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**STATE BOARD OF EQUALIZATION**

December 12, 1950

Your Memo of November 14, 1950

Confirming our discussion of the matter in your office last week, this is to advise that we can find no basis for sales tax exemption with respect to transactions wherein a resident of Mexico comes across the border and makes a purchase at a store on the California side of the line, the retailer delivering the goods purchased to the purchaser at the store.

The fact that the merchandise may actually be taken across the border by the purchaser and an export declaration issued does not in itself determine that there shall be no sales tax imposed with respect to the sale. We do not know of any Court decisions going that far in upholding exemption from a sales tax based upon constitutional grounds.

We appreciate the difficulty of the situation in your district because of the international boundary, but this fact does not alter the applicable law, and we stated in a recent memorandum "It is our opinion that the goods do not become exports until after they have been delivered to the [purchaser]... probably not until they are placed on the tanker that is to take them to [a foreign port]. Since the transfer of title to [purchaser] apparently occurred prior thereto ... it would appear that the sale precedes the happening of the event that marks the commencement of the movement of the goods abroad. The Court in the Richfield case (Richfield Oil Company v. State Board of Equalization, 329 U.S. 69) said 'Delivery was made into the hold of the vessel from the vendor's tanks located at the docks. That delivery marks the commencement of the movement of the oil abroad.' It would thus appear that the vendor could not claim exemption merely because 'there is an intent to export, or a plan which contemplates exportation, or an integrated series of events which will end with it'. (Empressa Siderurgica v. County of Merced. 337 U.S. 154.)

It seems that under the facts there is an intent or plan to export but it does not appear that the goods 'have been shipped or entered with a common carrier for transportation to another state or have started upon such transportation in a continuous route or journey'. (Coe v. Errol, 116 U.S. 517.)"

EHS:ph