

October 24, 1969

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Dear Mr.

This is with reference to the petition of \_\_\_\_\_ and the hearing held on the matter last September 22 in San Diego.

The items under protest are classified into two groups. One consisted of numerous sales of used cars to Mexican Nationals which were treated for tax reporting purposes like sales in foreign commerce. The other was a sale of a \_\_\_\_\_ automobile to the United States Consul in Tijuana. It, too, was treated like a sale in foreign commerce.

As far as the sales to the Mexican Nationals were concerned, \_\_\_\_\_ is charged sales tax reimbursement, and when proof of export was received from the customer, the sales tax was refunded. If the cars had been delivered by employees to the export broker at the border or to the customer at the border, or even to the export broker at \_\_\_\_\_'s place of business in National City, there would have been no need to add sales tax reimbursement to the sale and then later refund it upon receipt of proof of export. There is no evidence that the cars were delivered to anyone other than the purchasers and that delivery was made at the National City place of business where the cars were purchased.

We are of the opinion that it is very likely that Mr. Steel, in the prior audit, allowed all sales which were claimed to be exempt sales in foreign commerce upon the furnishing of proof of export such as you furnished at the hearing. However, where the delivery was to the purchaser who drove the vehicle to the border, the transaction should not have been allowed as a sale in foreign commerce, in spite of the documentary proof that the vehicle did, in fact, cross the border and ultimately become registered in Baja California, Mexico.

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Ruling 55, subdivisions (1)(E) and (1) (F) contain provisions wherein sales to foreign consumers are exempt from sales tax. They are:

"(1)... Sales tax does not apply to sales of property which is:

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"(E) Sold to a foreign purchaser for shipment abroad and delivered to a shop, airplane or other conveyance furnished by the purchaser for the purpose of carrying the property aboard and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States.

"(F) 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."  
(Underlining added for emphasis.)

The ruling also provides that sales tax does apply to sales of property which is delivered to the purchaser or his representative in this state (except under conditions described in (E) above).

The following paragraph is an extract from a letter written by Tax Counsel on January 22, 1965, to the fiscal officer of the California Highway Patrol in Sacramento:

"Motor vehicles delivered to Mexican purchasers in California cannot be regarded as exempt export items since the driving of the vehicles in this state constitutes a local use and makes the transaction subject to the California sales tax. We would assume that the vehicles which the Highway Patrol may sell to police agencies in Mexico would be driven to the purchaser in Mexico by an employee of the Patrol, thus qualifying for the exemption. It is required, however, that copies of U. S. Customs shippers' export declarations filed with the Collector of Customs or other documentary evidence of export must be obtained and retained by retailers to support deductions of sales as export sales."

The foregoing clearly indicates the position taken by the board in matters involving foreign commerce exemption claims

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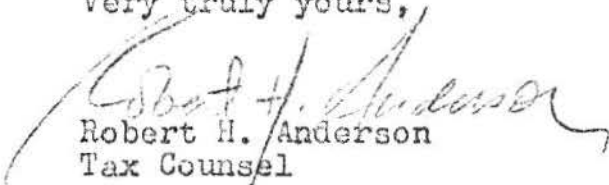
where the sale is of an automobile and the delivery is to the purchaser. Clearly, delivery of the vehicle to the purchaser who drives it to the foreign destination will not be consistent with the requirements for sales tax exemption under ruling 55.

We cannot accept the "Certificate of Mexican Export Via Buyer's Vehicle" signed by Mr. [redacted], the salesman who sold the [redacted] to the U.S. Consul in Tijuana. He has certified that he delivered the merchandise into the purchaser's vehicle. This is impossible, since the merchandise was the purchaser's vehicle. The [redacted] was delivered to the purchaser who drove it to Tijuana. Thus, the sale is not exempt from sales tax for the same reason that the sales to the Mexican purchasers who drove their automobiles to Tijuana are not exempt.

The foregoing is our reason for recommending that the petition for redetermination be denied. If, after considering our proposed recommendation and the reasons for it, the officials of [redacted] desire a hearing before the board on the matter, please notify us in writing within three weeks.

We are sorry a more favorable recommendation cannot be given, but as you can see, even with state agencies who sell cars to Mexican Nationals (or any other foreign purchasers) the board has disallowed the foreign commerce exemption if the delivery was to the purchaser in California and if the purchaser drove the car to the foreign destination.

Very truly yours,

  
Robert H. Anderson  
Tax Counsel

RHA/vs

bc: San Diego - District Administrator

Attached are two copies of hearing report dated 10/16/69 which has been approved. The hearing on this matter was held 9/22/69 in San Diego. ~~Also attached are the work papers for the period 1-1-66 to 12-31-66.~~