

HAC
DJA
RHA
PPD (916) 445-2641

325,1206

Handwritten notes and signatures, including the word "purchaser" and other illegible text.

March 16, 1976

[Redacted line]

Dear

[Redacted name]

This is in response to your letter of February 13, 1976, in which you inquire as to the application of tax to a proposed sale of an oil tanker by one of your clients.

We understand that [redacted] is an [redacted] corporation which is not engaged in business in either California or the United States. [redacted] owns a 34,000 dead weight ton oil tanker which sails under the [redacted] flag and which is presently situated in San Pedro Harbor in Los Angeles. [redacted] proposes to sell the tanker to a foreign corporation not doing business in California. The foreign purchaser will take possession of the tanker in San Pedro Harbor, have its registry changed to that of the purchaser's country or some other foreign country, and immediately sail for a foreign destination without returning to the United States.

We are in agreement with your analysis and conclusion that the proposed sale will qualify for exemption from the tax as an export sale. [Matson Navigation Company v. State Board of Equalization, 136 Cal.App.2d 577 (1955); Alaska Packers Association v. State of California, 136 Cal.App.2d 586 (1955); Pope & Talbot v. State Board of Equalization, 181 Cal.App.2d 721 (1960).]

You suggest that a delay in sailing might be occasioned by repairs to the tanker following transfer of title to the purchaser. We are of the opinion that, the cited cases notwithstanding, the sale will be subject to tax if the purchaser repairs the vessel in California.

Article I, Section 10, Clause 2 of the United States Constitution provides that, "No state shall, without the consent

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of the Congress, lay any imposts or duties on. . . exports." The United States Supreme Court has said that under the constitutional standard, "Goods do not cease to be part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation in a continuous route or journey." *Coe v. Errol*, 116 U.S. 517, 527. Although this test was fashioned to determine the validity under the commerce clause of a nondiscriminatory state tax, it was held in *Richfield Oil Corp. v. State Board of Equalization*, 329 U.S. 69, to be equally applicable to cases arising under the Import-Export Clause.

In *Gough Industries v. State Board of Equalization*, 51 Cal.2d 746, a California manufacturer and seller sold goods to a foreign purchaser. The seller was informed that the purchases were made for export. The purchaser submitted orders requiring that the packages be marked with the name of the foreign port of entry. The seller was instructed to deliver the goods to the purchaser in care of the purchaser's export packer. Seller shipped the goods by truck carrier to the packer. Title to the goods passed to the purchaser when the goods were delivered to the packer. The packer packed the goods according to the purchaser's specifications and forwarded them by truck carrier to an ocean carrier, which removed the goods to the foreign destination.

The court concluded that "(a) The agreement of sale contemplated shipment of the goods in export, that is, from a seller in the United States to a buyer in a foreign country; (b) from the beginning of the transaction, the goods were committed to go all the way to the foreign country; (c) the movement of the goods had actually started when the tax was sought to be imposed; and (d) the journey was continuous and unbroken by any action or delay taken for a purpose independent of the transportation of the goods" [at page 749] and that, therefore, the sales in question were not subject to tax.

Although the matter is not free from doubt, it is our opinion that if the vessel is delayed in California for repairs, the export journey will not be continuous and unbroken. You suggest that the repairs would be those minimally necessary

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for the tanker to sail. Nevertheless, we would regard these repairs as ". . . taken for a purpose independent of the transportation of the goods."

Very truly yours,

Gary J. Jugum
Tax Counsel

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