



STATE BOARD OF EQUALIZATION

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January 18, 1996

BURTON W. OLIVER
Executive Director

Mr. H--- H---, M.D.
Ms. H--- B. H---, M.D.
M--- B--- F---
XXXX E. ---
---, California XXXXX

Re: M--- B--- F---

Dear Mr. and Mrs. H---:

This is in response to your letter dated November 22, 1995, regarding the application of tax to medical supplies and equipment purchased by the M--- B--- F--- ("MBF"). You state that the --- Branch of MBF, a nonprofit organization, purchases medical supplies and equipment which it donates to hospitals in foreign countries. In addition to the items purchased by MBF, it collects, packs, and ships medical supplies and equipment donated to it by hospitals and companies in the United States.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

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California does not have a statute that provides a blanket exemption for the sale of tangible personal property to a nonprofit organization. (See BTLG Annot. 390.0020 (8/24/64).) This means that a retail sale of tangible personal property to a nonprofit organization is subject to sales or use tax unless the sale or use is specifically exempt by statute.

Sales and Use Tax Regulation 1620(a)(3)(C)2 (copy enclosed) provides that sales tax does not apply when tangible personal property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to the foreign country. To be exempt as an export, the sale must meet the following three requirements: (1) the property must be intended for a destination in a foreign country; (2) the property must be irrevocably committed to the exportation process at the time of sale; and (3) the property must actually be delivered to the foreign country prior to any use of the property.

Regulation 1620(a)(3)(C) provides that there has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of: (1) facilities operated by the retailer; (2) a carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export; or (3) a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Regulation 1620(a)(3)(C)2 further provides that delivery by the retailer of property into a ship, airplane, or other conveyance furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use.

You state that MBF collects, packs and ships medical supplies and equipment to hospitals in foreign countries. We assume that the possession of the medical supplies and equipment purchased by MBF passes to MBF prior to an irrevocable commitment of the property to the exportation process, as discussed above. Under such circumstances, the sale of the medical supplies and equipment to MBF has not been irrevocably committed to the exportation process at the time of the sale. Therefore, the sale of the medical supplies and equipment to MBF is subject to tax. It is immaterial that the intention of MBF is to ship or deliver the medical supplies and equipment to hospitals in foreign countries or that the medical supplies and equipment are actually transported to the foreign countries.

Lastly, you ask whether MBF needs to obtain a seller's permit. Because MBF donates the medical supplies and equipment it purchases or receives through donations, and does not sell or lease any tangible personal property that is ordinarily subject to sales tax, MBF is not required to obtain a seller's permit. (See Reg. § 1699.)

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If you have any further questions, please feel free to write again.

Sincerely,

Sophia H. Chung
Staff Counsel

SHC:rz

Enclosure: Regulation 1620

cc: --- District Administrator - -