must, at the time of making the sale, collect the use tax from the purchaser and pay it to the state. Rev. & Tax. Code § 6203.

B. Situation #1:

"WE, ACTING AS A DISTRIBUTOR/REPRESENTATIVE OR RESELLER, BUY AIRCRAFT PARTS FROM SUPPLIERS IN VARIOUS STATES THEN TURN AROUND AND RESELL THEM DIRECTLY (SHIP THEM DIRECT FROM THE SUPPLIER) TO A FOREIGN BUYER/PURCHASER."

In this transaction, if the aircraft parts are shipped directly from an out-of-state point to a foreign country, i.e., the parts never enter California, no sales or use tax is due. Sales tax only applies to retail sales occurring in California. If the property never enters California, the sale to the foreign purchaser cannot occur in California. Nor does use tax apply since the property was not used or stored in California.

Assuming that the supplier ships the parts from California, the tax consequences are as follows:

In these transactions you are purchasing the aircraft parts from your suppliers for resale. You may purchase such parts ex tax by issuing resale certificates to the suppliers. Sales and Use Tax Regulation 1668 (copy enclosed) explains the proper use of and procedures for resale certificates.

Your sale of the parts is a retail sale subject to tax unless the sale is subject to an exemption. Sales and Use Tax Regulation 1620(a) (3)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)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 parts 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 title to the parts does not pass to the foreign purchaser prior to the time the parts are delivered by the supplier to the carrier, forwarding agent etc., and (3) that the parts are shipped directly to the foreign country by the supplier prior to any use of the property, the sale is exempt as an export.

The rules are more complex if the parts are delivered by the supplier to a ship, airplane or other conveyance furnished by the buyer. To determine if the exemption applies, you should consult Regulation 1620 if transportation will be arranged in this manner.

C. Situation #2:

“AS ANOTHER OPTION, ARE WE SUBJECT TO PAY THE CALIFORNIA SALES & USE TAX IF WE PURCHASER THE AIRCRAFT PARTS FROM VARIOUS OUT OF STATE SUPPLIERS THEN SHIP THE PRODUCTS TO A CALIFORNIA FREIGHT FORWARDER PRIOR TO EXPORTATION (THIS WILL ALLOW TO VERIFY/INSPECT THE PARTS PRIOR TO FOREIGN SHIPMENT).”

We assume that the first and third requirements regarding intention and actual delivery to a foreign country are met. If title to the parts does not pass to the purchaser prior to the time of delivery to the freight forwarder, if the freight forwarder arranges shipment by means of a carrier and not by a ship, airplane, or other conveyance furnished by the purchaser, and if the property is not used prior to delivery to the foreign country, the sale to the foreign purchaser is exempt. Again, refer to the regulation if the parts are transported by a ship, airplane, or other conveyance furnished by the purchaser.

D. Situation #3:

"WE, ACTING AS A DISTRIBUTOR/REPRESENTATIVE OR RESELLER, BUY AIRCRAFT PARTS FROM SUPPLIERS FROM VARIOUS STATES THEN STORE THEM IN OUR WAREHOUSE, UNTIL WE ARE ABLE TO RESELL THEM TO A FOREIGN BUYER. ARE WE SUBJECT TO PAY TAX ON OR BEFORE THE SALE TO THE FOREIGN BUYER?"

A person* who purchases property ex tax with a resale certificate is not liable for use tax as long as he or she does not make any use of the" property other than retention, demonstration, or display while holding it for sale in the regular course of business. If the person makes any other use of such property, the person is liable for use tax as of the time the property is first used. The sales price of the property to the person is the measure

of tax. Rev. & Tax. Code § 6094(a). If a person issues a resale certificate, makes a taxable use of the property, and then makes a retail sale of the property, the person is liable for use tax when he or she makes a taxable use of the property and, unless the retail sale is exempt, is also liable for sales tax when the retail sale is made.

*Note: A "person" under Sales and Use Tax Law includes not only individuals but entities such as a firm, partnership, trust, or corporation. Rev. & Tax. Code § 6005.

E. situation #4:

"WE, ACTING AS AN AGENT FOR THE FOREIGN BUYER/PURCHASER BUY AIRCRAFT PARTS FROM A CALIFORNIA AIRCRAFT PARTS SUPPLIER THEN SHIP THEM DIRECTLY (THROUGH A FREIGHT FORWARDER) TO THE FOREIGN PURCHASER. ARE WE SUBJECT TO SALES OR USE TAXATION?"

If the parts are first delivered to your business, the export exemption will not apply. Since your business is the agent for the foreign purchaser, shipment to your place of business is regarded as shipment to the purchaser. Under these circumstances, there is no irrevocable commitment to the exportation process at the time of sale and therefore no exemption. The supplier is the retailer and must pay tax on the sale. If the parts are shipped by the supplier directly to a freight forwarder and you do not get possession of the parts, the export exemption will apply if all other requirements are met.

There are other exemptions which may apply, but we do not have enough facts to comment upon them. We are enclosing for your information Regulations 1621 and 1593 regarding the common carrier exemption and the aircraft exemption. (The latter has only limited application to aircraft parts.)

We have made several assumptions in this letter. If any of these assumptions are incorrect, the tax consequences may be different from those explained in this letter.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel