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**STATE BOARD OF EQUALIZATION**

December 4, 1953

S--- - K--- F---, Inc.

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California

Your letter of September 30

Account No. -- - XXXXX

Attention: Mr. T. E. L---

Gentlemen:

You inquire concerning the application of the California sales or use tax to merchandise which is shipped by a Chicago firm direct to recipients in California and in other states. The recipients either are persons who have been contestants on your radio or television programs or are stores which sell a given number of cases of your products.

The merchandise given away is not of your manufacture. You pay the Chicago firm for the merchandise and for their services. The recipient does not know where the merchandise is coming from.

California has both a sales tax and a use tax. The sales tax applies to sales made in this State. The use tax applies to the use in this State of property which has been purchased for use in this State. Since the use tax does not apply to any transaction which is subject to sales tax, it finds its principal application to purchasers from out-of-state sellers.

We enclose Ruling 72, Gifts and Premiums. Since the winning of the merchandise depends upon chance or skill, you are regarded as giving away this merchandise rather than selling it. Accordingly, you are the consumer and the use tax applies to all of such merchandise which is shipped to California recipients.

Yours very truly,

Bill Holden  
Junior Counsel

BH:ja

**M e m o r a n d u m****280.0840**

To: Mr. Robert Owens

Date: January 10, 1992

From: David H. Levine

Subject: Annotation 280.0840

This annotation does not accurately reflect the back-up letter. Fortunately, the annotation states the correct rule. This memorandum should replace the existing letter dated December 4, 1953 as the back-up to Annotation 280.0840.

A sponsor of radio and television programs inquired as to application of tax to transfers of merchandise to recipients who were contestants on the radio and television programs. The sponsor pays a California firm for the merchandise, and the merchandise is sent by that firm directly to the recipients in California. Those recipients won the merchandise by skill or chance.

Since the merchandise is won based on skill or chance, the sponsor is the consumer of that merchandise under subdivision (d) of Regulation 1670 even though the property is sent directly to the recipient. Sales tax applies to the sale of the merchandise to the sponsor.

DHL:es  
4237I*David H. Levine*

cc: Ms. Victoria Lani Arena: Please have the date of this memorandum added to the annotation.