



STATE BOARD OF EQUALIZATION

August 24, 1964

REDACTED TEXT

Your letter of June 26, 1964 to Mr. H. F. Freeman, Executive Secretary, was acknowledged under date of July 3 and referred to the undersigned for attention. It appears that REDACTED TEXT purchased various items of supplies and equipment for use on the ship REDACTED TEXT, which travels extensively to foreign countries conducting a medical teaching program.

We first call your attention to the fact that there is no exemption from either the sales tax or the use tax upon the basis that the user of the property purchased is engaged in charitable activities or is a nonprofit organization, except where the purchaser is the beneficiary of the charity, together with other qualifications explained in our letter to you of July 19, 1962. Sales and use taxes are imposed under specific statutory provisions which in California do not contain exemptions that are found in property tax statutes and income tax statutes in favor of some types of nonprofit or charitable organizations. Therefore, any exemption from sales or use taxes must be based on other considerations.

An exemption (Section 6385, Sales and Use Tax Law) affecting sales to certain for hire common carriers would appear to be inapplicable because REDACTED TEXT is, according to our understanding, not engaged in transportation of persons or property for hire. An exemption (Section 6368) applicable with respect to certain watercraft is not available because the California statute limits the exemption to watercraft for use in interstate or foreign commerce involving the transportation of persons or property for hire, or for use in commercial deep-sea fishing operations. There is no question but what the REDACTED TEXT travels to foreign countries, but this alone does not meet the requirements of the exemption statutes in the California law.

Sales by California retailers of goods delivered to your organization or to the REDACTED TEXT in this state for use in your activities do not fall under any exemption either constitutional or statutory insofar as we are able to determine. There is one area in which there could be basis for an adjustment in the measure of the use tax if the determination included the purchase price of any items purchased outside this state and merely stored in this state for subsequent use solely outside this state. In this situation, a section of our statute, 6009.1, would exempt from the use tax such storage or retention of the property in this state. If, however, the first use of the property occurs in this state, the use tax, in our opinion, applies.

Many court decisions including those of the U.S. Supreme Court have emphasized that there is a "taxable moment" between the time property purchased outside the state is

brought into the state and before it is removed from the state or placed in use in interstate or foreign commerce. See Southern Pacific Co. v. Gallagher, 306 U.S. 167, American Airlines, Inc. v. State Board of Equalization, 216 Cal. App. 2d 180. Unless some of the items in controversy were purchased outside this state and merely stored in this state for subsequent use solely outside the state, there does not appear to be any basis upon which the staff can recommend adjustment in the tax as determined.

The basis for considering the use tax inapplicable to your 1960 Willys Jeep was, according to our records, that the Jeep was found not to have been purchased for use in California within the meaning of the Use Tax Law. This principle would be applicable to any property included in our determination that you might have purchased outside this state intending to place it in service in some other state, but which you decided to place in service in California after it had been purchased.

We shall wait 30 days before submitting the matter to the Board for action on your petition for redetermination to give you the opportunity if you desire to submit any additional data or argument.

Very truly yours

E. H. Stetson
Tax Counsel

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