



STATE BOARD OF EQUALIZATION

June 18, 1991

Mr. [F]

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XXXX --- --- ---, Suite XXX

---, CA XXXXX

Re: [F] Corporation
S- --- XX-XXXXXX

Dear Mr. [F]:

Your client, [F] Corporation, has filed a claim for refund. One issue that remains in dispute between you and the audit staff relates to whether purchases of certain packaging material qualify for exemption from the Bradley-Burns local tax.

Subdivision (a)(7) of Revenue and Taxation Code section 7202 exempts from the local sales tax eighty percent of the gross receipts from the sale of property used principally outside the county in which the sale is made and directly and exclusively in the use of aircraft as common carriers of persons or property. Subdivision (a)(5) of Revenue and Taxation Code section 7203 exempts from eighty percent of the local use tax property purchased by operators of aircraft when used directly and exclusively in the use of aircraft as common carriers of persons or property.

In a letter to you dated August 21, 1990, I stated that we have insufficient information regarding the packaging material to provide you with a definitive answer as to whether the exemptions applied to your client's use of packaging materials. I noted that if the materials were used to package items which the carrier then delivered, the materials would qualify for exemption if meeting the other requirements, but if they were used in other ways, such as first used by the carrier's customer to package its product and then used for the purpose of delivery, the exemption would not apply. I noted also that the exemption from sales tax applies only with respect to property used or consumed principally outside the county of purchase. You now provide the following explanation of how the subject materials are used by your client:

“The carrier notifies its customer that, should they wish to ship property, they should request and will be provided with specially printed, specific size, shape and weight shipping containers and airbills for use in shipping property via the carrier. Customers must use the carrier’s standard issue containers and airbills. Size and imprint are designed to allow for rapid processing of the property being shipped. The weight and shape of the containers are designed for protection of the property in transit and in consideration of the weight limitations of the vehicles and aircraft which will be used in transporting the property. Only when packages do not fit in carrier-provided containers may customers use their own container, however, the carrier’s airbill must be used.

It is true that a customer may request a supply of these materials to be kept on hand. However, the containers and airbills remain the property of the carrier and are solely for use by the carrier in carrying the customer’s property for hire. They have no other use.”

The dispute between you and the staff has apparently arisen because of the wording of my previous letter. In reviewing that language, it is clear to me that my statement regarding a customer using the property first to package its products not only could easily be misunderstood, but is likely to be misunderstood. Of course, had I known the relevant facts, it would not have been necessary for me to make such a general statement. The disqualifying use by the customer that I referred to was not intended to be the customer’s packaging of the item for the specific purpose of shipment by the common carrier. Rather, I was alluding to packaging that would be necessary without regard to shipment by the carrier. In retrospect, it was not a good example, and you and the staff should disregard it.

In a letter dated March 14, 1991 to Mr. [Z] of your office, Supervising Tax Auditor Thomas noted that the customers of [F] could choose other uses of the materials provided to them which uses would not involve common carriage by [F]. Obviously, if a customer used all such materials for other purposes, such as intraoffice mail and storing files, such property would clearly not be used exclusively and directly in common carriage or persons or property. No exemption would be allowed. For purposes of this opinion, I assume that there is no such disqualifying use. Rather, I assume that the subject packaging were, in fact, used to hold property delivered to [F] for shipment. I further assume that such materials were delivered, with the contents, into aircraft and transported in that aircraft by [F].

To qualify for the partial exemption from local sales tax under section 7202, the property must be: (1) used or consumed principally outside the county in which the sale is made; and (2) used directly and exclusively in the use of aircraft as common carriers of persons or property. To qualify for the partial exemption from local use tax under section 7203, the property must be used directly and exclusively in the use of aircraft as common carriers of persons or property.

Based upon the accuracy of your statements and the assumptions made herein, we conclude that the subject packaging is used directly and exclusively by [F] in the use of its aircraft as common carriers of persons or property. Therefore, the partial exemption from the local use tax applies. However, if the packaging is provided to [F]'s customers in the county in which the sale to [F] occurred (see Regulation 1802 for the place of sale for purposes of the local sales tax), that sale of the packaging materials would not qualify for the partial exemption from the local sales tax. The customer's labeling of the packaging and insertion of the contents is a principal use of the property. Given that use, we do not regard [F] as using the property principally outside that county.

We hope that you and the staff will now be able to resolve this issue without further dispute.

Sincerely,

David H. Levine
Senior Tax Counsel

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