



STATE BOARD OF EQUALIZATION

September 3, 1964

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This is to inform you of the position we have taken with respect to your petition for redetermination of sales tax. We are of the opinion the position of our auditors was correct as respects the disallowance of bad debts. However, we differ with them as respects the application of tax to suit hangers.

We believe a sale occurs each time the hangers change possession. An accounting is made for the hangers and a suitable means of billing employed when they move from manufacturer to supplier to you and back to the supplier. We believe this treatment is consistent with a passage of title.

Hangers constitute “containers” under Section 6364 of the Sales and Use Tax Law, copy enclosed. Your purchases of hangers direct from the factory are nontaxable sales for resale. Your use of the hangers for transportation and display purposes is incidental to their use as containers and does not make the hangers subject to tax. However, where you purchase hangers for resale to suit suppliers, you may be subject to tax because the suit suppliers make an intervening use of the hangers during the manufacturing process. The matter will be returned to our subdistrict office, and they will contact you about the proposed adjustments.

As respects the disallowance of a bad-debt deduction because of the mistake in the formula method used by you, we believe the auditors acted properly. While we might debate the application of the legal rules of estoppel to state agencies, we do not believe estoppel is present in this case in any circumstance. Equitable estoppel in the law is essentially the proposition that where one person makes a misstatement and he intends that another person rely upon it, any loss or detriment incurred by the relying party should be borned by the person making the misstatement. Thus, there are three essential ingredients:

1. A misstatement.
2. Intention that it should be relied upon.
3. Detriment suffered by the relying party.

The third requirement of estoppel is not present in this case. You have pointed out that you feel you are being penalized because you relied upon the formula presented by our auditor. We fail to see how you are being penalized by a tax being asserted at this time which you would have been

required to pay had our auditor been more thorough and set up the formula correctly. You are mistaken in saying you are being penalized. It is simply a matter of being assessed a deficiency which should have been reported during the audit period. It is not a matter of penalty at all, but rather a disallowance of what otherwise would be a windfall.

We have reviewed your return for the third quarter 1960 and note that in making the schedule for this return you clearly stated the bad debts claimed on the face of the return were for the entire fiscal year and not merely for the third quarter. We believe this explanation accompanying your return may properly be regarded as a claim for credit for the first quarter 1960. Therefore, in accordance with our established procedures, we will eliminate the disallowed bad debts for the first quarter 1960 since we believe a timely claim was filed.

Our auditors will make the necessary adjustments in the audit in keeping with the foregoing. We hope you will find this revision satisfactory.

Very truly yours,

John H. Knowles
Associate Tax Counsel

Note:

Use of items as containers generally includes incidental uses of transportation and display, which are not an intermediate and completed use found to have existed by the court in Safeway Stores v. State Bd. Of Equal. (1957) 148 CalApp2d 299.

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