



**STATE BOARD OF EQUALIZATION**

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*Executive Director*

June 14, 1995

Ms. W--- T---  
Loss Prevention Manager  
R--- Transportation, Inc.  
XXX South --- Avenue  
---, CA XXXXX

Re: Sales Tax on Exports

Dear Ms. T---:

Copies of the correspondence between you and Mr. Travis S. Fullwood, Professional Advisor to Board Member Ernest J. Dronenburg, Jr. were sent to the Board of Equalization's Legal Staff for review.

You originally contacted Mr. Fullwood to request verification that your company is considered a freight forwarder for California sales and use tax purposes. This request was prompted by your customer, A---, who wanted assurances that R--- is considered a freight forwarder for purposes of meeting the requirements of the sales and use tax exemption for exported goods (Regulation 1620, copy enclosed). A---'s concerns were based on the fact that your company's Ocean Freight Forwarder's License does not specifically state that you are authorized as a ground freight forwarder.

R---'s Ocean Freight Forwarder License is issued through the Federal Maritime Commission, which is not authorized to issue licenses relative to freight transported by means of ground transportation. The federal entity which governs freight forwarders engaged in ground transportation is the Interstate Commerce Commission (ICC). However, freight forwarders (except household goods freight forwarders) are exempt from the jurisdiction of this Commission (Title 49 United States Codes § 10521) and are not required to be licensed by the ICC. From the facts you have provided it does not appear that your company is acting as a household goods freight forwarder in its activities with A--- and as such is not required to be licensed by the ICC. Since this transaction is an export, your company's activities are not subject to the jurisdiction of the California Public Utilities Code, which is specifically precluded from

regulating commerce with foreign nations (California Public Utilities Code § 202). Accordingly, it does not appear that there are any specific licenses associated with your company's ground activities that would identify it as a freight forwarder.

The term freight forwarder is not specifically defined in the California Revenue and Taxation Code. However, Revenue and Taxation Code section 6396, which defines when a sale of property is considered an exempt interstate purchase, defines a "forwarding agent" as "a person or firm engaged in the business of preparing property for shipment or arranging for shipment." In addition Business Tax Law Guide (BTLG) Annotation 325.1480 (1/30/50), entitled **Definition of Forwarding Agent** provides that:

"A 'forwarding agent' includes only such persons or firms as are engaged in the business of arranging for the shipment of goods. Those concerns that are in the business of consolidating shipments into carload lots and performing other services in connection with the shipment of goods would constitute forwarding agents. A person who is an agent of a buyer and takes delivery of the goods in this state on behalf of the buyer is not a 'forwarding agent' even though he arranges for the transportation of the goods.

"It sometimes happens that the purchaser will direct the seller to deliver the goods to some third party in his state not in the business of arranging for the shipment of goods but in some other business, and the goods are delivered to him simply to be further processed or incorporated with other goods sold by such persons. In this case, there has not been a delivery to a 'forwarding agent.'"

R---, as explained in your letter dated April 21, 1995,

"is an air freight forwarder, general and ocean, handling general commodities for its customers worldwide. The company operates 24 stations at major airports throughout the continental U.S.A. All stations operate under the same name. R--- has several subsidiaries, all of which are wholly owned."

On the basis of this description it appears that R--- is operating as a freight forwarder. If the property is delivered to R---, who then delivers these goods to a port outside the continental limits of the United States without A--- taking possession of such property prior to the delivery outside the United States, then sales to A--- will qualify for the export exemption. However, I note that you state in your letter dated April 12, 1995, that A--- is leasing office space at your Otay Mesa facility. This statement raises implications that A---, itself, might be accepting delivery of the goods prior to their entrance into the exportation process. If this is the case, then the sales tax would apply to the purchases made by A--- in California even if A--- makes no use of the goods in this state. This is explained in Regulation 1620(a)(3)(C)1 which provides that:

“[S]ales tax applies 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.”

Regulation 1620(a)(3)(C)2 provides that there has been an “irrevocable commitment of the property to the exportation process” when the property is delivered by the retailer to a forwarding agent. However, delivery into facilities of A---, such as leased premises of the forwarding agent, might be regarded as a delivery to A--- rather than a delivery to a forwarding agent. Without more information we are unable to give a definitive response regarding A---'s lease of office space at R---'s Otay Mesa facility.

Revenue and taxation Code section 6596, under which the Board may relieve a person of otherwise applicable tax if the person reasonably relied on written advice from the Board, only applies to the person who, in writing, requested advice regarding a particular activity or transaction. Accordingly, as Mr. Fullwood advised, if A---, wishes written advice on which it may rely, it should write to the Board of Equalization explaining the facts and circumstances involved with its purchases intended for export.

If you need any further assistance please feel free to contact us again.

Sincerely,

Patricia Hart Jorgensen  
Senior Staff Counsel

PHJ:cl

Enclosure

cc: Travis Fullwood  
San Diego District Office