

M e m o r a n d u m**325.1325**

To: Mr. Jack E. Warner

Date: June 15, 1984

From: Charles J. Graziano

Subject: J---
S- -- XX XXXXXX

This is in reply to your memorandum dated May 23, 1984 wherein you request our opinion as to the application of tax on goods imported into the United States and stored in a U.S. Customs bonded warehouse prior to exportation.

We understand that J--- ("J---") is a corporation organized under the laws of [Country] and has been authorized by the United States Civil Aeronautics Board to engage only in foreign air transportation of persons, property and mail between [Country] and various points in the United States, including points in California. It is J---'s practice to import into the State of California from [Country] certain in-flight materials which are temporarily stored in a U.S. Customs bonded warehouse prior to exportation on board one of its own aircraft. These in-flight materials include such items as dishes, multi-use tags, toilet paper, aisle carts, galley equipment, bags, soap, slippers, pillow cases and paper meal service items. We understand that J--- does not concur with your recent audit report with respect to J---'s storage of these items in California pending export.

The taxpayer protests imposition of a use tax on the items in question and contends that they were imported into the United States in accordance with U.S. Customs Laws and regulation, and temporarily stored in a U.S. Customs Bonded warehouse while awaiting export from the U.S. to [Country]. The taxpayer alleges that within the time period permitted by U.S. Customs Regulations, the material was withdrawn under the supervision of the U.S. Customs Service from the bonded warehouses, and delivered onboard an aircraft for the purpose of being exported to [Country]. Furthermore, taxpayer states that none of this material was consumed in California or within California airspace, but instead was used in-flight only after the aircraft had departed the United States and was in international airspace. It is taxpayer's position that the imposition of California use tax on such materials which are owned by J--- and which have been stored in a U.S. Customs warehouse pending re-export is prohibited by U.S. law as evidenced by the recent Supreme Court decision in the case of Xerox Corp. v. County of Harris, Texas and City of Houston, Texas, 103 S.Ct 523 (1982).

Pursuant to The Tariff Act of 1930 ("Act") as amended (19 U.S.C. 1202 et seq.), imports may be stored duty free up to five years in a U.S. Customs bonded warehouse and re-exported free of customs duties and internal revenue taxes. Section 1557(a) of the Act provides that any merchandise, with certain exceptions not applicable here, may be imported into the U.S. for

warehousing and deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee, and may be withdrawn, at any time within 5 years from the date of importation, either for domestic consumption or for sale upon payment of the duties, or for withdrawal duty free for exportation to a foreign country. The importer is required to post a bond for the value of the duty. While the goods are in a U.S. Customs bonded warehouse, they are in the joint custody of the U.S. Customs Service and the warehouse proprietor and under the continuous control and supervision of the local customs officers (19 U.S.C. Section 1555). With regard to supplies for aircraft registered in any foreign country and actually engaged in foreign trade, Section 1309(a)(3) of the Act provides an exemption from customs duties and internal revenue tax for articles which are withdrawn from any U.S. Customs bonded warehouse. With this statutory scheme in mind, the U.S. Supreme Court in Xerox, supra, held that state property taxes on goods stored under bond in a customs warehouse are preempted by Congress' comprehensive regulation of custom duties pursuant to its powers under the Commerce Clause, and are thus prohibited.

Under California Revenue and Taxation Code Section 6201, an excise tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for the storage, use, or other consumption in this state. The term "storage" is defined under Section 6008 to include any keeping or retention of tangible personal property in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state. However, Section 6009.1 provides in effect that the terms "storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. In our view, the storage of goods under bond in a U.S. Customs warehouse pursuant to the Tariff Act for the purpose of re-exportation is within the exclusion from use tax provided under Section 6009.1.

Although the Court in the Xerox case held that, because of federal preemption, states are not free to tax goods while the goods are lodged temporarily in government regulated bonded storage in the United States it is clear under this case that the prohibition does not apply to states when the bonded and protected goods are withdrawn for domestic sale or consumption. Therefore, assuming J--- does not otherwise use or consume the in-flight materials in this state once the items are withdrawn from the warehouse and free from bond, it is our opinion that J---'s storage of in-flight supplies in a bonded warehouse prior to exportation on their aircraft is not subject to California's use tax.

CJG:ba