



STATE BOARD OF EQUALIZATION

August 31, 1964

"A"

This is to inform you of the position we have taken with respect to your petition for redetermination of sales tax. We regret we must recommend to the Board that the petition be denied.

"A" is a retailer making taxable sales of a variety of items including ice buckets, dairy supplies, orange drink, fruit punch, fountain equipment, and miscellaneous other equipment, including sales of fixed assets. The sale in question concerns the sale of market fixtures at retail. Thus, the only question is whether the sale qualifies for the occasional sale exemption. Section 6006.5(a) defines occasional sale to include sales which are not in two categories. The first category is sales of assets held or used in a selling activity, e.g., fixed assets. This is not applicable here. The second category excluded from the definition is a series of sales sufficient in number, scope and character to require the holding of a seller's permit. Your company, of course, made such a series of sales prior to the sale in question. Thus, the sale in question became one in a long series of retail sales made by your company.

We do not believe the language "sufficient in number, scope and character" requires a different conclusion. We believe that in view of your widespread activities involving not only dairy sales, but the sales of various items of equipment and in view of the business conducted by your corporate subsidiaries in buying and selling markets, the sale in question is one in a series sufficient in number, scope and character to require the holding of a seller's permit. While the property was of a different type than the goods ordinarily sold by you, it was the kind of property subject to the sales tax act. We believe nothing more is required by the statutory language to make it one of a series.

We also note your objection to the sale of fixtures in the meat and produce departments. We believe these items were correctly included in the audit. Meat and produce fixtures are exempt occasional sales upon a single sale of a market because these assets are not held or used in connection with an activity requiring the holding of a seller's permit as provided in the first part of Section 6006.5(a). However, this is not true where the sale of these assets is one of a series as provided in the second portion of this section. The sale of the fixtures here involved, is one of a series as mentioned above and, thus, the exemption is inapplicable.

Finally, we cannot agree with your objection to the valuation as including an intangible benefit derived from the goods' location in an operating market. The sales tax is a gross receipts tax measured by the actual consideration involved. Insofar as the consideration includes an intangible in the selling price of tangible personal property, it must be included in the measure of tax. Section 6012 of the California Sales and Use Tax Law which defines the tax states:

" 'Gross receipts' mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property sold...

"(b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense...

"The total amount of the sale or lease or rental price includes all of the following:

"(a) Any services that are part of the sale.

"(b) All receipts, cash, credits and property of any kind.

"(c) Any amount for which credit is allowed by the seller to the purchaser..."

We think it is clear that the sales price must reflect all receipts and that no deduction can be made for any intangible benefit derived from the location of the goods at the time of the sale.

You are entitled to a Board hearing in this matter; if you disagree with our conclusions and desire such a hearing, please let us know within 30 days so we may make the necessary arrangements. If you do not desire such a hearing, please sign and return two of the enclosed waiver of Board hearing forms. The third copy is for your files.

Very truly yours,

John H. Knowles
Associate Tax Counsel

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