

STATE OF CALIFORNIA  
STATE BOARD OF EQUALIZATION

**235.0060**

March 16, 1954

REDACTED TEXT

Your letter of January 26

Account No. REDACTED TEXT

Attention: Tax Department  
REDACTED TEXT  
Supervisor, Sales and Use Tax Section

Gentlemen:

You inquire concerning the measure of use tax upon your purchases from Canadian suppliers. The invoices rendered separately state import duties, consular and brokerage fees.

The measure of the use tax is the "sales price", which is defined in Section 6011 of the Revenue and Taxation Code as "the total amount for which tangible personal property is sold ... without any deduction on account of ... labor or service cost, interest charged, losses, or any other expenses."

It is our opinion that consular and brokerage fees are merely part of the seller's expenses of doing business and therefore included in the measure of tax. However, if he obtains such services as your agent and binds you contractually to the third parties for the payment of such fees, then they are not included in the measure of tax.

As to the import duties, Section 1001 of Title 19 of the United States Code states "There shall be levied, collected and paid upon all articles when imported from any foreign country into the United States ... the rates of duty which are prescribed." In *Meredith v. United States*, 38 U.S. 486 (1839), the problem presented is whether personal liability for import duties was imposed upon the importer. The Court, per Mr. Justice Story, stated (at p. 493):

"It appears to us clear upon principle, as well as upon the obvious import of the provisions of the various acts of Congress on this subject, that the duties due upon all goods imported institute [sic] a personal debt due to the United States from the importer .... The language of the Duty Act of the 27th of April, 1816. ch. 107, under which the present importations were made, declares that 'there

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shall be levied, collected, and paid,' the several duties prescribed by the act on goods imported into the United States.”

Section 1483 of Title 19 of the United States Code states, “For the purposes of this subtitle, all merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned.” Accordingly, it is seen that import duties are legally imposed upon the consignee. If the seller is the consignee at the time the goods enter the United States, the duties are legally imposed upon him and his charging you for such duties is merely an increase in the purchase price to reimburse himself for an expense of doing business. If you are the consignee at the time the goods enter the United States, the duty is legally imposed upon you and the seller's payment of such amount will be regarded as made on your behalf and your reimbursement of him for that amount will not be regarded as payment on the purchase price of the goods.

Yours very truly,

Bill Holden  
Assistant Counsel

BH:ja

cc: New York