



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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May 26, 1969

Attention: --- ---

Gentlemen:

On February 18, 1969, you first inquired of this office as to the application of the sales tax to sales made by various California vendors to ABCDEFGHIJKLM or ABC. In particular, you were concerned with those transactions where ABC purchased property for export, but where the property was delivered, prior to its ultimate removal to [a foreign country], to the California facilities of your client, --- --- --- for the purpose of being consolidated for shipment with other property similarly purchased by ABC for export.

Your letters of February 18, February 21, and February 27, 1969, indicate that ABC purchases a considerable number of items in California for export to [a foreign country]. --- --- --- of New York pays for all items purchased by ABC. Nearly all of the items ordered by ABC are shipped to --- for the purpose of being repacked into more economical units. The repacking is done to save airfreight fees. There is a minimum freight charge up to 60 lbs., and --- consolidates merchandise to exceed this minimum weight.

The items in question are ordinarily sent to ---'s place of business by means of United Parcel. --- does not open any of the packages sent to it. It does not have authority to repack any item because of its failure to meet quality standards, so that any item sent to --- remains on its premises until it is [xxxxxxx] with its invoice and until it can be property repacked. The average length of time an item remains with --- before shipment is three days. Occasionally, an item will remain for three weeks. The property is owned by --- while it is in the possession of [xxxxxxx].

The documents which support a typical shipment indicate that --- issues its own purchase orders directly to its vendors. Typically, the purchase orders provide the following shipping and delivery instructions:

- SHIP TO : --- --- --- Sun Valley
--- Aeroport du Bourgot
SOLD TO : --- ---
DELIVERY : 2 months or sooner
CONTROL : Upon receipt - certificate of conformance requested

PACKING : Domestic
TERMS : Payment of this order will be made by ---

Some invoices indicate:

“These commodities licensed by the United States for ultimate destination ---.
Diversion contrary to United States law prohibited.”

Others indicate only that the property covered by the invoice is sold to --- with shipment to
--- ---.

Once the items have been accumulated at --- ---, --- --- issues an invoice to --- indicating
a charge for packing and prepaid inland freight per enclosed documents. --- then issues an
invoice covering the entire shipment indicating that the items are:

“Sold to: --- ---
 --- ---
 --- ---.”

From --- --- the repacked goods are taken by --- to the facilities of ABC. ABC in turn
carries the goods by air from California to [a foreign country]. The air waybill indicates that the
shipper is --- and that the consignee is --- ---.

Each item in question is purchased by --- with the intent that the item will be removed to
[a foreign country] and each item is in fact ultimately exported to [a foreign country].

--- is the only customer for whom --- --- performs this consolidation service. --- makes
some sales directly to --- ---.

Article I, Section 10, Clause 2 of the United States Constitution provides that, “No state
shall, without the consent of the Congress, lay any imposts or duties on...exports.” The United
States Supreme Court has said that under the constitutional standard, “Goods do not cease to be
part of the general mass of property in the state, subject, as such, to its jurisdiction and to
taxation in the usual way, until they have been exported or entered with a common carrier for
transportation to another state, or have been started upon such transportation in a continuous
route or journey.” Coe v. Errol, 116 U.S. 517, 527. Although this test was fashioned to
determine the validity under the commerce clause of a nondiscriminatory state tax, it was held in
Richfield Oil Corp. v. State Board of Equalization, 329 U.S. 69, to be equally applicable to cases
arising under the Import-Export Clause.

In Gough Industries v. State Board of Equalization, 51 Cal.2d 746, the case which most
nearly parallels the case at hand, a California manufacturer and seller sold goods to a foreign
purchaser. The seller was informed that the purchases were made for export. The purchaser
submitted orders requiring that the packages be marked with the name of the foreign port of

entry. The seller was instructed to deliver the goods to the purchaser in care of the purchaser's export packer. Title to the goods passed to the purchaser when the goods were delivered to the packer. The packer packed the goods according to the purchaser's specifications and forwarded them by truck carrier to an ocean carrier, which removed the goods to the foreign destination.

The court concluded that "(a) The agreement of sale contemplated shipment of the goods in export, that is, from a seller in the United States to a buyer in a foreign country; (b) from the beginning of the transaction, the goods were committed to go all the way to the foreign country; (c) the movement of the goods had actually started when the tax was sought to be imposed; and (d) the journey was continuous and unbroken by any action or delay taken for a purpose independent of the transportation of the goods" [at page 749] and that, therefore, the sales in question were not subject to tax.

In our opinion, the movement of the goods from the various vendors to --- for consolidation relating to the transportation of the goods to --- --- is not independent of the journey in foreign commerce where all of the parties know and contemplate that the shipments are to go through to [a foreign country]. The packing and consolidation done by --- --- is only, "...an incidental part of the total export journey rather than the primary station of commencing an export journey" [Gough at p. 749]. Accordingly, the sales in question are exempt from the tax as sales for export.

Very truly yours,

T. P. Putnam
Tax Counsel

By _____
Gary J. Jugum

GJJ/ss

bc: Hon. Richard Nevins
--- --- District – District Administrator
--- --- Subdistrict Administrator