STATE BOARD OF EQUALIZATION

July 2, 1973

Mr. J--- -. K---
Vice President
K--- D--- Inc.
XXXXX --- Avenue
--- --- ---, CA XXXXX

Dear Mr. K---

Re: SS – XX XXXXXX

Your letter of April 2, 1973 was referred to the legal staff by Mr. K--- of our Downey office for review. On May 1, 1973 we wrote to Mr. K--- setting forth our conclusions. Shortly thereafter, he called and requested I write directly to you. Unfortunately, the note I made regarding this matter was misplaced and until just recently I had forgotten to write to you. Please accept my apologies for the delay.

As you are aware, it is the Board's position that effective December 16, 1971 if a sign that is manufactured by the lessor is attached to a building, wall, or roof of a building it is considered to be tangible personal property and tax applies to the rental receipts. On the other hand, if the sign is firmly attached to the realty; namely, a pole sign embedded in concrete in the ground, it will be treated as a lease of real property and tax will apply to the material cost.

You question the propriety of this conclusion. For the reasons set forth below, we are of the opinion that the foregoing position is correct.

Effective December 16, 1971, Section 6016.3 was amended to provide that tangible personal property included leased fixtures if the lessor had the right to remove the fixture upon breech or termination and he was not the lessor of the realty to which the property was attached. Due to this amendment, we were faced with the problem of whether signs such as the ones you lease were or were not fixtures. In researching this matter we found that in 1964 we concluded that the determining point as to whether or not a sign was or was not a fixture depended upon whether it was attached to the building or to the realty (California Tax Service Annotation 190.0560). After due consideration it was decided to accept this classification in regard to the 1971 amendment. As you point out prior to December 16, 1971 we had taken the position that the signs that you leased were tangible personal property. However, this was based upon the wording of Section 6016.3 as it read prior to December 16, 1971. At that time it

provided that tangible personal property included any (as distinguished from just fixtures) property that was attached to the realty where the lessor had the right to remove the property unless he was the lessor of the realty to which the property was attached.

Although the state might possibly receive more money in the long run if the signs you lease were still treated as tangible personal property, the Legislature by amending Section 6016.3 saw fit to limit the classification of tangible personal property affixed to realty to fixtures rather than just any property affixed to the realty.

If you have any further questions regarding this matter, please feel free to contact us direct.

Very truly yours,

Glenn L. Rigby
Tax Counsel