



STATE BOARD OF EQUALIZATION

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June 27, 1996

E. L. Sorensen, Jr.
Executive Director

Ms. G--- B---
P.S. W---
XXX --- Drive, -XXX
---, California XXXXX

Re: P.S. W---

Dear Ms. B---:

This is in response to your letter dated March 15, 1996, asking how tax applies to your sales of shipping containers and marine equipment. You state:

“Our company is a California Sole Proprietor and acts as a broker on behalf of Freight Forwarders/Shippers throughout North America of shipping containers and marine equipment. . . . Our company never buys/sells for domestic use within California and we only broker/buy on behalf of freight/shippers that require equipment for export. . . .

“As example, we recently purchased for a Canadian company 20 containers in Los Angeles which were taken by the customer via truck & rail to Salt Lake City, Utah, loaded there and turned in to the Port of Tacoma for shipment via F--- Lines to Russia.”

DISCUSSION

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in California unless specifically excluded from taxation by statute. (Rev. & Tax. Code § 6051.) A “sale” includes any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) A “retail sale” means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

You state that you act as a “broker.” However, you have not provided any facts or evidence indicating that you act as an agent on behalf of your customers in purchasing the shipping containers and marine equipment. We therefore understand that you are the person contracting with the vendors of the shipping containers and marine equipment to purchase such

tangible personal property on your own behalf for resale to your customers and that you are not acting as an agent on behalf of your customers. The retail sale in this situation is the sale of the shipping containers and marine equipment by you to your customers. Such sale is subject to tax unless it is specifically exempt from taxation by statute.

Revenue and Taxation Code section 6396 provides an exemption from sales tax the gross receipts from the sales in interstate commerce when certain requirements are satisfied. These requirements are explained in subdivision (a)(3)(B) of Sales and Use Tax Regulation 1620, as follows:

“Shipments Outside the State--When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer, or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term 'carrier' means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a 'carrier' or 'forwarding agent' within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state”

With respect to exports, Sales and Use Tax Regulation 1620(a)(3)(C), 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. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country....

“Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to a foreign country. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.”

Accordingly, to qualify for the export exemption, the purchaser may not take possession of the property in California prior to an irrevocable commitment of the property into the process of exportation, as discussed in Regulation 1620(a)(3)(C)2., a copy of which is enclosed. Furthermore, to qualify for the interstate commerce exemption, the purchaser may not take possession of the property in California. However, based on the information you have provided, our understanding is that the containers and marine equipment are delivered to your customer or your customer's representative in this state, prior to an irrevocable commitment of such property into the process of exportation. Your customer then delivers the containers and marine equipment outside California to a loading site where certain items of tangible personal property are loaded in such containers and marine equipment for export. Under such facts, the sales of the containers and marine equipment to your customers do not qualify for either the interstate commerce or export exemption. Therefore, the sales of such property are subject to tax.

You may purchase the containers and marine equipment extax by issuing resale certificates to your vendor, as described in Regulation 1668, a copy of which is enclosed. However, as discussed above, your sales of the containers and marine equipment to your customers are subject to tax. Every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of sales tax is required to hold a seller's permit. (Rev. & Tax. Code § 6066; Reg. 1699 (copy enclosed).) A person so engaged is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated. (*Id.*) Accordingly, P.S. W--- is required to maintain a seller's permit for its sales of containers and marine equipment and should apply for a permit at its local State Board of Equalization office.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

Enclosures: Regulations 1620, 1668 and 1699

cc: --- District Administrator - --