



STATE BOARD OF EQUALIZATION

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Executive Director

October 3, 1995

Re: ---, Inc.

Dear ---:

This is in response to your letter dated July 21, 1995, in which you inquired about the application of California Sales and Use Tax to the use of a vehicle purchased on behalf of a company located in Costa Rica.

It is my understanding that your client, XX is an importer/exporter specializing in seafood products. A portion of XX's business is dedicated to transporting seafood products which is facilitated through the use of refrigerated vehicles. In May 1995, XX was contacted by a Costa Rican company, A, for assistance in purchasing a refrigerated truck for use in Costa Rica. In early May (the date on the document is not legible) 1995, a Power of Attorney was executed by you and B, a representative of XX. This document states that your, as XX's

“attorney-in-fact shall have full power and authority to undertake, commit, and perform only the following acts in my behalf to the same extent as if I had done so personally; all with full power of substitution and revocation of the presence:

“To purchase, transport and or conduct any and all functions of business in my behalf in Santa Clara County, Alameda County and San Francisco County.”

On May 3, 1995, a vehicle was purchased from C, a company located in San Jose, California for \$29,854. The buyer's signature lines on the sales agreement are executed as "XX by ---." You state that the vehicle's refrigeration unit was rebuilt in California and that the vehicle was ready for the journey to Costa Rica on May 24, 1995. According to your letter, "C was contracted to facilitate as an exporter to prepare the vehicle for export to Costa Rica [and t] he vehicle left San Jose, CA at 3:00 A.M. on May 25, 1995, on a continuous non-stop journey to Costa Rica."

You have requested an opinion on the California Sales and Use Tax consequences of this transaction. You cite Regulation 1620 to support your conclusion that: "The documentation provided herein, i[n] fact 'provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use.'"

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempted by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax Code § 6007.) Persons engaged in the business of selling vehicles are considered retailers whose sales are subject to sales tax unless specifically exempted by statute. (Rev. & Tax Code § 6284.)

Sales and Use Tax Regulation 1620(a)(3)(C)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.

To be exempt under Regulation 1620(a)(3)(C)2 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 sales; and
3. The property must actually be delivered to the foreign country prior to any use of the property.

This regulation also provides that "exportation does not begin until the property has been shipped or entered with a common carrier for transportation to another country." However, sales tax **does** apply when the property is delivered in this state to the **purchaser** or the **purchaser's representative** prior to an irrevocable commitment of the property into the process of exportation, and it is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country. (Reg. 1620(a)(3)(C)1.)

The fact that you were empowered with the power of attorney “to purchase transport and or conduct all functions” on behalf of XX supports a conclusion that you were acting as its representative when you took delivery of the vehicle. California law clearly provides that an attorney-in-fact is an agent acting under a written grant of authority. (Delos v. Farmers Ins. Group, Inc., (1979) 93 C.A. 3d 642; 155 Cal Rptr 843.) Thus, pursuant to Regulation 1620(a)(3)(C)1, since you, as an agent of XX, took delivery of the vehicle in California and transported the vehicle to its foreign destination, sales tax applies regardless of the intention that the vehicle would be and actually was transported to a foreign country. (Reg. 1620(a)(3)(C)1.)

You state that you have received additional requests to facilitate the purchase of vehicles on behalf of other Costa Rican companies. In order for the export exemption to apply the property must be intended for a destination to a foreign country; the property must be irrevocably committed to the exportation process at the time of sale; there can be no delivery to the purchaser or its representative prior to the irrevocable commitment into the exportation process; and the property must actually be delivered to the foreign country prior to any use of the property.

If you have further questions please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

Enclosure (Regulation 1620)

cc: District Administrator