

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

440.0220

Place: Sacramento, California

Date: October 14, 1954

To: Mr. V. M. Ekstrom (HGG)

From: W. W. Mangels

Re: [A]

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Account No. --- -- XXXXX

As a result of our conference with Mr. Stetson, it was agreed that taxpayer is a consumer of the salt which it uses to refrigerate merchandise for shippers. This is true whether or not taxpayer bills the shipper a 99 cent per hundred-weight separate charge for the salt used. The taxpayer should also be regarded as a consumer even though he should bill another carrier the 99 cents per hundred-weight for the salt.

In other words, whether or not a separate charge is made for the salt, the carrier actually furnishing the salt is a consumer. This is in line with the reasoning of the "ice" cases, *People v. Monterey Ice & Dev. Co.*, 24 Cal. App. 2d 421, and *People v. Puritan Ice Company*, 24 Cal 2d 645. In the *Puritan Ice Company* case, the Supreme Court of California held that *Pacific Fruit Express Company*, a corporation engaged in renting refrigerator cars, was the consumer of ice which it placed in the cars even though a separate charge was made to the buyers of the vegetables for the ice. The same rule should apply where a carrier rather than a person engaged in renting refrigerator cars so uses the refrigerant. And the same rule should whether the refrigerant is salt or ice.

In those cases where the [M] Company is the person which is the carrier placing purchased salt in the cars, it too should be regarded as a consumer in accordance with the foregoing reasoning.

You will also note that carriers which purchase salt and are regarded as consumers are not entitled to avail themselves of the provisions of Section 6359.5 of the Law. In other words, the sale of the salt to them is 100% taxable whether or not the food products will be shipped in interstate commerce.

WWM:ja