



STATE BOARD OF EQUALIZATION

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February 9, 1995

BURTON W. OLIVER
Executive Director

S--- P. P---, C.P.A.
J--- and S---
P.O. Box XXXX, Berth XX
--- ---, CA XXXXX

**Re: Taxable Status of Sales of
Marine Fuel to the Argentine Navy
SR -- XX-XXXXXX**

Dear Ms. P---:

This is in response to your letter received by us on December 22, 1994 in which you state the following:

“J--- and S--- (“J---”) engages in retail and wholesale sales of marine fuel in California as well as in interstate and foreign commerce. In July of 1994, J--- sold fuel to the Argentine Diplomatic Corp. in Washington D.C. for the operation of an Argentine Navy vessel, the A--- S--- C---. The fuel was loaded onto the vessel at Berth #XX, O--- H---, S--- P---, California on July 6, 1994 and July 21, 1994. Consequently, J--- billed the customer California sales tax on those sales, and has since remitted it to the Board.

“A representative of the Naval attach' of the Embassy of the Argentine Republic contends that the embassy is exempt from sales tax on the sales because the embassy is exempt from sales and use tax in all states in the United States. The representative sent J--- a copy of a District of Columbia Sales and Use Tax exemption certificate as evidence supporting their claim of exempt status.”

You have provided us with additional information including documents pertaining to the sales as well as a copy of the District of Columbia exemption certificate that was issued by that district.

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail. The measure of tax is based on gross receipts from the retail sales in the state of tangible personal property. Section 6007, in part, provides that a retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

There are exemptions for various types of sales of personal property provided for under the law. Revenue and Taxation Code Section 6352 provides an exemption from sales and use tax when federal law so requires. As relevant here, this is explained in Sales and Use Tax Regulation 1619 which provides in pertinent part:

“(a) Application of Tax.

(1) In General. Neither sales nor use tax applies to the sale or use of tangible personal property sold to foreign consular officers, employees, or members of their families, to the extent that such persons have been identified by the U.S. Department of State as immune from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as immune from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Tax Exemption Card by the U.S. Department of State which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

Tax applies to sales of tangible personal property to foreign consular officers, employees, or members of their families, who do not hold a tax exemption card issued by the U.S. Department of State Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card.”

Your sale was to the Argentine Diplomatic Corporation. Apparently there is an exemption provided for such sales of tangible personal property in the District of Columbia as is indicated by the exemption certificate that you provided. The Sales and Use Tax Laws vary from State to State. You have not provided information showing that your sales qualified for the exemption discussed above or for any other exemption in California. For example you make no mention of the issuance of a Tax Exemption Card issued by the United States Department of State nor its presentation to you for the exemption claimed, thus I assume none was provided. The sales of the fuel in question were sales which were completed in State of California as shown by the invoices which were provided. The purchaser did not comply with the prerequisites required under the law to qualify for the exemption claimed, therefore, those sales

are taxable.

Ms. S--- P---, C.P.A.

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February 9, 1995
250.0005

I am enclosing a copy of Sales and Use Tax Regulation 1619 for your information. If you have any further questions in regard to this matter, please advise.

Your Very Truly,

Anthony I. Picciano
Staff Counsel

AIP:es

Enclosure: Reg. 1619

cc: --- - District Administrator (--)