STATE OF CALIFORNIA

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March 17, 1978

No. 78/45

TO COUNTY ASSESSORS:

TAXATION OF IMPORTS

In Schettler v. County of Santa Clara, 74 Cal. App. 3d 990 (1977), the Court of Appeal held that Revenue and Taxation Code, section 226, serves a valid public purpose and is not objectionable to the California Constitution. On January 19, 1978, the California Supreme Court denied the county's petition for further hearing in that court. We are advised that informal requests for reconsideration have also been denied by the court and that the county has now decided to acquiesce in the decision.

The Schettler decision means that in most instances our guidance issued in letters to assessors numbers 76/53 of March 26, 1976, and 76/135 of August 13, 1976, is no longer valid. Revenue and Taxation Code, section 226, provides:

> 226. Imported goods; validity of assessment. The validity of any ad valorem property tax assessment on imported goods, heretofore or hereafter imposed, levied or collected with respect to tax years prior to the 1976-77 tax year, *shall be determined pursuant to statutory and case law in effect prior to the decision* in Michelin v. Wages, (1976), 46 L. Ed. 2d 495, except that *for any any assessment made prior to* January 14, 1976, the court may, if the circumstances warrant and *the taxing authority demonstrates* that it would be equitable to do so, *follow the decision* in Michelin v. Wages.

The italicized portions above point out the two exceptions within the statute. The first relates primarily to escape assessments that were made on the basis of those special instances in which the breaking of bulk, as required by the original package doctrine, had occurred. The second exception applies to regular

or escape assessments that were made prior to the Michelin decision but appears to require additional facts that would tend to put the taxpayer on notice that the imported products were not subject to the then controlling constitutional immunity.

Prior to the cancellation of escapes made on the basis of our original guidance, it is recommended that you review with appropriate county counsel the particulars of the taxpayer's operation in light of the series of cases annotated on page 27 of our Property Tax Laws, 1976. If you have questions, please call James M. Williams at (916) 445-8900.

Sincerely,

Jack F. Eisenlauer

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:fp