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**STATE BOARD OF EQUALIZATION**

July 26, 1967

Gentlemen:

This is in reply to your letter of June 10, 1967 in which you ask our opinion with respect to the application of the California Sales and Use Tax Law to your sales of diesel fuel to foreign fishing boat owners.

We understand that these fishing boats are based and registered in a foreign country. The diesel fuel which is sold by your firm is used to propel the vessels in their fishing operations.

It is apparently your customers' contention that these sales of diesel fuel made at your San Diego dock are exempt from sales tax on the ground that they are sales in foreign commerce under sales and use tax Ruling 55.

In order to claim exemption from sales tax upon the ground that the sales are immune from taxation as sales in foreign commerce or as export sales, it is essential that all of the conditions of such exemption be present and adequately supported by proper proof. Ruling 55 (a) (1) (E), copy enclosed, expressly provides as a condition of exemption that the goods shall be delivered to a conveyance furnished by the purchaser for the purpose of carrying the goods abroad and which, in fact, are actually carried to a foreign destination.

Since your foreign purchaser (i.e., foreign boat operator) uses the purchased fuel in its fishing operations, it has not purchased goods for the express purpose of carrying them to a foreign destination. Thus, it is our opinion that sales of fuel to foreign fishing boat operators for purposes of refueling their vessels while engaged in fishing operations are not to be considered as sales of "export cargo" within the meaning of the aforementioned ruling, notwithstanding the fact that the foreign purchaser transports the goods outside the state and uses them in his fishing operations outside the United States territorial waters.

In support of our position is a letter opinion from the Attorney General's office stating that the California sales tax applies to the sale of fuel oil to the government of Mexico for use in its naval vessels. The opinion also states, "... that such a tax would not become a burden on an act of exportation contrary to the federal Constitution." Thus, if tax applies to the sale of fuel oil to the Mexican government, undoubtedly it should also apply to the sale of fuel oil or other types of fuel to private foreign fishing boat operators who use the fuel in their fishing operations.

The question whether the California sales tax could constitutionally apply to sales of bunker fuel used to propel a vessel was answered in the affirmative in the recent California Supreme Court decision of Shell Oil Co. v. State Board of Equalization, 64 Cal. 2d 713. In that case, the court held that the bunker fuel used to propel a vessel was not an "export" within the meaning of the import-export clause of the United States Constitution. (U.S. Const., art. I, § 10, cl. 2.) The court also held that the application of the sales tax to these sales did not constitute an unconstitutional tax on the "process of exportation".

In conclusion, we believe you are correct in assuming that the sales tax applies to your sales of fuel to your fishing boat owner customers.

If you have further questions in connection with this matter, please do not hesitate to forward the same to this office for our reply.

Very truly yours,

Elliott D. McCarty  
Assistant Counsel

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