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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2641

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September 28, 1993

BURTON W. OLIVER
Executive Director

Ms. C--- H---
The XXXX V--- L---, Inc.
XXXXX --- --- Boulevard
--- ---, CA XXXXX

Dear Ms. H---:

This is in response to your letter of June 30, 1993, which requested our opinion as to whether certain proposed transactions would be exempt from the sales tax as foreign commerce.

You state that you are a --- moving company with authority in 48 states. You propose that your members, A--- N---, or customers who have booked a moving with your company to Japan be able, with appropriate documentation, to purchase merchandise tax-exempt at the participating stores and have it shipped to Japan.

The proposed documents, of which you have provided samples, are as follows:

1. An A--- N--- Membership Card identifies a purchaser as an XXXX V--- L--- customer. The customer presents the card to the retailer at the time of purchase.
2. A form letter from XXXX V--- L--- stating that items purchased by the member will be shipped immediately outside the country. Presented by customer at the time of purchase.
3. California Blanket Sales Tax Exemption form. This will be on hand with retailer so they can attach tax-exempt receipt to this form. (The example provided is a Certificate E as shown in the Appendix to Regulation 1621, pursuant to Rev. & Tax. Code § 6385(a).)

4. Bill of Lading from XXXX V--- L---. This will show the merchandise was picked up for the customer. The XXXX V--- L--- will present this to the retailer when merchandise is ready for delivery.
5. Bill of Lading from --- - L---. This shows customer's item did get packed inside a container going to Yokohama or to a destination in Japan. This is presented to the retailer once the container reaches Japan and the Bill of Lading is returned to XXXX V--- L---.

It is presumed that all gross receipts from the retail sale of tangible personal property in California are subject to sales tax until the contrary is established. (Rev. & Tax. Code § 6091.) The retailer has the burden of proving facts establishing his or her right to exemption. Sales in interstate and foreign commerce, which meet the criteria contained in Regulation 1620 (copy enclosed), are exempt.

As explained in subdivision (a)(3)(C)2 of Regulation 1620, sales tax applies to a sale in California unless the property is intended for a foreign destination and the property is irrevocably committed to the exportation process at the time of sale, and actually shipped or delivered to a foreign country before any use is made of the property.

In examining your sample documents, I note that you propose to use a California Blanket Sales Tax Exemption form. This form is the one which appears as Certificate E in the Appendix to Regulation 1621. This form may not be used for the transactions you have described. It may only be given to a retailer by a common carrier when the common carrier is the purchaser and qualifies for the exemption described in Revenue and Taxation Code section 6385(a) regarding sales to common carriers.

Since the export exemption depends on actions for which the retailer is held responsible, and not the purchaser, no certificate from the purchaser is required for an export exemption. Rather, the retailer must obtain and retain bills of lading, import documents of a foreign country or other documentary evidence of export. (Reg. 1620(a)(3)(D).)

Instead of the proposed form letter from XXXX V--- L---, each retailer could use an agreement providing that the merchandise would be shipped abroad. The agreement should provide that the purchased items will be shipped via a specific "carrier, forwarding agent, export packer, or customs broker or other person engaged in the business of preparing property for export, or arranging for its export" (Reg. 1620(a)(3)(C)2.(b)), as well as other terms such as which party will pay the shipping costs.

The retailer is responsible for ensuring that the property is actually delivered (whether by the retailer's own facilities or by a carrier such as your company) to the foreign country, and obtain and retain a bill of lading or other document described in Regulation 1620(a)(3)(D) as proof of exemption.

If you have other questions, please contact me.

Sincerely yours,

Donald L. Fillman
Tax Counsel

DLF:wk

Enclosure: Reg. 1620