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**STATE BOARD OF EQUALIZATION**

September 27, 1968

Gentlemen:

This is in reply to your letter of August 12, 1968 in which you inquire as to the taxability of a certain described transaction. You are the retailer of new trucks. The "F" corporation, which happens to be an export packer, has ordered several new trucks from you. It is the intention of "F" to ship these vehicles to Korea and to make no use of them in this state. Once you have serviced the vehicles in question, they are to be delivered to facilities of "F" in this state where they are to be packaged and crated for shipment overseas. The sale of these vehicles is exempt if at the time of the sale the vehicles are being exported within the meaning of the import-export clause of the U. S. Constitution or if, within the meaning of Section 6387 of the Revenue and Taxation Code, they are "... purchased for use solely outside this State and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof." (Rev. & Tax. Code, Section 6387.)

Section 6387 will not operate to exempt sales when the export packer is the purchaser. Exemptions are to be construed narrowly and are not to be extended to situations to which they do not expressly apply. (Compare Section 6385.) However, if the sales in question are otherwise exempt sales for export, then the fact that the purchaser and the export packer are the same is immaterial.

It appears, then, that where an article is manufactured and sold in California for export to a foreign country, it is free from sales tax under the import-export clause of the U. S. Constitution if, at the time title passed, the certainty of foreign destination was plain. Thus the question to be asked here is: Will a continuous export journey begin at, or prior to, the time the trucks are to be delivered to the packer?

Based on the information supplied in your letter, it appears that no such continuous export journey will begin prior to the time the tax will otherwise attach. We say this because it is the rule that sales tax applies to sales of property "Sold and delivered to the purchaser or his representative in this State (except under conditions stated in paragraph (E)...) whether or not the disclosed or undisclosed intention of the purchaser is to transport the property outside the state, and whether or not the property is actually so transported." (Ruling 55 (a) (2) (B).) Paragraph (E) refers to sales of property "Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad

and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States." Because the goods will not be delivered to a conveyance furnished by "F" for direct shipment abroad, it does not appear that "F" is entitled to the paragraph (E) exemption. And since "F" is free to do with the property as it likes when the property comes into its possession, it cannot be said that the certainty of foreign destination will be plain at the time title to the property will pass. For these reasons, it is our opinion that the sales in question are not exempt sales for export.

Very truly yours,

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Tax Counsel

By Gary J. Jugum  
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