410.0001

Mr. [illegible] May 16, 1978

Glenn L. Rigby

Taxability of Submarine Cable - [illegible]

At the May 4, 1978, meeting with Mr. J. Dunn of A[illegible] a question arose as to whether certain submarine cable owned by A[illegible] was subject to California property tax.

From reviewing the file we find the following facts existed:

A[illegible] contracted with I[illegible] to purchase the cable in question. In February 1978, a shipment-consignment contract was entered into with [illegible] (TCS). TCS was required under the contract with I[illegible] to deliver the cable to a point outside of California. On March 1, 1978 the cable was located at I[illegible]'s dock awaiting loading into TCS's ship, the "C. S. Long Lines." At the date of writing this memorandum some of the cable is still awaiting shipment.

Mr. Dunn was of the opinion that since the cable had been consigned for shipment to an out-of-state point prior to March 1, 1978, it qualified as an exempt export. We must respectfully disagree with Mr. Dunn.

To constitute an export and to be immune, the cable must have begun its movement or physical journey on the lien date. (Schnitzer Steel Products of Calif., Inc. v. County of Alameda, 58 Cal. App. 3d 104. See also Koydar v. National Cash Register Co., 417 U.S. 62.)

The process of exportation has been held to have begun only when the goods had crossed the "waters edge" or had been delivered to a common carrier for the continuous route or journey abroad. (Farmers Rice Cooperative v. County of Yolo, (1975) 14 Cal. 3d. 616 at p. 625.) The Farmers Rice decision overturned a prior holding that rice in a dockside elevator, in the process of being loaded on ship, was immune from taxation.

Certainty of export is not shown by sales receipts or contracts. Certainty of export is shown only by a movement of the goods in foreign commerce, e.g., a delivery to a common carrier for export

and some actual movement of the goods into the stream of export, (Schnitzer Steel Products of Cal., Inc., supra, Rosudar, supra, and Connell Rice and Sugar Co. v. County of Yolo, (1978) 573 P. 2d 511.) Clearly, under these guidelines the cable sitting at dockside on the lien date, even though subject to a consignment contract, was not in the stream of export.

Mr. D[illegible] mentioned the fact that they had an opinion from the Board's sales tax counsel that the sale of the cable by I[illegible] to A[illegible] was exempt from sales tax. Mr. D[illegible] believed that to conclude the property was subject to property tax while exempting it from sales tax seems to be inconsistent. We do not believe it is. In the sales tax case, the question was whether under Section 6396 of the Revenue and Taxation Code, the sale was taxable. To be exempt under this section I[illegible] was required under the contract of sale to deliver the cable to a point out of the state. The question of whether the cable was in the stream of export at a given date (March 1, in the case of property tax) was immaterial in regard to Section 6396 exemption. However, to be exempt for property tax purposes the cable is required to be in the stream of export on March 1, 1978. Since it was not, it is subject to property tax.

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