

135.0005



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

916-445-6439

March 30, 1978

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

Your letter of March 13, 1978 addressed to Mr. Herbert Sopot, Field Audit Supervisor, has been referred to this office for recommendation.

In essence you contend that [X] should be classified as a bank since it is performing certain banking functions and is classified as a "financial corporation" for the State of California franchise tax purposes. In light of this you reason that the company should be afforded an exemption from the California use tax citing Regulation 1567.

It is our considered opinion that the term "bank" is intended to include only those institutions chartered as banks under specific state and federal statutes. Your business has not obtained a charter as a banking institution under any of these provisions.

The provisions of Regulation 1567 implement the provisions of the statutory law which provide an exemption to instrumentalities of the United States. A national bank has been held to be an instrumentality of the United States. Banks chartered under state law receive a similar exemption by reason of provisions in the State Constitution.

The fact that a corporation (such as [X] Company) is classified as a financial corporation for franchise tax purposes does not require a finding that it should be treated as a bank for sales and use tax purposes. The classification of a particular entity as a financial corporation is made for purposes of imposing an equivalent franchise tax since it is in competition with a bank.

It has been specifically held that a classification made under one of our tax laws does not control a classification made under an independent taxing statute such as our sales and use tax law (see Standard Oil Co. v. State Board of Equalization, 232 Cal. App. 2d 91). Accordingly, in view of the opinion expressed herein, we have advised the out of state audit staff that your company is not entitled to an exemption from the California use tax.

We will be pleased to discuss this with you at your convenience. I can be reached at telephone (916) 445-6439.

Sincerely,

W. E. Burkett
Tax Counsel

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