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**STATE BOARD OF EQUALIZATION**

June 25, 1954

Mr. O--- A. T---  
Attorney at Law  
XXX South --- Street  
--- --- XX, California

Dear Mr. T---:

At a conference held in Los Angeles on February 4, 1954, with representatives of the S--- C--- A--- P--- Association, the question of the application of sales tax to transportation charges in the asphaltic paving industry was discussed.

We are advised that asphaltic paving material is manufactured in the plant of the vendor according to specifications of the vendee. These specifications vary with the quantity and proportion of different sizes of rock and gravel, the courseness of sands, the viscosity of the asphaltic materials used and the degree of heat of the asphaltic material at the time of mixture. Consequently, the material is not a standard type of material maintained in stock, and each order must be made up separately and specifically for the purpose for which it is ordered. Also, hot asphaltic pavement is highly perishable and once it leaves the vendor's plant it cannot be returned to him because it becomes useless.

Delivery of this material is made by three methods:

1. By delivery in the vendor's trucks.
2. By delivery in the vendee's trucks.
3. By delivery in the trucks of a public carrier.

In instances in which delivery is by the vendor's trucks, or by independent public carrier, the transportation charges are separately stated. Where delivery is by public carrier the vendor pays the carrier and bills the vendee for the amount of such charges. In each instance the transportation charges are separately stated.

We think that title passes in the above situations as follows:

1. Where delivery is made in the vendor's own trucks title passes upon delivery at the destination.
2. Where delivery is made in the vendee's trucks title passes at the plant site.
4. Where delivery is made by an independent public carrier title passes at the plant site upon delivery to the carrier.

In the last instance, we think that title passes upon delivery to the carrier because the goods are manufactured to the order of the purchaser and the goods are of such perishable nature that they cannot be returned to the vendor. Accordingly, upon delivery to the carrier there is an appropriation of the goods to the contract with the implied assent of the vendee and the risk of loss or deterioration is upon the vendee.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:ph

cc: --- --- - Tax Administrator